Volume 42 | Issue 5 Article 8

1997

Labor Law - Antol v. Esposto: The Third Circuit Expands Preemption under the Labor Management Relations Act

Joshua H. Grabar

LABOR LAW—*ANTOL V. ESPOSTO*: THE THIRD CIRCUIT EXPANDS PREEMPTION UNDER THE LABOR MANAGEMENT RELATIONS ACT

I. INTRODUCTION

Imagine that your client, a union member employed under the terms of a collective bargaining agreement, is laid off or fired in contravention of the terms of his or her employment agreement. Although state law may appear to provide a remedy for your client, the availability of the remedy may be extinguished by federal law.

On its face, section 301 of the Labor Management Relations Act of 1947 (LMRA)[1] grants a federal forum for labor contract disputes, without regard to citizenship of the parties or the amount in dispute.[2] The Supreme Court has interpreted section 301, however, as authorizing and requiring federal courts to create and develop a federal common law to govern the enforcement of collective bargaining agreements.[3] This preemption does not remove state court jurisdiction over actions arising under collective bargaining agreements; rather, in some instances, it preempts the application of state law in favor of the federal common law.[4]

1. 29 U.S.C. § 185(a) (1994).

2. *See id.* (specifying forum in which to bring labor contract dispute). For the text of section 301(a) of the Labor Management Relations Act of 1947, see *infra* note 24 and accompanying text.

3. *See* Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 456 (1957) ("The question then is, what is the substantive law to be applied in suits under § 301(a)? We conclude that the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws."); Antol v. Esposto, 100 F.3d 1111, 1115 (3d Cir. 1996) ("Although section 301 refers only to jurisdiction, it has been interpreted as authorizing federal courts to fashion a body of common law for the enforcement of collective bargaining agreements."); Laura W. Stein, *Preserving Unionized Employees' Individual Employment Rights: An Argument Against Section 301 Preemption*, 17 BERKELEY J. EMP. & LAB. L. 1, 3 (1996) (discussing Supreme Court's interpretation of section 301 as authorizing federal courts to create governing body of federal common law to enforce collective bargaining agreements); Christina M. Lyons, Recent Development, *Labor Law*, 36 B.C. L. REV. 307, 331-32 (1996) ("[T]he Supreme Court has interpreted section 301 to require the development of a federal common law with respect to collective bargaining agreements.").

4. *See* Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 413 (1988) (holding that "an application of state law is pre-empted by § 301 of the Labor Management Relations Act of 1947 only if such application requires the interpretation of a collective-bargaining agreement"); International Bhd. of Elec. Workers v. Hechler, 481 U.S. 851, 859 (1987) ("Inasmuch as federal law must control the uniform meaning given to contract terms in a collective-bargaining agreement, however, an employee's state-law tort action that necessarily rests on an interpretation of those terms is pre-empted by § 301."); Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 215 (1985) (stating that question of federal contract interpretation is preempted by section 301); Franchise Tax Bd. v. Construction Laborers Vacation

The purposes of this federal common law are to provide "consistency and uniformity in the interpretation and application of collective bargaining

---

Trust, 463 U.S. 1, 23 (1983) ("[T]he preemptive force of § 301 is so powerful as to displace entirely any state cause of action 'for violation of contracts between an employer and a labor organization.'" (quoting Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 667 (1974))).

Claims that are independent of collective bargaining agreements, however, even if between employees and employers, are not removable. *See* Livadas v. Bradshaw, 512 U.S. 107, 125 (1994) ("[W]hen liability is governed by independent state law, the mere need to 'look to' the collective-bargaining agreement for damage computation is no reason to hold the state law claim defeated by § 301."). The *Livadas* Court (noted that "[s]ection 301 cannot be read broadly to pre-empt nonnegotiable rights conferred on individual employees as a matter of state law," and thus, claims that are independent of collective bargaining agreements may proceed on a state cause of action. *Id.* at 123; *see Lingle*, 486 U.S. at 409-10 ("In other words, even if dispute resolution pursuant to a collective-bargaining agreement, on the one hand, and state law, on the other, would require addressing precisely the same set of facts, as long as the state-law claim can be resolved without interpreting the agreement itself, the claim is 'independent' of the agreement for § 301 preemption purposes."); Caterpillar, Inc. v. Williams, 482 U.S. 386, 394-95 (1987) (stating that respondent's claim was not "substantially dependent" on interpretation of collective bargaining agreement and preemption of independent state rules would be inconsistent with congressional intent); *Antol*, 100 F.3d at 1117 ("Claims that are independent of a collective bargaining agreement, even if they are between employees and employers, are not removable." (citing *Livadas*, 512 U.S. at 123)). As one commentator noted:

> Preemption is defined as a doctrine "adopted by the U.S. Supreme Court holding that certain matters are of such a national, as opposed to local, character that federal laws preempt or take precedence over state laws." Congress' power to preempt or to displace entirely any overlapping and conflicting state law is derived from the Supremacy Clause of the United States Constitution. When evaluating a preemption question, courts must begin with a general presumption against preemption. The presumption is especially strong when the federally regulated area deals with laws which have traditionally been left to a state's sovereignty. . . .
>
> Preemption may occur either by an express statutory provision or by implication determined by the structure and purpose of the Act. The . . . LMRA do[es] not contain express statutory preemption provisions. Thus, absent explicit provision, the extent to which federal labor laws are intended to supercede state laws depends on an analysis of the purpose and structure of the federal act.

Nancy Abraham, Comment, *Section 301 Preemption and Its Effect on an Employee's State Rights*, 1988 DET. C.L. REV. 735, 739-40 (1988) (footnotes omitted) (quoting Black's Law Dictionary 1177 (5th ed. 1960)); *see also* Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 741 (1985) ("The presumption is against pre-emption, and we are not inclined to read limitations into federal statutes in order to enlarge their pre-emptive scope.").

It should be noted that at least one court has held that section 301 may not be applied outside of the United States. *See* Christopher Downey, *Section 301 of Labor Management Relations Act May Not Be Applied Outside U.S.*, N.Y. L.J., July 16, 1992, at 5 (stating that appellate panel found that Congress had authority under Commerce Clause to provide federal forums for labor suits outside United States, but that Congress evidenced no such intent with LMRA).

agreements"[5] and to promote arbitration as the primary means of collective bargaining agreement interpretation.[6]

This change in the governing body of law can have a profound impact on the outcome of a worker's case. Section 301 actions may be advantageous for many employer defendants because they place mandatory satisfaction of certain procedural burdens on aggrieved plaintiffs.[7] In fact, "[t]o prevail in a section 301 action, a plaintiff must initially exhaust collective bargaining grievance procedures, then file suit within a six-month period of limitation, and ultimately prove a breach of both the collective bargaining agreement and the union's duty of fair representation."[8] Because of the heightened procedural requirements of section 301, many of

5. Lyons, *supra* note 3, at 331; *see* Stein, *supra* note 3, at 3 (stating that Supreme Court has argued that allowing certain state law claims could undermine goal of establishing single uniform body of federal law to govern interpretation of collective bargaining agreements); *see also* Local 174, Int'l Bhd. of Teamsters v. Lucas Flour Co., 369 U.S. 95, 103-04 (1962) (discussing policy of formation of uniform federal law as means to avoid stimulation and prolongation of labor disputes); *Antol*, 100 F.3d at 1115 ("An underlying reason for the development of federal law in this area is the need for uniform interpretation of contract terms to aid both the negotiation and the administration of collective bargaining agreements.").

6. *See Lingle*, 486 U.S. at 410-11 (discussing federal common law as means of enforcing arbitration agreements; and stating that by not preempting state tort remedy, Court was consistent with policy of fostering uniform and certain adjudication of collective bargaining disputes and maintained central goal of section 301 preemption by preserving effectiveness of arbitration); *Lueck*, 471 U.S. at 219 ("The need to preserve the effectiveness of arbitration was one of the central reasons that underlay the Court's holding in *Lucas Flour.*"); *Lucas Flour*, 369 U.S. at 105 (stating that use of strike as means to settle dispute that collective bargaining agreement provides shall be settled exclusively and finally by mandatory arbitration constitutes violation of agreement); *Antol*, 100 F.3d at 1115 (noting reason for development of federal law in this area is need for uniformity in interpretation of contract terms to aid negotiation and administration of collective bargaining agreements); Stein, *supra* note 3, at 3 (stating that Supreme Court has reasoned that allowing certain state law claims "could undermine the role of the arbitrator as the principal interpreter of such agreements").

7. *See* Christopher P. Yates, *Cutting the Gordian Knot: A Principled Response to Removal of State Law Claims to Federal Court Based on Section 301 Preemption*, 6 COOLEY L. REV. 483, 483-84 (1989) (stating that in many cases, when plaintiffs' attorneys fail to contest preemption based removal, they play "directly into the hands of employers because section 301 actions require plaintiffs to satisfy a host of procedural requirements"). The advantages that section 301 may confer on employer-defendants may be seen in cases such as *Wheeler v. Graco Trucking Corp.*, 985 F.2d 108 (3d Cir. 1993). In *Wheeler*, a former employee sued his corporate employer and an officer of the corporation for wages due. *Id.* at 110. The action was based on both state law and the LMRA. *See id.* The United States Court of Appeals for the Third Circuit held that because the plaintiff had failed to exhaust the arbitration requirements in the collective bargaining agreement with respect to his wage claim, he was barred from suing under section 301(a) of the LMRA. *See id.* at 112. The court further held that the plaintiff's state law claim was preempted because it was based on a collective bargaining agreement and as such was "governed exclusively by federal law." *Id.* at 113. Hence, the aggrieved plaintiff was never given the chance to be heard on the merits of his claim. *See id.*

8. Yates, *supra* note 7, at 483-84 (footnotes omitted).

the preempted actions are quashed during the first round of dispositive motions.[9] Therefore, the question of preemption can make or break a union employee's lawsuit.[10] Consequently, "section 301 preemption has been a fruitful source of litigation over the years."[11]

Most recently, in *Antol v. Esposto*,[12] the United States Court of Appeals for the Third Circuit held that section 301 of the LMRA preempted an employee action against corporate employers that would otherwise have been permitted under state law.[13] In doing so, the court refused to recognize the independent nature of state law rights apart from those rights delineated in the bargaining agreement in situations in which the collective bargaining agreement must be referenced for calculation of damages.[14] The Third Circuit further held that a state law that defined "employer" to permit aggrieved employees to hold officers of their former

9. *See id.* at 484 & n.9 ("Aggrieved employees who cannot allege exhaustion of their contractual remedies will almost certainly have their preempted claims dismissed for failure to exhaust." (citing Cole v. Pathmark of Fairlawn, 672 F. Supp. 796, 803 (D.N.J. 1987)); *see also Wheeler*, 985 F.2d at 112 (holding that plaintiff could not sue under section 301 of LMRA because he failed to make use of exclusive grievance and arbitration procedures set forth in collective bargaining agreement). One commentator noted that "in most cases the district court does not even address the exhaustion requirement because, once preempted, the plaintiff's state law claims fall prey to § 301's six-month statute of limitations." Yates, *supra* note 7, at 484 n.9 (citing Kirby v. Allegheny Beverage Corp., 811 F.2d 253, 256 (4th Cir. 1987)); *see* Barton v. Creasey Co., 718 F. Supp. 1284, 1287-88 (N.D. W. Va. 1989) (discussing six-month statute of limitations as bar to state claim); *see also* DelCostello v. International Bhd. of Teamsters, 462 U.S. 151, 169-72 (1983) (holding that section 10(b) of National Labor Relations Act, 29 U.S.C. § 160(b) (1994), which establishes six-month period for making charges of unfair labor practices to National Labor Relations Board, is federal statute of limitations designed to accommodate balance of interests very similar to that sought by LMRA and, therefore, governs suits under LMRA section 301).

10. *See Antol*, 100 F.3d at 1117-18 (holding that because suit is based squarely on terms of collective bargaining agreement, state law claim is preempted by federal labor law and noting that federal labor law defines "employer" differently from state law resulting in complete denial of remedy that plaintiff may have been entitled to under federal law); *Wheeler*, 985 F.2d at 111-13 (holding that plaintiff's state law claims for wages due under collective bargaining agreement were preempted and governed exclusively by federal law and that plaintiff could not assert claim under federal law because he failed to exhaust grievance and arbitration procedures required by collective bargaining agreement).

11. *Antol*, 100 F.3d at 1115.

12. 100 F.3d 1111 (3d Cir. 1996).

13. *Id.*, at 1121 (concluding that Pennsylvania wage law is preempted by LMRA). For a discussion of the Third Circuit's decision in *Antol*, see *infra* notes 124-84 and accompanying text.

14. *See Antol*, 100 F.3d at 1121 ("Federal law rests on the premise that limitation of certain rights afforded by the states is justified by having a uniform labor policy."). One commentator notes that the requirements of the dependence test have been interpreted two different ways. *See* Stein, *supra* note 3, at 6. Under one interpretation, the court holds that section 301 preemption is not warranted if the state law right is an independent public law right that can exist without any contractual agreement. *See id.* at 6-7. A second interpretation of the dependence test holds that preemption is mandated if resolution of the claim at issue would re-

corporate employer personally liable would alter the scope and enforcement of collective bargaining agreements if applied to the LMRA.[15]

This Casebrief discusses the development of section 301 preemption under the LMRA in U.S. jurisprudence and, more specifically, within the Third Circuit.[16] Part II summarizes the development of section 301 preemption by the Supreme Court.[17] Part III briefly analyzes the application and interpretation of the LMRA's section 301 preemption by other circuit

---

quire a court to interpret the collective bargaining agreement "in a more than de minimis way." *Id.* at 7.

15. *See Antol*, 100 F.3d at 1119-20 (stating that definition of "'employer' . . . created by state law, if applied to the Labor Management Relations Act, would substantially alter the scope and enforcement of the typical collective-bargaining agreement").

Although this Casebrief does not focus on the issue of employer liability under the National Labor Relations Act, the *Antol* court discussed this facet of the case at some length. The *Antol* court noted that "[u]nder the [Pennsylvania] Wage Law, officers become the 'employer' and are personally liable for obligations of the corporate employer." *Id.* at 1119. To determine if section 301 preempted the plaintiffs' state law claim, the Third Circuit focused on the suits in which the court reviewed the relationship between the Pennsylvania wage law and federal labor law. *See id.* This issue was first raised in *Carpenters Health & Welfare Fund v. Kenneth R. Ambrose, Inc.*, 727 F.2d 279 (3d Cir. 1983). In *Ambrose*, the Third Circuit held that individual officers were not liable under section 301 because there was no proof that they were acting as alter egos of the corporation. *Id.* at 284. In so holding, the court read the LMRA's definition of "employer" as narrower than that term's meaning in the state wage law, but refused to find merit in the defendant's argument that the state law was preempted by section 301. *See id.* The Third Circuit, however, has since held that the state law was preempted in contravention of *Ambrose* in light of two recent Supreme Court holdings. *See* McMahon v. McDowell, 794 F.2d 100, 115 (3d Cir. 1986) (citing Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724 (1985); Shaw v. Delta Air Lines, Inc., 463 U.S. 85 (1983)).

The *Ambrose* footnote was revisited by the Third Circuit in *Wheeler*. *Wheeler*, 985 F.2d at 113. In *Wheeler*, the plaintiffs brought an action based on both the Pennsylvania wage law and the LMRA. *See id.* at 110. The Third Circuit held that the state action was preempted because it required interpretation of a collective bargaining agreement and that the section 301 suit was barred because the plaintiff had failed to exhaust the arbitration requirements of the agreement. *See id.* at 113. The Third Circuit, in *Antol*, determined that *Wheeler*'s holding was more in line with the Supreme Court's holding in *Lueck*, which contradicted *Ambrose*. *Antol*, 100 F.3d at 1119-20.

The Third Circuit distinguished the *Antol* case as one against individual officers and shareholders of the corporation. *Id.* at 1119. Under the state wage law, officers become the "employer" and were personally liable as such. *See id.* This definition of the term "employer" was deemed by the Third Circuit to be in conflict with that of the LMRA, and if applied to the LMRA, it would drastically alter its scope. *See id.* at 1119-20 ("[P]ermitting use of the Wage Law in disputes where collective bargaining agreements are in force, undermines the uniformity of federal labor law in a critical area—enforcing wage agreements, a mandatory subject for collective bargaining."). As a matter of policy, the Third Circuit determined that preemption must occur in order to uphold the federal right to determine who shall resolve contract disputes. *See id.* at 1120.

16. For an introductory discussion of section 301 jurisprudence, see *supra* notes 1-15 and accompanying text.

17. For a discussion of the development of section 301 jurisprudence within the Supreme Court, see *infra* notes 23-78 and accompanying text.

courts.[18] Next, Part III examines the history of section 301 preemption within the Third Circuit.[19] Part IV provides a narrative analysis of the Third Circuit's most recent application of section 301 preemption and describes how such application may affect the ability of a legally harmed employee to seek remedies granted under state law.[20] Part V discusses what a practitioner must do when faced with section 301 preemption.[21] Finally, Part VI considers the future of section 301 preemption and the extent to which courts may apply section 301 to preempt rights granted under state law in favor of federal common law.[22]

II. THE SUPREME COURT AND SECTION 301 PREEMPTION

As first adopted, the purpose of section 301 of the LMRA was to provide jurisdiction to federal courts in labor disputes and to "encourage the making of agreements and to promote industrial peace."[23] Section 301(a) of the LMRA provides:

---

18. For a discussion of the development of section 301 jurisprudence within jurisdictions other than the Third Circuit, see *infra* notes 79-98 and accompanying text.

19. For a discussion of the development of section 301 preemption jurisprudence within the Third Circuit, see *infra* notes 99-123 and accompanying text.

20. For a narrative analysis of *Antol*, see *infra* notes 124-84 and accompanying text.

21. For a discussion of the practical applications of the analysis presented within this Casebrief, see *infra* notes 185-208 and accompanying text.

22. For the conclusion of this Casebrief, see *infra* notes 209-12 and accompanying text.

23. Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 453 (1957) S. REP. No. 80-105, at 17-18 (1947). One commentator added:

> It appears that Congress was troubled because it believed that it was difficult for employers to sue unions as entities in state courts to enforce contracts. Thus, the purpose of [section] 301 seemed to be to provide recourse to the federal courts to enforce contracts as a vehicle for achieving labor peace.

Anthony Herman, *Wrongful Discharge Actions After* Lueck *and* Metropolitan Life Insurance*: The Erosion of Individual Rights and Collective Strength?*, 9 INDUS. REL. L.J. 596, 604 n.28 (1987). Additionally Senate Report 105 states:

> Statutory recognition of the collective agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace.
>
> It has been argued that the result of making collective [bargaining] agreements enforceable against unions would be that they would no longer consent to the inclusion of a no-strike clause in a contract.
>
> This argument is not supported by the record in the few States which have enacted their own laws in an effort to secure some measure of union responsibility for breaches of contract. Four States . . . have thus far enacted such laws and, so far as can be learned, no-strike clauses have been continued about as before.
>
> In any event, it is certainly a point to be bargained over and any union . . . which has bargained in good faith with an employer should have no reluctance in including a no-strike clause if it intends to live up to the terms

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between 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 controversy or without regard to the citizenship of the parties.[24]

In *Textile Workers Union of America v. Lincoln Mills*,[25] however, the United States Supreme Court interpreted section 301 as authorizing federal courts to create a substantive body of federal common law to govern the enforcement of collective bargaining agreements.[26] The *Lincoln Mills*

---

of the contract. The improvement that would result in the stability of industrial relations is, of course, obvious.

S. REP. NO. 80-105 at 17-18. Senate Report 105 further stated that "to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the Federal courts." *Id.* at 15; *see also* HARRY A. MILLIS & EMILY CLARK BROWN, FROM THE WAGNER ACT TO TAFT-HARTLEY 17 (1950) (reviewing growth of U.S. labor market in 1940s and 1950s and need to promote performance of agreements); James B. Atleson, *The Circle of Boys Market: A Comment On Judicial Inventiveness*, 7 INDUS. REL. L.J. 88, 92 (1985) (discussing Senate Report 105); Alexander M. Bickel & Harry H. Wellington, *Legislative Purpose and the Judicial Process: The* Lincoln Mills *Case*, 71 HARV. L. REV. 1, 19-20 (1957) (stating that collective bargaining agreements affecting interstate commerce should be enforceable in federal courts in order to promote harmony and uniformity); Archibald Cox, *Some Aspects of the Labor Management Relations Act, 1947*, 61 HARV. L. REV. 1, 48 (1947) (discussing transition to system of collective bargaining with hope of achieving harmonious relationships).

24. 29 U.S.C. § 185(a) (1994).

25. 353 U.S. 448 (1957).

26. *Id.* at 451-52 (stating that section 301 "supplies the basis upon which the federal district courts may take jurisdiction and apply the procedural rule of § 301(b)"). The *Lincoln Mills* Court noted that section 301's construction was varied among the courts. *Id.* at 450. One view held that section 301 was only a grant of jurisdiction to federal district courts in cases involving labor organizations, without respect to diversity of citizenship or amount in controversy. *See id.*; *see also* United Steelworkers v. Galland-Henning Mfg. Co., 241 F.2d 323, 325 (7th Cir. 1957) (referring to section 301, and stating that "it would seem clear that all it does is to give procedural directions to the federal courts"); International Ladies' Garment Workers' Union v. Jay-Ann Co., 228 F.2d 632, 635 (5th Cir. 1956) ("[S]ection 301 implies a normal federal-question jurisdiction to the extent provided in other statutes, all other jurisdictional requisites having been abolished in suit by or against labor organizations . . . ."); Mercury Oil Refining Co. v. Oil Workers Int'l Union, 187 F.2d 980, 983 (10th Cir. 1951) ("This statute is for the purpose only of giving jurisdiction to the federal courts in cases involving labor contracts.").

The other view held that section 301 was more than jurisdictional, because it authorized federal courts to create federal law for the enforcement of collective bargaining agreements. *See Lincoln Mills*, 448 U.S. at 451; Shirley-Hermann Co. v. International Hod Carriers Union, 182 F.2d 806, 809 (2d Cir. 1950) (stating that section 301 is substantive as well as jurisdictional); *see also* Signal-Stat. Corp. v. Local 475, United Elec., Radio & Mach. Workers, 235 F.2d 298, 300 (2d Cir. 1956) (holding that section 301 creates federal substantive rights and federal jurisdiction to enforce them); Rock Drilling Local Union No. 17 v. Mason & Hanger Co., 217

Court was faced with resolving a dispute in which a plaintiff-union sought to compel an employer to arbitrate grievances pursuant to a collective bargaining agreement.[27]

The court below, the United States Court of Appeals for the Fifth Circuit, found that although the district court had jurisdiction over the suit, it had no authority based in federal or state law to grant relief.[28] The Supreme Court, however, looked to the legislative history of section 301 and found that "[v]iewed in this light, the legislation does more than con-

---

F.2d 687, 691-92 (2d Cir. 1954) (stating that section 301 is substantive as well as jurisdictional); Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp., 210 F.2d 623, 625 (3d Cir. 1954) ("Section 301(a) is a grant of federal-question jurisdiction and thus creates a federal substantive right."); United Elec., Radio & Mach. Workers v. Oliver Corp., 205 F.2d 376, 384-85 (8th Cir. 1953) ("Congress, exercising its power under the commerce clause of the Constitution, not only intended to but did create substantive rights and liabilities of parties to collective bargaining agreements in industries affecting commerce."); Milk & Ice Cream Drivers & Dairy Employees Union, Local No. 98 v. Gillespie Milk Prod. Corp., 203 F.2d 650, 651 (6th Cir. 1953) (assuming substantive rights were created by section 301); Textile Workers Union v. Arista Mills Co., 193 F.2d 529, 533 (4th Cir. 1951) (finding that section 301 confers federal jurisdiction and determining that there is no reason why court cannot enforce federal substantive rights); Hamilton Foundry & Mach. Co. v. International Molders & Foundry Workers Union, 193 F.2d 209, 215 (6th Cir. 1951) (discussing section 301 as grant of federal question jurisdiction that creates federal substantive rights); Schatte v. Int'l Alliance of Theatrical State Employees & Moving Picture Mach. Operators, 182 F.2d 158, 164 (9th Cir. 1950) (stating that "[s]ection 301 was not enacted merely to provide a new forum for the enforcement of contracts theretofore enforceable solely in the state courts . . . . [T]he section was designed to protect interstate and foreign commerce by creating a new substantive liability, actionable in the federal courts, for the breach of a collective bargaining contract" in industries having impact upon either interstate or foreign commerce); American Fed'n of Labor v. Western Union Tel. Co., 179 F.2d 535, 536 (6th Cir. 1950) (finding that jurisdiction in case did not rest on diversity, but rather on section 301, which meant that court may enforce substantive federal rights).

After reviewing relevant legislative history, the *Lincoln Mills* Court held that "the substantive law to be applied in suits under § 301(a) is federal law, which courts must fashion from the policy of our national labor laws . . . . Federal interpretation of the federal law will govern, not state law." *Lincoln Mills*, 353 U.S. at 456-57; *see* Stein, *supra* note 3, at 3 ("The Supreme Court has interpreted section 301 as authorizing the federal courts to create a body of federal common law governing the enforcement of collective bargaining agreements."); Yates, *supra* note 7, at 484-85 ("More than thirty years ago, the United States Supreme Court ruled that section 301 is 'more than jurisdictional.' Rather, section 301 provides federal courts with the power to fashion substantive law 'from the policy of our national labor laws.'" (quoting *Lincoln Mills*, 353 U.S. at 451, 456)); Lyons, *supra* note 3, at 331-32 ("[T]he Supreme Court has interpreted section 301 to require the development of a federal common law with respect to collective bargaining agreements.").

27. *Lincoln Mills*, 353 U.S. at 449 (explaining petitioner-union entered into collective bargaining agreement in 1953 with respondent-employer and agreement provided that grievances would be handled pursuant to specified procedures and provided for availability of arbitration by either party as final step).

28. *See id.* ("[The court of appeals] held that, although the District Court had jurisdiction to entertain the suit, the court had no authority founded either in federal or state law to grant the relief.").

fer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way."[29] The Supreme Court, therefore, determined that such enforcement should be accomplished through the application of a federal common law in accordance with the intent of Congress.[30]

Since *Lincoln Mills*, the Supreme Court and lower courts throughout the nation have struggled with defining and applying section 301.[31] In *Local 174, International Brotherhood of Teamsters v. Lucas Flour Co.*,[32] the Supreme Court was faced with an action by an employer against a labor union for damages sustained as a result of a union-initiated strike in contravention of a collective bargaining agreement.[33] The Court held that although state court jurisdiction is not removed by section 301 preemption, an application of state law is preempted to the extent to which it contradicts a federal common law interpretation of collective bargaining agreements.[34]

---

29. *Id.* at 455.

30. *See id.* at 457 (noting that "[i]t is not uncommon for federal courts to fashion federal law where federal rights are concerned. Congress has indicated by § 301(a) the purpose to follow that course here." (citations omitted)).

31. For a discussion of the development of section 301 preemption by the Supreme Court, see *supra* notes 23-30, *infra* notes 32-78 and accompanying text. For a discussion of the development of section 301 preemption within the circuit courts, see *infra* notes 79-123 and accompanying text.

32. 369 U.S. 95 (1962).

33. *See id.* at 96-98. In *Lucas Flour*, an employee was discharged after he had damaged a new forklift by running it off a loading platform and onto some railroad tracks. *See id.* at 97. This discharge sparked a union strike designed to force the employer to rehire the discharged employee. *See id.* The employer brought suit against the union seeking damages caused to the business by the strike. *See id.* The strike was a violation of the collective bargaining agreement because it was an attempt to coerce the employer to forgo its contractual right to terminate an employee for sub par work. *See id.*

34. *See id.* at 103 ("The dimensions of § 301 require the conclusion that substantive principles of federal labor law must be paramount in the area covered by the statute."). Whether the suit brought to enforce the collective bargaining agreement is brought in state or federal court is irrelevant. *See id.*; *see also* Avco Corp. v. Aero Lodge No. 735, 390 U.S. 557, 559-60 (1968) (addressing related concepts of preemption and removal under section 301 and explaining that actions under section 301 are controlled by federal substantive law even when brought in state court under state law); Stein, *supra* note 3, at 5 ("The Court [in *Lucas Flour*] declared that federal law in this area is exclusive, regardless of whether the suit to enforce the collective bargaining agreement is brought in state or federal court. Thus, state contract law is preempted to the extent that it would otherwise enforce and govern the interpretation of collective bargaining agreements."); Yates, *supra* note 7, at 485 (discussing Supreme Court's analysis of preemption and removal under section 301 in *Avco Corp.*).

The *Lucas Flour* Court emphasized the need for one uniform law.[35] In doing so, the Court sought to avoid (1) a disruptive influence on negotiation and administration of collective bargaining agreements; (2) difficulties in dispute resolution under the agreement; and (3) unwillingness to agree to contract terms providing for final dispute resolution.[36] In light of these considerations, the Court ruled in favor of federal preemption: "[W]e cannot but conclude that in enacting § 301 Congress intended doctrines of federal labor law uniformly to prevail over inconsistent local rules."[37]

In the same year that the Court decided *Lucas Flour*, it also extended section 301's coverage beyond union plaintiffs to claims of individual employees.[38] In *Smith v. Evening News Ass'n*,[39] the plaintiff brought a claim, both as an individual and as a member of a union, against his employer for breach of his collective bargaining contract.[40] The Court recognized that

35. *Lucas Flour*, 369 U.S. at 104 ("Indeed, the existence of possibly conflicting legal concepts might substantially impede the parties' willingness to agree to contract terms providing for final arbitral or judicial resolution of disputes.").

36. *See id.*, 369 U.S. at 103-04 (stating that subject matter of section 301 calls for uniform law so as to avoid disruption of negotiation and administration of collective bargaining agreements and difficulties with dispute resolution).

37. *Id.* at 104. The Court discussed the policy reasons for the federal preemption of state law in the adjudication of issues arising out of collective bargaining agreements:

> More important, the subject matter of § 301(a) "is peculiarly one that calls for uniform law." The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. Because neither party could be certain of the rights which it had obtained or conceded, the process of negotiating an agreement would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract. 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. Indeed, the existence of possibly conflicting legal concepts might substantially impede the parties' willingness to agree to contract terms providing for final arbitral or judicial resolution of disputes.

Id. at 103-04 (citations and footnote omitted) (quoting Pennsylvania R.R. Co. v. Public Serv. Comm'n, 250 U.S. 566, 569 (1919)).

38. *See* Smith v. Evening News Ass'n, 371 U.S. 195, 201 (1962) (concluding that action of individual employees arose under section 301); *see also* Yates, *supra* note 7, at 485 (stating that Supreme Court extended section 301 to individual employees).

39. 371 U.S. 195 (1962).

40. *Id.* at 195-96. The plaintiff, a building maintenance employee of Evening News Association and member of the Newspaper Guild of Detroit, sued his employer for breach of contract when the employer did not permit the plaintiff and his assignors to report to their jobs when a different union went on strike. *See id.* During this same time period, the employer continued to allow employees not covered under collective bargaining agreements to work and paid these employees in full. *See id.* at 196. This action violated a clause in the contract stating that

there was support for the defendant's contention that this employee action to collect damages was "not among those 'suits for violation of contracts between an employer and a labor organization . . . ,' as provided in § 301."[41] Such support, however, was defeated in light of the *Lincoln Mills* holding that section 301 was not only procedural, but substantive as well.[42] Therefore, the Court held that the claims of individual employees could be brought under section 301.[43]

The Supreme Court further expanded section 301 in *Allis-Chalmers Corp. v. Lueck*[44] to preempt certain tort actions brought by employees covered under collective bargaining agreements.[45] In *Lueck*, the plaintiff-employee alleged bad faith in his employer's handling of his disability claim.[46] The Court justified the expansion of section 301 preemption through a policy set forth in *Lucas Flour*—the need for a uniform law to

---

"there shall be no discrimination against any employee because of his or her membership or activity in the Guild." *Id.*

41. *Id.* at 198 (alteration in original) (quoting 29 U.S.C. § 185(a) (1994)). The Court discussed one case in which a majority concluded that section 301 "did not give the federal courts jurisdiction over a suit brought by a union to enforce employee rights which were variously characterized as 'peculiar in the individual benefit which is their subject matter', 'uniquely personal' and arising 'from separate hiring contracts between the employer and each employee.'" *Smith*, 371 U.S. at 198 (quoting Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp., 348 U.S. 437, 460 (1954).

42. *See Smith*, 371 U.S. at 199 (discussing how three Justices in *Westinghouse* based their decisions on view that section 301 was procedural only, not substantive). Justice Frankfurter, joined by Justice Burton and Justice Minton, recognized that if section 301 was substantive, "it would be self-defeating to limit the scope of the power of the federal courts to less than is necessary to accomplish this congressional aim." *Westinghouse*, 348 U.S. at 442.

43. *Smith*, 371 U.S. at 200. The Court discussed individual employee claims under section 301:

> The rights of individual employees concerning rates of pay and conditions of employment are a major focus of the negotiation and administration of collective bargaining contracts. . . . To exclude these claims from the ambit of § 301 would stultify the congressional policy of having the administration of collective bargaining contracts accomplished under a uniform body of federal substantive law. This we are unwilling to do.

Id.

44. 471 U.S. 202 (1985).

45. *Id.* at 219 ("Since the state tort purports to give life to these terms in a different environment, it is pre-empted."); *see* Stein, *supra* note 3, at 5 (noting that Court justified expansion of section 301 preemption based on need for uniform law). As noted in *Antol*, "[e]ven though 'the state court may choose to define the tort as "independent" of any contract questions . . . Congress has mandated that federal law govern the meaning given contract terms.'" *Antol v. Esposto*, 100 F.3d 1111, 1116 (3d Cir. 1996) (quoting *Lueck*, 471 U.S. at 218-19).

46. *See Lueck*, 471 U.S. at 206 (alleging that employer "intentionally, contemptuously, and repeatedly failed to make payments under the negotiated disability plan, without a reasonable basis for withholding the payments"). In *Lueck*, the plaintiff was injured in a nonoccupational accident that occurred while carrying a pig to a friend's house for a pig roast. *Id.* at 205. Under the parameters of the collective bargaining agreement, the corporate employer was to provide benefits for nonoccupational injuries to all union employees. *See id.* at 204. The plaintiff

govern the interpretation of the terms of the collective bargaining agreement.[47] The *Lueck* Court then added the need to preserve the role and effectiveness of arbitration as a means of dispute resolution as a second policy-based justification.[48]

Furthermore, in *Lueck*, the Court explained that as a general rule, any state law cause of action that is "*substantially dependent* upon analysis of the terms of [a collective bargaining] agreement" is preempted by section 301.[49] Satisfaction of the requirements of this "dependence test" has been a key focus in the determination of section 301 preemption.[50]

An example of a dependent state law remedy is typified in *International Brotherhood of Electrical Workers v. Hechler*.[51] In *Hechler*, the Supreme Court concluded that a state law tort claim for breach of duty of care to assure workplace safety was preempted because courts would be required

---

felt he was being harassed by his employer and filed suit in state court for failure to make disability payments. *See id.* at 205; *see also* Robert P. Lane, Jr., Note, *Labor Law Preemption Under Section 301: New Rules for an Old Game*, 40 SYRACUSE L. REV. 1279, 1285-86 (1989) (discussing employee's belief of harassment by Allis-Chalmers in processing his benefit payments).

47. *See Lueck*, 471 U.S. at 211 ("The interests in interpretive uniformity and predictability that require that labor-contract disputes be resolved by reference to federal law also require that the meaning given a contract phrase or term be subject to uniform federal interpretation.").

48. *See id.* at 219 (espousing policy reasons for expansion of section 301 preemption found in *Lucas Flour* and further stating "[a] final reason for holding that Congress intended § 301 to pre-empt this kind of derivative tort claim is that only that result preserves the central role of arbitration in our 'system of industrial self-government'" (quoting Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 581 (1960))). The *Lueck* Court feared that allowing union employees to bring certain claims in court would undermine the role of the arbitrator by having courts resolve employment disputes that the arbitrator could have resolved and reducing employer incentive to agree to arbitration clauses that could easily be disregarded by employees. *See* Stein, *supra* note 3, at 6 ("The Court feared that allowing unionized employees to seek redress for employment related claims in court would undermine the arbitrator's role as the primary interpreter of most labor agreements."). The Supreme Court in *Lueck* stated:

> A rule that permitted an individual to sidestep available grievance procedures would cause arbitration to lose most of its effectiveness, as well as eviscerate a central tenet of federal labor-contract law under § 301 that it is the arbitrator, not the court, who has the responsibility to interpret the labor contract in the first instance.

Lueck, 471 U.S. at 220 (citation omitted).

49. *Lueck*, 471 U.S. at 220; *see* International Bhd. of Elec. Workers v. Hechler, 481 U.S. 851, 859 n.3 (1987) (stating that state law tort action claiming that union breached duty of care was preempted by section 301 because it was substantially dependent on union's obligations as delineated in collective bargaining agreement). The *Hechler* Court stated that "[t]he rule there set forth is that, when a state-law claim is substantially dependent on analysis of a collective-bargaining agreement, a plaintiff may not evade the pre-emptive force of § 301 of the LMRA by casting the suit as a state-law claim." *Id.* (citing *Lueck*, 471 U.S. at 220).

50. *See* Stein, *supra* note 3, at 6 ("[T]he Court has indicated that the real question is whether resolution of the state law claim depends on the collective bargaining agreement.").

51. 481 U.S. 851 (1987).

to interpret the collective bargaining agreement to determine what duties had been placed on the union.[52] Hence, any state law claim that required an interpretation of the collective bargaining agreement for its resolution, would be preempted by section 301 in favor of an application of federal law.[53]

Converse to *Lueck*'s general rule, the Supreme Court in *Caterpillar, Inc. v. Williams*[54] held that section 301 preemption is not triggered when a state law claim can be resolved without an interpretation of the collective bargaining agreement's terms.[55] In *Caterpillar*, former employees brought an action against their former employer for breach of their individual employment contracts under state law.[56] Because state law claims were not *substantially dependent* on the interpretation of the collective bargaining agreement, they were not preempted.[57]

---

52. *Id.* at 862. In discussing the preemptive force of section 301, the Court stated:

> In order to determine the Union's tort liability, however, a court would have to ascertain, first, whether the collective-bargaining agreement in fact placed an implied duty of care on the Union to ensure that Hechler was provided a safe workplace. . . . Thus in this case, as in *Allis-Chalmers*, it is clear that "questions of contract interpretation . . . underlie any finding of tort liability."

Id. (quoting *Lueck*, 471 U.S. at 218).

53. *See id.* at 859 & n.3 (discussing preemption of state law claim by section 301). When a state law claim is substantially dependent on analysis of the collective bargaining agreement, the claim will be preempted by federal law through section 301 of LMRA, but to extend section 301 preemption to state laws that proscribe conduct, or establish rights and obligations independent of labor contract would be inconsistent with congressional intent. *See id.*

54. 482 U.S. 386 (1987).

55. *Id.* at 396 ("[A] plaintiff covered by a collective-bargaining agreement is permitted to assert legal rights independent of that agreement, including state-law contract rights."); *see also Lueck*, 471 U.S. at 211 ("[N]ot every dispute concerning employment, or tangentially involving a provision of a collective-bargaining agreement, is pre-empted by § 301 or other provisions of the federal labor law.").

56. *Caterpillar*, 482 U.S. at 390 (discussing state law claim for breach of individual employment contracts based on employee downgrades, that eventually led to termination).

57. *See id.* at 394. The Court stated, in pertinent part, that respondents' state law contract claims are not "completely pre-empted" section 301 claims:

> Section 301 governs claims founded directly on rights created by collective-bargaining agreements and claims "substantially dependent on analysis of a collective-bargaining agreement." Respondents alleged that Caterpillar has entered into and breached *individual* employment contracts with them. Section 301 says nothing about the content or validity of individual employment contracts. It is true that respondents, as bargaining unit employees at the time of the plant closing, possessed substantial rights under the collective agreement, and could have brought suit under § 301. As masters of the complaint, however, they chose not to do so.
>
> Moreover . . . respondents' complaint is not substantially dependent upon interpretation of the collective bargaining agreement.

Id. at 394-95 (citation omitted) (quoting *Hechler*, 481 U.S. at 859 n.3).

Moreover, the Supreme Court in *Lingle v. Norge Division of Magic Chef, Inc.*[58] extended this narrow reading of section 301's preemptive power and held that when an issue is tangential to, and requires only limited interpretation of, a collective bargaining agreement, federal common law may not preempt a state law cause of action.[59] The cause of action in *Lingle* arose out of an employee's claim that she was terminated for exercising her rights under a state workers compensation act.[60] The *Lingle* Court determined that the state law claim was not preempted, even though the Court needed to look at the collective bargaining agreement to determine benefits and damages.[61] The Court explained its holding:

> In other words, even if a dispute resolution pursuant to a collective-bargaining agreement, on the one hand, and state law, on the other, would require addressing precisely the same set of facts, as long as the state-law claim can be resolved without interpreting the agreement itself, the claim is "independent" of the agreement for § 301 pre-emption purposes.[62]

---

58. 486 U.S. 399 (1988).

59. *See id.*, 486 U.S. at 413 n.12 ("'[N]ot every dispute . . . tangentially involving a provision of a collective bargaining agreement, is pre-empted by § 301 . . . .'" (quoting Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 211 (1985)); *see also LMRA Did Not Pre-empt State Defamation Action*, NAT'L L.J., July 22, 1996, at B22 (discussing circuit court holding that refused to preempt state law action because action did not require interpretation of collective bargaining agreement, so allowing independently brought state action did not violate principle of preemption).

60. *Lingle*, 486 U.S. at 401. The plaintiff, an employee of the defendant's manufacturing plant, notified the defendant that she had been injured in the course of her employment and asked for compensation for her medical expenses in accordance with the Illinois Workers' Compensation Act, 820 ILL. COMP. STAT. 305/1 to 305/30 (West 1994). *See Lingle*, 486 U.S. at 401. The plaintiff was discharged by the defendant six days later for filing a false workers' compensation claim. *See id.* The union that represented the plaintiff then filed a grievance pursuant to the collective bargaining agreement that protected the plaintiff from discharge except for "proper" or "just" cause and created a procedure for arbitration of such grievances. *See id.* Pending arbitration, the plaintiff commenced an action in state court alleging improper discharge. *See id.* at 402. The defendant then removed the action to federal court and moved to dismiss the case on preemption grounds or to stay further proceedings pending the completion of arbitration. *Id.*

61. *Lingle*, 486 U.S. at 407. The *Lingle* Court noted:

> Neither of the elements [of this action] requires a court to interpret any term of a collective-bargaining agreement. . . . This purely factual inquiry likewise does not turn on the meaning of any provision of a collective-bargaining agreement. Thus, the state-law remedy in this case is "independent" of the collective-bargaining agreement in the sense of "independent" that matters for § 301 pre-emption purposes: resolution of the state-law claim does not require construing the collective-bargaining agreement.

Id.

62. *Id.* at 409-10.

The state law claim that involves only a limited interpretation of the collective bargaining agreement, therefore, will not, without more, be preempted by the LMRA.[63]

Most recently, the Supreme Court, in *Livadas v. Bradshaw*,[64] attempted to reinforce and clarify its position on potentially conflicting areas of section 301 preemption jurisprudence.[65] In *Livadas*, the Court held that the California Labor Commissioner's policy of denying enforcement of certain state laws to those employed under the terms of a collective bargaining agreement was not mandated by section 301 preemption and violated the plaintiff's rights under the National Labor Relations Act.[66] Specifically, the Court found that federal labor law was not in conflict with a state statute that imposed a monetary penalty upon employers who failed to pay all wages due immediately upon discharge.[67]

In *Livadas*, the Court reiterated that the mere need to look to the collective bargaining agreement for damage computation is no reason to hold the state claim defeated by section 301.[68] The Court's position ensured the availability of the protections of minimum state labor standards when such state rights are independent of those delineated in the collective bargaining agreement.[69]

---

63. *See id.* at 410-12 (discussing result reached by Court and expressing concern for leaving standard labor law establishments within state power). The *Lingle* Court further noted that although there may be instances in which federal law preempts state law on the basis of subject matter of the particular law in question, section 301 preemption says nothing about the substantive rights that a state may provide to workers when adjudication of those state-granted rights does not depend on an interpretation of those rights. *Id.* Section 301 preemption "merely ensures that federal law will be the basis for interpreting collective-bargaining agreements." *Id.* at 409.

64. 512 U.S. 107 (1994).

65. *Id.* at 108; Lyons, *supra* note 3, at 335 ("[I]n *Livadas v. Bradshaw*, the United States Supreme Court reinforced and attempted to clarify its position on these potentially conflicting areas of preemption jurisprudence.").

66. 29 U.S.C. §§ 151-168 (1994); *see Livadas*, 512 U.S. at 117-18 ("[T]he Commissioner has presented Livadas and others like her with the choice of having state-law rights . . . enforced or exercising the right to enter into a collective-bargaining agreement with an arbitration clause."). The Court further stated: "This unappetizing choice, we conclude, was not intended by Congress . . . and cannot ultimately be reconciled with a statutory scheme premised on the centrality of the right to bargain collectively and the desirability of resolving contract disputes through arbitration." *Id.*

67. *See Livadas*, 512 U.S. at 117-18 (reasoning that commissioner's interpretation of LMRA was irreconcilable with Congress's statutory scheme and intent).

68. *See* Antol v. Esposto, 100 F.3d 1111, 1122 (3d Cir. 1996) (Mansmann, J., dissenting) (stating that *Livadas* Court "reiterated that '[w]hen the meaning of contract terms is not the subject of the dispute, the bare fact that a collective bargaining agreement will be consulted in the course of state-law litigation plainly does not require the claim to be extinguished'" (quoting *Livadas*, 512 U.S. at 124)).

69. *See Livadas*, 512 U.S. at 133-34 (stating that federal labor law policy must not be heavy-handed). The *Livadas* Court did not suggest that all state action taking into account any collective bargaining process or state law distinction was auto-

The *Caterpillar* Court enunciated a second general rule of preemption by stating that the mere reliance on a collective bargaining agreement as a defense to a state law claim does not result in section 301 preemption.[70] The Court reasoned that the federal question inherent in a section 301 preemption question, even when used in a defensive argument, does not overcome the fact that the plaintiff is the master of the complaint.[71]

Thus, two general rules of preemption have surfaced from an analysis of Supreme Court jurisprudence of section 301 preemption.[72] First, section 301 preempts any state law claim that requires an analysis of the terms of the collective bargaining agreement,[73] but does not preempt a claim that is independent of, or only tangential to, a collective bargaining agree-

---

matically defeated. *Id.* The Court noted: "It is enough that we find the Commissioner's policy to have such direct and detrimental effect on the federal statutory rights of employees that it must be pre-empted." *Id.* at 135; *see* Lyons, *supra* note 3, at 335 ("[*Livadas*] reinforced the Court's position of ensuring minimum state labor standards as a foundation of the system created by the federal labor statutes."). One commentator noted: "In addition, the Court declared that states cannot rely on section 301 of the LMRA to bypass the application of minimum state labor standards to all employees in the state when the legal character of the state right proves independent of the rights under the collective bargaining agreement." *Id.*

70. Caterpillar, Inc. v. Williams, 482 U.S. 386, 398-99 (1987). The *Caterpillar* Court stated: "[A] defendant cannot, merely by injecting a federal question into an action that asserts what is plainly a state-law claim, transform the action into one arising under federal law, thereby selecting the forum in which the claim shall be litigated." *Id.* at 399; *see* Yates, *supra* note 7, at 486 (stating that, to resolve section 301 principles, federal courts have enumerated general rule that parties may not inject federal question into what is clearly state law claim).

71. *See Caterpillar*, 482 U.S. at 398-99 (stating that, in section 301 preemption case, plaintiff is still master of complaint). The Court in *Caterpillar* stated:

> It is true that when a defense to a state claim is based on the terms of a collective-bargaining agreement, the state court will have to interpret that agreement to decide whether the state claim survives. But the presence of a . . . § 301 question, in a defensive argument does not overcome . . . [the fact that] the plaintiff is the master of the complaint.

Id. at 398.

72. For a discussion of the development of Supreme Court section 301 jurisprudential concepts, see *supra* notes 23-78 and accompanying text.

73. *See* International Bhd. of Elec. Workers v. Hechler, 481 U.S. 851, 859 n.3 (1987); Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 220 (1985) (discussing rule that when state law claim substantially depends on analysis of collective bargaining agreement, section 301 controls and prevents plaintiff from masking suit as state law claim).

ment.[74] Second, mere reliance on a collective bargaining agreement as a defense to a state law action does not result in section 301 preemption.[75]

Further, a review of relevant Supreme Court cases reveals that two policy reasons stand behind section 301 jurisprudence: (1) the need for a uniform law to govern interpretation of the terms of a collective bargaining agreement[76] and (2) the need to preserve the central role of arbitration as a means for dispute resolution within industrial self-government.[77] Despite the general rules of section 301 preemption and their correlative public policy purposes as set forth by the Supreme Court, an evaluation of the development of section 301 jurisprudence among the circuit courts shows that its application has been difficult and inconsistent.[78]

III. THE CIRCUIT COURTS' STRUGGLE

A. *The Circuit Courts and Section 301 Preemption*

Although this Casebrief focuses on the development and application of section 301's "dependence" test within the Third Circuit,[79] a review of

74. *See Lueck*, 471 U.S. at 220 (holding that when "resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim . . . or dismissed as preempted by federal labor-contract law" (citations omitted)); Eric T. Berkman, *Employee's Claim for Retaliation is Preempted*, MASS. L. WKLY. Feb. 3, 1997, at 1 (reporting that "[The Plaintiff's] state law claims are preempted . . . not because the collective bargaining agreement is inconsistent with the state law claims asserted, but because it may be so and requires interpretation" (alteration in original)); Jay Judge, *To Federal Court and Back: Judge Remands Ill. Case*, CHI. DAILY L. BULL., Feb. 6, 1995, at 6 (reporting on case holding that LMRA does not preempt state law on retaliatory discharge claims and does not serve as basis for federal jurisdiction on such claims).

75. *See Caterpillar*, 482 U.S. at 398-99 ("[A] defendant cannot, merely by injecting a federal question into an action that asserts what is plainly a state-law claim, transform the action into one arising under federal law.").

76. *See* Local 174, Int'l Bhd. of Teamsters v. Lucas Flour Co., 369 U.S. 95, 102-04 (1962) (stating that incompatible local laws must fall to federal labor law principles to avoid possibility of conflicting substantive interpretation under competing legal systems); *see also Lueck*, 471 U.S. at 211 ("The interests in interpretive uniformity and predictability that require that labor-contract disputes be resolved by reference to federal law also require that the meaning given a contract phrase or term be subject to uniform federal interpretation.").

77. *See Lueck*, 471 U.S. at 219 (citing *Lucas Flour*, 369 U.S. at 105) (stating that finding of preemption of derivative tort suit preserves central role of arbitration in industry and that need to preserve effectiveness of arbitration was central to holding in *Lucas Flour*).

78. *See* Rebecca Hanner White, *Section 301's Preemption of State Law Claims: A Model for Analysis*, 41 ALA. L. REV. 377, 415 (1990) ("While it is clear a claim is preempted if its resolution involves interpretation of the contract, the courts are still struggling with determining when a claim's resolution actually will involve consideration of the contract.").

79. The Supreme Court decisions discussed in this Casebrief have constructed the parameters of section 301 preemption and the "dependence" test. For a discussion of the Supreme Court decisions that have delineated the parameters of section 301 preemption, see *supra* notes 23-78 and accompanying text. In ex-

other circuit court decisions has uncovered an inconsistent application of section 301 preemption's "dependence" test.[80] In fact, the Supreme Court's ambiguous answers to the question of how much interpretation of a collective bargaining agreement is necessary before a plaintiff's state law claims would "substantially depend" upon an interpretation of the agreement have forced the lower courts to define the parameters of section 301 and to apply its "dependence" test on an ad hoc basis.[81]

Prior to *Lueck*, most lower courts allowed unionized employees to bring actions granted by state law, at least when such actions implicated a specific state statute that created or established the cause of action.[82] After *Lueck*, a majority of the federal courts of appeals interpreted the Supreme Court's holding as a bar on employee-plaintiffs who were protected under a collective bargaining agreement from asserting state law claims.[83]

Disparity in appellate court interpretation of *Lueck*, however, became evident in the appellate courts' determination of state-provided retaliatory discharge claims.[84] On one hand, the United States Courts of Appeals for the Second, Third and Tenth Circuits viewed protection against retaliatory discharge as a nonnegotiable state law right immune from section 301 preemption.[85] On the other hand, the United States Courts of Appeals for the Seventh and Eighth Circuits determined that retaliatory discharge

---

panding the application of section 301 preemption, the Supreme Court has not been clear in its definition of a test for preemption. *See* Stein, *supra* note 3, at 3 (stating that Supreme Court has been unclear in defining when claims should be preempted). Because of the Third Circuit's reliance upon the decisions of other circuits and the Supreme Court for guidance in determining the application of section 301 preemption and the definition of its "dependence" test, however, this Casebrief reviews these decisions.

80. *See* Livadas v. Bradshaw, 512 U.S. 107, 124 n.18 (1994) ("We are aware . . . that the Courts of Appeals have not been entirely uniform in their understanding and application of the principles set down in *Lingle* and *Lueck*.").

81. *See id.* (discussing inconsistencies within federal circuits in understanding and applying principles of section 301 preemption); Berda v. CBS, Inc., 881 F.2d 20, 25 (3d Cir. 1989) (recognizing that courts have differed on exactly what constitutes substantial dependence).

82. *See* Herman, *supra* note 23, at 639 (observing that before *Lueck* and *Metropolitan Life*, majority of lower courts permitted assertion of state wrongful discharge actions when specific statute could be pointed to as creating rights).

83. *See id.* at 640 (stating that most federal district courts and courts of appeals interpreted *Lueck* to bar plaintiffs from asserting state wrongful discharge claims).

84. *See* Stephanie R. Marcus, *The Need for a New Approach to Federal Preemption of Union Members' State Law Claims*, 99 YALE L.J. 209, 217 (1989) (discussing conflict among circuits); *see also* Herman, *supra* note 23, at 639-58 (discussing wrongful discharge actions in lower courts after *Lueck*).

85. *See* Marcus, *supra* note 84, at 217 (discussing conflict among circuits); *see also* Baldracchi v. Pratt & Whitney Aircraft Div., United Tech. Corp., 814 F.2d 102, 105, 107 (2d Cir. 1987) (holding that employee's right under state statute was nonnegotiable and, as such, cannot be preempted); Herring v. Prince Macaroni of N.J., Inc., 799 F.2d 120, 124 n.2 (3d Cir. 1986) (holding that employee's state-provided retaliatory discharge claim was not preempted by section 301); Peabody Galion v. Dollar, 666 F.2d 1309, 1323-24 (10th Cir. 1981) (holding, in case decided

claims were preempted by section 301 because such claims were incorporated in collective bargaining agreements.[86] In an attempt to resolve this conflict among the circuits,[87] the Supreme Court in *Caterpillar* and *Lingle* redefined the scope of section 301 preemption and attempted to limit its application by holding that when state law claims were not substantially dependent on, or were merely tangential to, an interpretation of the collective bargaining agreement, they were not preempted.[88] Hence, in *Lingle*, the Supreme Court followed the path of the Second, Third and Tenth Circuits.[89]

After *Lingle*, many courts viewed the Supreme Court's decision as an expansion of the *Lueck* holding.[90] Post-*Lingle* circuit court adjudication of

---

prior to *Lueck*, that state retaliatory discharge claim was not preempted by federal law).

86. *See* Marcus, *supra* note 84, at 217 (discussing treatment of this issue by Seventh and Eighth Circuits); *see also* Johnson v. Hussman Corp., 805 F.2d 795, 797 (8th Cir. 1986) (holding that employee state law retaliatory discharge claim was preempted); Vantine v. Elkhart Brass Mfg. Co., 762 F.2d 511, 517 (7th Cir. 1985) (holding that alleged retaliatory discharge was covered by section 301 and not state law).

87. *See* Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 402-03 & n.1 (1988) (stating that Seventh Circuit's holding rejected petitioner's argument that tort action was not "inextricably intertwined" with collective bargaining agreement because outcome of claim did not depend upon interpretation of agreement and that Seventh Circuit's favoring preemption was contrary to decisions of Second, Third and Tenth Circuits); *see also Baldracchi*, 814 F.2d at 107 (holding that wrongful discharge was not preempted by section 301, but acknowledging conflict among circuits); *Herring*, 799 F.2d at 124 n.2 (holding that plaintiff's claim was rooted in state law and was not preempted by federal labor law); Garibaldi v. Lucky Food Stores, Inc., 726 F.2d 1367, 1369 (9th Cir. 1984) (holding that state retaliatory discharge claim was not preempted by federal law); *Peabody*, 666 F.2d at 1323-24 ("Here the action is not rooted in a collective bargaining agreement . . . [and thus] is not precluded from application here by federal courts . . . ."). *But see Johnson*, 805 F.2d at 797 (holding state retaliatory discharge claim preempted by section 301).

88. *See* Caterpillar, Inc. v. Williams, 482 U.S. 386, 394 (1987) (allowing state claim to proceed because it was not substantially dependent on collective bargaining agreement); *see also Lingle*, 486 U.S. at 413 n.12 (stating that disputes that only tangentially involve collective bargaining agreements are not necessarily preempted by section 301). For a more complete discussion of the Supreme Court's holding in *Caterpillar*, see *supra* notes 54-57, 70-71 and accompanying text. For a more complete discussion of the Supreme Court's holding in *Lingle*, see *supra* notes 58-63 and accompanying text.

89. *Compare Lingle*, 486 U.S. at 413 (stating that state law claims that only tangentially involve collective bargaining agreement are not necessarily preempted by section 301), *with Baldracchi*, 814 F.2d at 107 (holding that state law claim based on wrongful discharge was not preempted by section 301), *Herring*, 799 F.2d at 124 n.2 (holding state law retaliatory discharge was not preempted by section 301), *and Peabody*, 666 F.2d at 1324 (noting that state law retaliatory discharge claim was not preempted by section 301).

90. *See* Marcus, *supra* note 84, at 219. As one Commentator stated:

> *Lingle* announced that section 301 preemption occurs when a plaintiff's state law claim "requires the interpretation of a collective-bargaining agreement," while [*Lueck*] called for section 301 preemption when reso-

section 301 cases resulted in inconsistent application of preemption.[91] Thus, one commentator noted: "While *Lueck* initially promoted a sweeping view of preemption, the *Caterpillar* and *Lingle* decisions have resulted in a more restrictive approach that is often inconsistent with a proper analysis and application of the Supreme Court decisions."[92]

Recognizing the inconsistent judicial interpretations, the *Livadas* Court stated "the Courts of Appeals have not been entirely uniform in their understanding and application of the principles set down in *Lingle* and *Lueck*."[93] In *Livadas*, however, the Supreme Court stated that this case was "not a fit occasion for us to resolve disagreements that have arisen over the proper scope of our earlier decisions."[94] The *Livadas* Court stated that in order to survive section 301 preemption, the legal character of the state right must be "independent" of the rights under the collective bargaining agreement.[95] The ruling in *Livadas* failed to clarify the boundary at which independent state rights must yield to federal preemption and instead used a "vague standard" which creates "the need for ad hoc judicial determinations of the 'independence' of the state right."[96] As a result, it is left up to the lower courts to determine the full scope of

---

> lution of the claim "is substantially dependent upon analysis" of the [collective bargaining agreement] terms. Under *Lingle*, a plaintiff's claim could therefore be preempted if it requires [collective bargaining agreement] interpretation only in assessing an employer's defense, whereas under [*Lueck*] that claim would probably escape preemption because it does not "substantially depend" on [collective bargaining agreement] interpretation.

Id. (footnotes omitted) (quoting *Lingle*, 486 U.S. at 413).

91. *See id.* at 219-25 (discussing circuit court treatment of *Lingle*); *see also* White, *supra* note 78, at 415 ("Despite these Supreme Court decisions, the lower courts continue to struggle with section 301 preemption."). One commentator noted: "Using the same *Lingle* preemption test, the Ninth Circuit decided a case that seems to contradict the Sixth Circuit's reasoning." *Id.* at 221. *Compare* Smolarek v. Chrysler Corp., 879 F.2d 1326, 1331 (6th Cir. 1989) (ruling that plaintiff's state law claim was essentially same as claim in *Lingle*, could be determined without reference to collective bargaining agreement and therefore was not preempted by section 301), *with* Newberry v. Pacific Racing Ass'n, 854 F.2d 1142, 1147 (9th Cir. 1988) (holding that state law claim of intentional infliction of emotional distress depended on interpretation of collective bargaining agreement and is preempted under section 301).

92. White, *supra* note 78, at 415 n.167 (citing *Smolarek*, 879 F.2d at 1326; Nelson v. Central Ill. Light Co., 878 F.2d 198 (7th Cir. 1989); Bettis v. Oscar Mayer Foods Corp., 878 F.2d 192 (7th Cir. 1989); Dougherty v. Parsec, Inc., 872 F.2d 766 (6th Cir. 1989)); *see* Mark A. Casciari & Kay Ann Hoogland, *Passing a Baton to the States—The Supreme Court Narrows the Scope of Federal Regulation of Employee Benefits Plans*, 15 EMPLOYEE REL. L.J. 367, 367 (1989) (discussing trend toward increased state regulation of traditional labor and employment matters).

93. Livadas v. Bradshaw, 512 U.S. 107, 124 n.18 (1994).

94. *Id.*

95. *See id.* at 123-24; Lyons, *supra* note 3, at 339.

96. Lyons, *supra* note 3, at 339-40 (discussing balance between minimum state rights and section 301 principles).

"dependence" under section 301.[97] Consequently, determinations of "dependence" have not been consistent among the circuits.[98]

Supreme Court precedent and circuit court treatment of section 301's "dependence" test provided an essential background upon which the Third Circuit relied in fashioning an application of section 301. This Casebrief now examines the Third Circuit's treatment of section 301 and its application of the "dependence" test in determining the appropriateness of preemption.

B. *The Third Circuit and Section 301 Preemption*

In 1954, in *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*,[99] the Third Circuit recognized that section 301 "seemingly indicat[ed] that Congress intended to preempt to the federal courts litigation on collective bargaining contracts."[100] Since that time, the Third Circuit, like other circuit courts, has struggled with the expansion and delineation of section 301 preemption in accordance with vague Supreme

97. *See* Stein, *supra* note 3, at 16 (stating that issue of "how much contract interpretation is too much" has been left in confused state).

98. *See* Antol v. Esposto, 100 F.3d 1111, 1115 (3d Cir. 1996) ("Not surprisingly, case law has not been completely consistent, particularly when state law may affect the outcome."); Smith v. Houston Oilers, Inc., 87 F.3d 717, 720-21 (5th Cir. 1996) (stating that "labor dispute over termination pay cannot be divorced from the Oilers' conduct in forcing the players to choose between the terms of termination and an excessively demanding rehabilitation program," and thus, players claims were "too dependent" on analysis of collective bargaining agreement to avoid section 301 preemption); Papell v. Loomis Armored, Inc., No. 95-15704, 1996 WL 539122, at *5-6 (9th Cir. Sept. 23, 1996) (holding that employee's defamation claim against employer was preempted because it was "'inextricably intertwined' with the grievance machinery of the collective bargaining agreement"); Montag v. Aerospace Corp., No. 95-55674, 1996 WL 454544, at *1, *4 (9th Cir. Aug. 12, 1996) (concluding that two of plaintiff's claims were preempted because they required interpretation of collective bargaining agreement, but allowing plaintiff to proceed in state court because two federal claims were dismissed).

99. 210 F.2d 623 (3d Cir. 1954), *aff'd*, 348 U.S. 437 (1955).

100. *Id.* at 630 n.16. This was an action for construction of a collective bargaining agreement and enforcement of the rights of employees under the agreement. *See id.* at 624-25. It should be noted that this case, which was affirmed by the Supreme Court, was decided three years before the Supreme Court decided *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 450 & n.2 (1957). *Compare Westinghouse*, 210 F.3d at 623 (noting that Third Circuit handed down decision in 1954), *with Lincoln Mills*, 353 U.S. at 450 & n.2 (citing, in 1957, Third Circuit's decision in *Westinghouse* as holding that section 301 of Labor Management Relations Act is more than jurisdictional and authorizes federal courts to create a body of federal law for enforcement of collective bargaining agreement). In fact, *Westinghouse* was the first suit brought under section 301 to be decided by the Supreme Court. *See* Lane, *supra* note 46, at 1281-82 & n.22 ("The first suit to be brought under section 301 produced a divided Court that seemed to agree on only one aspect of the preemption doctrine: section 301 authorizes suits in federal court for violation of the terms of a collective bargaining agreement."). The Court considered, but did not resolve, whether section 301 was merely jurisdictional or was truly substantive. *See id.* at 1281-82.

Court dictates.[101] Indeed, Third Circuit jurisprudence regarding section 301 preemption generally has followed the dictates of Supreme Court jurisprudence and has favored an ad hoc application of section 301 in narrowly defining "independent" state law claims in an effort to recognize the federal common law.[102] Despite the Third Circuit's efforts toward consistent section 301 jurisprudence, a brief examination of several of the section 301 cases decided by the Third Circuit reveals a pattern of confusion.

In *Berda v. CBS Corp.*,[103] the Third Circuit held that an employee's claims were not preempted by federal law.[104] The Third Circuit considered whether state contract and tort claims for monetary relief could withstand section 301 preemption even though they were brought by an employee who was covered by a collective bargaining agreement and were brought against an employer for misrepresentations that the employer made before the employee was covered by the agreement.[105] The Third

101. *See Antol*, 100 F.3d at 1115-16 (discussing Supreme Court case law, but finding it inconclusive for resolution of issue at hand).

102. *See id.* at 1117 (holding that suit requiring court to look at collective bargaining agreement to determine wages owed is based "squarely on the terms of the collective bargaining agreement" thereby applying broad definition of "dependence" test); Wheeler v. Graco Trucking Corp., 985 F.2d 108, 113 (3d Cir. 1993) (holding that plaintiff's state law claim for wages allegedly due under collective bargaining agreement was preempted by section 301 because it was based squarely on terms of collective bargaining agreement). *But see* Berda v. CBS, Inc., 881 F.2d 20, 27 & n.8 (3d Cir. 1989) (holding that claims based on state law do not "substantially depend" on analysis of terms of collective bargaining agreement). In *Berda*, the Third Circuit cited the *Lueck* Court opinion and noted that the Supreme Court "stated that state tort claims would be preempted only if 'inextricably intertwined with consideration of the terms of the labor contract.' Taking this phrase in the context of the whole opinion, we believe that the Court intended this as a statement equivalent to 'substantial dependence.'" *Id.* (quoting Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 213 (1985)).

103. 881 F.2d 20 (3d Cir. 1989).

104. *Id.* at 26 ("[T]he Supreme Court has made clear that section 301 does not preempt state contract causes of action premised on pre-employment agreements that are advantageous to the employee.").

105. *See id.*, at 21. While employed as a technician in Pittsburgh, Berda met with employees of Columbia Broadcasting System (CBS) to discuss the possibility of future employment with CBS in Washington, D.C. *See id.* Berda allegedly was told at this meeting that he would be guaranteed employment with CBS for the reasonably foreseeable future, and the job would be a permanent position. *See id.* CBS then offered Berda the job, and relying on the promises of the CBS employees, Berda and his wife moved to Washington so that he could begin work as a CBS technician there. *See id.* Shortly after beginning work for CBS, Berda joined the International Brotherhood of Electric Workers, and his employment was covered by the terms and conditions of a collective bargaining agreement. *See id.* The agreement contained a provision that stated that any "[l]ayoffs caused by a reduction of staff shall be made in the inverse order of seniority." *Id.* Less than five months after Berda began working for CBS, he was laid off during a company-wide reduction in force. *See id.* Berda claimed that CBS had determined to conduct wide-scale layoffs within his department before his initial meeting with them to discuss future employment. *See id.* Hence, Berda claimed that the CBS employees with whom he met "knew or should have known that their promises and representations to him were false." *Id.*

Circuit recognized that the issue was "circuit-splitting."[106] Although the circuits agreed that claims were preempted only to the extent that they "substantially depended" on the interpretation of the collective bargaining agreement, "the courts have differed on the more particular question whether in fact there would be *substantial dependence* in the case before them. On similar facts they reach different answers."[107] In *Berda*, the Third Circuit determined that *Caterpillar* demanded a narrow reading of "dependence" in favor of avoiding state law preemption.[108]

Contrary to its decision in *Berda*, in *Wheeler v. Graco Trucking Corp.*,[109] the Third Circuit held that the plaintiff's state law claim for wages allegedly due under a collective bargaining agreement was preempted by section 301.[110] First, the Third Circuit applied the dependence test broadly, holding that the state law claim was preempted because it was "based squarely on the terms of the collective bargaining agreement" and, thus,

---

Berda then filed a claim in state court, alleging breach of contract and tortious misrepresentation. *See id.* Although Berda's complaint did not refer to the collective bargaining agreement, CBS, stating that the suit was preempted by section 301, removed the case to federal district court alleging diversity jurisdiction and federal question jurisdiction. *See id.* The district court held that a resolution of Berda's state law claims was "substantially dependent" upon an analysis of the terms of the collective bargaining agreement, and therefore, the claims were preempted by section 301. *Id.* at 22. The district court then dismissed the action because it was not filed within the LMRA's six-month statute of limitations. *See id.*

106. *See id.* at 25. The Third Circuit noted that the United States Courts of Appeals for the Eighth and Eleventh Circuits have allowed similar state law fraud and contract claims to go forward when based on pre-employment misrepresentations by an employer. *See id.*; Varnum v. Nu-Car Carriers, Inc., 804 F.2d 638, 640 (11th Cir. 1986) (allowing state fraudulent misrepresentation claims to go forward based on pre-employment employer misrepresentations); Anderson v. Ford Motor Co., 803 F.2d 953, 955-59 (8th Cir. 1986) (allowing both state fraud and contract claims to go forward when based on alleged pre-employment misrepresentations by employer). The Ninth Circuit, however, maintained that state fraudulent misrepresentation claims arising from alleged pre-employment misrepresentations are preempted by section 301. *See Berda*, 881 F.2d at 25 (citing Bale v. General Tel. Co., 795 F.2d 775, 779-80 (9th Cir. 1986) (holding that state law claim of pre-employment misrepresentation was preempted by section 301 before Supreme Court's decision in *Caterpillar*)); *see also* Young v. Anthony's Fish Grottos, Inc., 830 F.2d 993, 997 n.1 (9th Cir. 1987) ("No later Supreme Court decision has undermined our analysis in *Bale* [that pre-employment misrepresentation claim was preempted by section 301] and therefore [we are] not at liberty to reexamine that precedent without convening an en banc panel.").

107. *Berda*, 881 F.2d at 25 (emphasis added) (citations omitted).

108. *See id.* at 26 ("Because the contract count of Berda's complaint is not substantially dependent on interpretation of the collective bargaining agreement under *Caterpillar*, his contract claims are not preempted under section 301.").

109. 985 F.2d 108 (3d Cir. 1993).

110. *Id.* at 113; Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 220 (1985) (holding that section 301 preempts claims that are "substantially dependent upon analysis of the terms" of collective bargaining agreement); National Metalcrafters v. McNeil, 784 F.2d 817, 820, 828 (7th Cir. 1986) (holding that federal labor law preempted employee's claim under state law for vacation benefits allegedly due under terms of collective bargaining agreement).

was governed exclusively by federal law.[111] Second, the plaintiff's section 301 suit was barred because of his failure to exhaust the arbitration requirements in the collective bargaining agreement.[112]

In *Trans Penn Wax Corp. v. McCandless*,[113] the Third Circuit held that the resolution of an employee's contract and tort claims was not "substantially dependent" upon an analysis of the collective bargaining agreement and, therefore, was not preempted by section 301.[114] In *Trans Penn*, the employees alleged that their corporate employer induced them to decertify their union through contractual promises of job security that were later breached when six employees were terminated.[115] The Third Circuit recognized that "the mere existence of a collective bargaining agreement does not prevent an individual from bringing state law claims based on some independent agreement or obligation."[116] Furthermore, the Third Circuit stated that a plaintiff may bring a state law tort action provided that

111. *See Wheeler*, 985 F.2d at 113 (applying dependence test broadly and preempting state law claim).

112. *See id.* at 111; *see also* Clayton v. UAW, 451 U.S. 679, 681 (1981) ("An employee seeking a remedy for an alleged breach of collective bargaining agreement between his union and employer must attempt to exhaust any exclusive grievance and arbitration procedures established by the agreement before he [or she] may maintain a suit against his union or employer under § 301."); Angst v. Mack Trucks, Inc., 969 F.2d 1530, 1536 (3d Cir. 1992) (holding that plaintiff must first exhaust grievance and arbitration procedures under collective bargaining agreement before claim can go forward).

113. 50 F.3d 217 (3d Cir. 1995).

114. *Id.* at 220 ("We hold that resolution of the employees' contract and tort claims is not substantially dependent upon an analysis of the collective bargaining agreement and therefore section 301 does not require preemption.").

115. *Id.* Trans Penn, a corporation engaged in manufacturing industrial wax products, entered into a collective bargaining agreement with the Oil, Chemical, and Atomic Worker's International Union ("OCAWI") in which Trans Penn recognized OCAWI as the exclusive representative of all full-time employees at the corporate plant. *See id.* at 220-21. Several months later, a majority of the union members voted to decertify OCAWI as their bargaining representative. *See id.* On the eve of this election, Trans Penn gave the employees a written contract guaranteeing employment and job security. *See id.* Five months later, Trans Penn terminated six of these employees. *See id.* These employees then filed an action in state court alleging breach of contract, fraud, intentional infliction of emotional distress and Racketeering Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962(e) (1994), violations. *See id.*

116. *Trans Penn*, 50 F.3d at 229; *see* Caterpillar, Inc. v. Williams, 482 U.S. 386, 396 (1987) (holding that "a plaintiff covered by a collective-bargaining agreement, is permitted to assert legal rights *independent* of that agreement, including state-law contract rights, so long as the contract relied upon is *not* a collective bargaining agreement"). The Third Circuit noted that the Supreme Court in *Lueck* further held that not every suit "concerning employment, or tangentially involving a provision of a collective bargaining agreement" is necessarily preempted by section 301 of the LMRA. *Trans Penn*, 50 F.3d at 229 n.12 (citing *Lueck*, 471 U.S. at 211-12). *But see The Week's Opinions*, MASS. LAW. WKLY., Sept. 23, 1991, at 9 (reporting that appellate court held that district court below had jurisdiction under section 301 to evaluate action alleging fraudulent inducement in formation of collective bargaining agreement).

the claim did not require, or was not dependent on, an interpretation of the collective bargaining agreement.[117] Central to the Third Circuit's holding was the fact that "the collective bargaining agreement is 'of no consequence because [the employees] need not refer to . . . the collective bargaining agreement in order to make out [their] claim.'"[118] This language may suggest that were the employees' claims even slightly dependent on a nominal interpretation of the terms of the agreement, the *Trans Penn* court may have been overwhelmingly in favor of preemption and a broad application of the "dependence" test.[119]

The past decade has borne witness to an explosion of labor law litigation implicating section 301 preemption issues within the Third Circuit.[120]

117. *See Trans Penn*, 50 F.3d at 229 (discussing when plaintiff may bring state law tort action against employer).

118. *Id.* at 231 (quoting Berda v. CBS, Inc., 881 F.2d 20, 27 (3d Cir. 1989)).

119. *See id.* at 230-31 & n.13 (discussing appropriate application of dependence test in section 301 preemption suits). Trans Penn asserted that the employees' claims were "inextricably intertwined with and substantially dependent on the terms of the collective bargaining agreement." *Id.* at 230 (citing Angst v. Mack Trucks, Inc., 969 F.2d 1530 (3d Cir. 1992); Darden v. United States Steel Corp., 830 F.2d 1116 (11th Cir. 1987)). The Third Circuit distinguished *Angst* from *Caterpillar* and *Berda*, stating that, in *Angst*, the state law claims depended upon an interpretation of the terms of a collective bargaining agreement, whereas in *Caterpillar* and *Berda*, the plaintiffs were not subject to collective bargaining agreements. *See id.* at 230 n.13. The Third Circuit noted, however, that not all claims occurring while one is subject to a collective bargaining agreement are preempted by section 301. *See id.*

The Third Circuit then distinguished the Eleventh Circuit's holding in *Darden* as one that only found that the employee's state law claims would be preempted by section 301 because their resolution *depended* on an examination of the terms of the collective bargaining agreement. *See id.* The Third Circuit noted with approval that the *Darden* court stated that because the "plaintiffs actually allege a violation of the collective bargaining agreement in their complaints . . . it is disingenuous for them now to maintain that their claims are not 'inextricably intertwined with consideration of the terms of the labor contract.'" *Id.* (quoting *Lueck*, 471 U.S. at 213)). Such language may be interpreted as favoring a broad interpretation and application of the "dependence" test.

120. *See* Antol v. Esposto, 100 F.3d 1111, 1117 (3d Cir. 1996) (holding that employee's suit for wages due was based squarely on terms of collective bargaining agreement so as to be preempted in favor of federal law by section 301); Pennsylvania Nurses Ass'n v. Pennsylvania Educ. Ass'n, 90 F.3d 797, 800-04, 807-08 (3d Cir. 1996) (holding that section 301 of LMRA did not preempt nurses' union's breach of fiduciary duty, fraud and deceit claims against former labor representatives because of characterization of plaintiff's claim as assertion of "legal rights *independent* of that agreement" (emphasis added)); Dukes v. U.S. Healthcare, Inc., 57 F.3d 350, 354 (3d Cir. 1994) (discussing section 301's civil enforcement provisions); *Trans Penn*, 50 F.3d at 232 (holding LMRA did not preempt contract and tort claims that were deemed not substantially dependent upon analysis of terms of collective bargaining agreement); Goepel v. National Postal Mail Handlers Union, 36 F.3d 306, 310 & n.5 (3d Cir. 1994) (discussing doctrine of complete preemption under section 301); Wheeler v. Graco Trucking Corp., 985 F.2d 108, 113 (3d Cir. 1993) (holding that section 301 of LMRA preempted former employee's claim for additional wages under state law because claim was based squarely on terms of collective bargaining agreement and therefore was governed exclusively by federal law); *Angst*, 969 F.2d at 1536-38, 1541 (holding resolution of plaintiff's claim pre-

Generally, the trend in the Third Circuit, as well as in most other circuits, involves an application of the "dependence" test on an ad hoc basis.[121] In particular, the Third Circuit's recent treatment of section 301's "dependence" test evidences this trend.[122] In order to gauge when the Third Circuit will preempt state law as being dependent upon an interpretation of a collective bargaining agreement, one needs to review the court's most recent decision concerning section 301.[123]

IV. THE THIRD CIRCUIT DEFINES THE SCOPE OF SECTION 301 IN ANTOL V. ESPOSTO

A. *Majority Opinion*

Recently, in *Antol v. Esposto*, the Third Circuit faced the issue of whether reference to the collective bargaining agreement for the purpose of damage calculation triggers section 301 preemption after liability has been established under state law.[124] Because any action requiring "interpretation" of a collective bargaining agreement is subject to section 301 preemption,[125] the Third Circuit was essentially asked to define the scope of the phrase "*dependent* upon an *interpretation*" within the parameters of

empted by section 301 because it substantially depended upon analysis of terms of collective bargaining agreement and discussing necessity of exhausting grievance and arbitration procedures before going forward with complaint in federal court); *Berda*, 881 F.2d at 25 (holding employee's claims were not preempted in circuit-splitting question of whether state contract and tort claims for monetary relief bought by union against employer were preempted, even though they were based on alleged misrepresentations of job security made before employee was represented by union); Bradshaw v. General Motors Corp., Fisher Body Div., 805 F.2d 110, 115 (3d Cir. 1986) (holding that section 301 was not implicated because plaintiff failed to state cause of action); Malia v. RCA Corp., 794 F.2d 909, 913 (3d Cir. 1986) (holding employee's state law tort claims were independent of and, therefore, did not interfere with collective bargaining agreement and were not preempted by section 301); Carpenters Health & Welfare Fund v. Kenneth R. Ambrose, Inc., 727 F.2d 279, 283-84 (3d Cir. 1983) (discussing Ambrose argument for preemption under LMRA).

121. For a discussion of the application of the "dependence" test on an ad hoc basis, see *supra* notes 99-120 and accompanying text.

122. For a discussion of the explosion of section 301 preemption litigation in the Third Circuit, see *supra* note 120 and accompanying text.

123. For a discussion of the Third Circuit's decision in *Antol v. Esposto*, see *infra* notes 124-84 and accompanying text.

124. *See Antol v. Esposto*, 100 F.3d 1111, 1115 (3d Cir. 1996) (discussing plaintiffs' assertion that "once liability is established under state law, reference to the collective bargaining agreement for calculation of damages does not trigger preemption.").

125. *See* Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 410 (1988) (stating that "as long as the state-law claim can be resolved without *interpreting* the agreement itself, the claim is '*independent*' of the agreement for § 301 pre-emption purposes" (emphasis added)). For a discussion of why actions requiring an "interpretation" of the collective bargaining agreement are considered "dependent" on the agreement and, therefore, are preempted by section 301, see *supra* notes 44-69 and accompanying text.

section 301.[126] More specifically, the court considered whether section 301 preempted an employee action for unpaid wages, liquidated damages and attorney's fees that were permitted under Pennsylvania state law.[127]

In *Antol*, 111 terminated employees of Shannopin Coal Company brought suit against individual corporate officers and shareholders for wages owed by the corporate employer under Pennsylvania state law.[128] The former employees brought the suit in a state court of common pleas to collect wages earned by and guaranteed to the plaintiffs under their employment contract with Shannopin.[129] The plaintiffs based their claim on the Pennsylvania Wage Payment and Collection Law[130] and attempted to recover liquidated damages and attorney's fees as well as unpaid wages.[131] Attached to the plaintiffs' complaint was a schedule of the amounts claimed and the capacity under which they were owed.[132]

The defendants removed the case to federal court on the basis that the employment contract under which they were being sued was, in fact, a collective bargaining agreement that should be enforced under section 301 of the LMRA.[133] The magistrate judge determined that the plaintiffs' claims required an interpretation of the collective bargaining agreement and, thus, were governed by section 301, rather than state law.[134] The judge further held that the plaintiffs had not yet exhausted their contractual remedies under the collective bargaining agreement and recom-

126. *See generally Antol*, 100 F.3d at 1117 (stating that suit was based "squarely on the terms of the collective bargaining agreement" and "the plaintiff's alleged entitlement to compensation and benefits is disputed and cannot be discerned without analyzing the terms of the collective bargaining agreement").

127. *See id.* at 1121 (Mansmann, J., dissenting) (discussing issue of proper application of section 301).

128. *Id.* at 1114 (stating that suit was brought under law in Pennsylvania providing for wage payment and collection). Shannopin had filed for bankruptcy on September 31, 1991 and continued to operate its business until July 24, 1992. *See id.* On that date, the plaintiffs were laid off, still being owed wages earned during the bankruptcy proceeding. *See id.*

129. *See id.* ("In May 1995, plaintiffs filed suit in the Court of Common Pleas of Greene County, Pennsylvania for the wages due and . . . 'several categories of vacation pay . . . all of which were wages guaranteed to and earned by the plaintiffs as part of their contract of employment with [Shannopin].'").

130. 43 PA. CONS. STAT. ANN. § 260 (West 1992).

131. *See Antol*, 100 F.3d at 1114 (asserting claim under Pennsylvania law).

132. *See id.* (describing plaintiffs' complaint). Damages were claimed as amounts in the categories of "wages, regular vacation, graduated vacation, floating and sick/personal." *Id.*

133. *See id.* (asserting that "contract of employment" referred to in plaintiffs' complaint was collective bargaining agreement between United Mine Workers and Shannopin).

134. *See id.*

mended that summary judgment and dismissal be granted for the defendants.[135] The district judge adopted these recommendations.[136]

On appeal to the Third Circuit, the plaintiffs first contended that their claims were independent of the collective bargaining agreement.[137] Coupled with this contention was the assertion that reference to the collective bargaining agreement for the sole purpose of damage calculation was not an "interpretation of the collective bargaining agreement" and, therefore, did not trigger section 301 preemption.[138] The plaintiffs finally asserted that the ruling of the district court discriminated against union employees.[139] In response, the defendants contended that federal law preempted the state statute because the plaintiffs' claims for wages and benefits due would require an interpretation of the collective bargaining agreement.[140]

1. *Defining "Independent"*

In arriving at its holding, the Third Circuit first reviewed the development of section 301 jurisprudence within the Supreme Court.[141] The court noted, as stated in *Lincoln Mills*, that section 301 allows federal courts to create a body of federal common law to govern collective bargaining agreements.[142] The Third Circuit stated that the development of this federal law was supported by policy needs for uniform interpretation of agreement terms and to help develop and enforce the negotiation and administration of collective bargaining agreements.[143]

---

135. *See id.* ("He therefore recommended that summary judgment be granted as to those defendants who had filed appropriate motions and that the action be dismissed as to those defendants who had not joined in the motions.").

136. *See id.* at 1114-15.

137. *See id.* at 1115 ("On appeal, plaintiffs contend that their claims are independent of the collective bargaining agreement, that once liability is established under state law, reference to the collective bargaining agreement for calculation of damages does not trigger preemption, and that the district court's ruling discriminated against union employees.").

138. *Id.* (discussing plaintiffs' assertion that referencing collective bargaining agreement for damage calculation is not equivalent to "interpretation").

139. *See id.* at 1115 (complaining of discrimination against union employees).

140. *See id.* (discussing defendant's contention that plaintiffs' claims required interpretation of collective bargaining agreement).

141. *See id.* at 1115-17 (discussing Supreme Court development of section 301 preemption jurisprudence).

142. *See id.* at 1115 ("Although section 301 refers only to jurisdiction, it has been interpreted as authorizing federal courts to fashion a body of common law for the enforcement of collective bargaining agreements."); *see also* Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 456 (1957).

143. *See Antol*, 100 F.3d at 1115 (citing Local 174, Int'l Bhd. of Teamsters v. Lucas Flour Co., 369 U.S. 95, 103-04 (1962)); *see also* Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 410-11 (1988) (stating that federal common law fosters uniform and predictable resolution of disputes requiring interpretation of collective bargaining agreements).

The Third Circuit recognized that although section 301 preemption is powerful, its general principles are not easily extrapolated or applied to specific cases.[144] Moreover, not all state law causes of action are preempted.[145] The Third Circuit focused on *Lingle*'s recognition that section 301 does not preempt state law when litigation of a plaintiff's cause of action does not require an interpretation of a collective bargaining agreement.[146] In other words, the Third Circuit recognized that if a claim can be resolved *independently* of an interpretation of a collective bargaining agreement, then the state law is not preempted.[147] If, however, the state law remedy is *dependent* on an interpretation of the collective bargaining agreement, it is supplanted by federal law through section 301.[148]

The Third Circuit used *Caterpillar* as an example of an "independent" claim.[149] The Third Circuit noted that in *Caterpillar*, a breach of contract suit that was outside the scope of the collective bargaining agreement, an interpretation of the agreement was unnecessary to establish the plaintiffs' case.[150] The Third Circuit stated that the "'independent' nature of the

144. *See generally*, Stein, *supra* note 3, at 6 (discussing difficulties with section 301 preemption and stating "[i]n expanding section 301 preemption to apply to certain individual employment rights claims asserted by employees covered by collective bargaining agreements . . . the Court did not clearly define the test for preemption").

145. *See Antol*, 100 F.3d at 1115 (stating that federal principles draw no clear lines of demarcation and as result "case law has not been completely consistent, particularly where state law may affect the outcome"). The Third Circuit observed that "'the preemptive force of § 301 is so powerful as to displace entirely any state cause of action "for violation of contracts between an employer and a labor organization." Any such suit is purely a creature of federal law, not withstanding the fact that state law would provide a cause of action in the absence of § 301.'" *Id.* at 1115 (quoting Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 23 (1983)). The powerful impact of section 301, however, is lessened by *Lingle's* holding that courts could determine state labor law actions provided that such matters were beyond any arbitration of the collective bargaining agreement. *See Lingle*, 486 U.S. at 408-11 (stating that federal preemption of state law action is not permitted "when adjudication of [plaintiffs'] rights does not depend upon the interpretation of such agreements").

146. *See Antol*, 100 F.3d at 1115 (discussing *Lingle* Court's conclusion that employee could enforce state statute even though employee was covered by collective bargaining agreement).

147. *See id.* (stating that *Lingle* Court noted that section 301 preemption is not implicated to address substantive rights state may provide to workers "when adjudication of those rights does not depend upon the interpretation of such agreements").

148. *See id.* at 1115-16 (discussing how section 301 ensures that federal law will govern interpretation of collective bargaining agreements and that section 301 is applied to preempt state law action when state law remedy requires interpretation of collective bargaining agreement and is therefore dependent on interpretation of collective bargaining agreement).

149. *See id.* at 1116 (discussing independent nature of plaintiff's claims as deciding factor in *Caterpillar*). For a discussion of *Caterpillar*, see *supra* notes 54-57, 70-71 and accompanying text.

150. *See Antol*, 100 F.3d at 1116 (stating that "construction of that agreement was unnecessary to establish the plaintiffs' case").

plaintiffs' claim was the deciding factor" in determining that the state law action would not be preempted by section 301.[151]

The Third Circuit focused on *Hechler* as an example of a "dependent" claim.[152] The Third Circuit noted that in this employee common law tort suit against a union, an interpretation of the collective bargaining agreement was necessary to establish the plaintiff's case.[153] In *Hechler*, the plaintiff's case charged that her union had failed to fulfill its duty of providing safe working conditions as it had promised in the collective bargaining agreement.[154] The Third Circuit recognized that the Supreme Court concluded that the plaintiff's claim was preempted because the case was "dependent" on an interpretation of the collective bargaining agreement.[155] According to the Third Circuit, such an interpretation was necessary to determine the nature and scope of the duty at issue and to determine whether such a duty was placed on the union.[156]

The *Antol* court also discussed the expansion of federal law preemption in *Lueck*, in which a plaintiff alleged bad faith in the handling of a disability claim.[157] The Third Circuit stated that because "the right asserted derived from the contract and was defined by the contractual obligation of good faith, any attempt to assess liability inevitably involved contract interpretation," thus triggering section 301 preemption.[158] Even if the state defines the tort action as "independent" of the contract action, Congress has determined that federal law should supercede the state action.[159]

---

151. *See id.* (discussing association between preemption and independent nature of plaintiffs' claim).

152. *See id.* (discussing differences between independent and dependent claims). The Third Circuit stated that in *Caterpillar*, the plaintiffs' claim was outside of the scope of the collective bargaining agreement, making the claim independent of the agreement and rendering it unnecessary to interpret the agreement to establish the plaintiffs' case. *See id.* *Hechler* was used as an example of a dependent claim because the courts would be required to interpret the collective bargaining agreement to determine if a duty of providing safe conditions in the workplace had been placed on the union and if the agreement delineated the nature and scope of that duty. *See id.* (citing International Bhd. of Elec. Workers v. Hechler, 481 U.S. 851 (1987)). For a discussion of *Hechler*, see *supra* notes 51-53 and accompanying text.

153. *See Antol*, 100 F.3d at 1116 (stating plaintiffs' cause was dependent upon interpretation of collective bargaining agreement).

154. *See id.* (citing *Hechler*, 481 U.S. at 853) (stating that plaintiff was electrocuted when her employer assigned her to perform tasks allegedly beyond scope of her training and experience).

155. *See id.* at 1116 (discussing matter by which "dependent" claims are preempted).

156. *See id.* (stating that contract interpretation questions precede any finding of tort liability).

157. *See id.* (citing Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985)). For a discussion of *Lueck*, see *supra* notes 44-50 and accompanying text.

158. *See Antol*, 100 F.3d at 1116.

159. *See id.* ("Even though 'the state court may choose to define the tort as "independent" of any contract questions . . . Congress has mandated that federal

The Third Circuit next recognized a limitation placed on section 301 preemption in *Livadas*.[160] In *Antol*, the Third Circuit noted that in *Livadas*, there was no dispute over the amount of the penalty to which the employee was entitled.[161] The Supreme Court held that in such a case, federal law was not in conflict with a state statute that imposed a monetary penalty for each day that passed between an employee's termination and receipt of wages due.[162] The *Antol* court realized that in reaching this conclusion, the Supreme Court reasoned that "'the mere need "to look" to the collective-bargaining agreement for damage computation is no reason to hold the state claim defeated by § 301.'"[163]

From a review of the Supreme Court cases, the Third Circuit concluded that claims based on a collective bargaining agreement, or requiring an interpretation thereof, were preempted by section 301.[164] The Third Circuit stated: "Claims that are independent of a collective bargaining agreement, even if they are between employees and employers, are not removable" or preempted.[165]

2. *The Third Circuit Rejects a Reading of* Livadas *That Would Require the State Action to Stand*

The Third Circuit rejected the plaintiffs' argument that *Livadas* required the state action to stand.[166] The court in *Antol* distinguished *Livadas* because there was neither a need to refer to the collective bargaining agreement to calculate damages, nor was there any assertion of an interference with the arbitral process.[167] Furthermore, in *Livadas*, the em-

---

law govern the meaning given contract terms.'" (quoting *Lueck*, 471 U.S. at 218-19)).

160. *See id.* (discussing ways in which scope of section 301 was narrowed by *Livadas*).

161. *See id.* at 1116-17 (stating "that [t]he Supreme Court emphasized that there was no dispute over the amount of the penalty to which the employee was entitled" (citing Livadas v. Bradshaw, 512 U.S. 107, 125 (1994))).

162. *See id.* (noting that employee in *Livadas* sued for amount equivalent to lost wages for three days that had passed between her discharge and her receipt of check from her former employer).

163. *Id.* (quoting *Livadas*, 512 U.S. at 125) (considering computation of damages in cause of action for breach of collective bargaining agreement).

164. *See id.* at 1117 ("In general, claims based squarely on a collective bargaining agreement or requiring analysis of its terms are preempted by section 301 and are removable to the federal courts."); *see also* Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 413 (1988); International Bhd. of Elec. Workers v. Hechler, 481 U.S. 851, 859 (1987); *Lueck*, 471 U.S. at 215; Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 23 (1983).

165. *Antol*, 100 F.3d at 1117 (discussing treatment of claims independent of collective bargaining agreement.)

166. *See id.* at 1120-21 ("Nor do we accept the plaintiffs' argument that *Livadas* requires a different result here.").

167. *See id.* (noting that in *Antol*, there were contested factual questions about plaintiffs' eligibility for certain benefits based on collective bargaining agreement that "are proper grist for the arbitration mill").

ployee could not bypass arbitration by relying on the state statute as in *Antol*.[168] The Third Circuit also distinguished *Livadas* on other grounds, noting that in *Antol* there were questions about eligibility for, and correct amounts of, payment.[169] Finally, the Third Circuit claimed that the statute in *Lividas* did not impose individual liability on corporate officers and agents, whereas the statute in *Antol* did.[170]

B. *Dissenting Opinion*

In a compelling dissent, Judge Mansmann determined that *Livadas* allowed the plaintiffs to bring their state law claim without fear of section 301 preemption.[171] According to Judge Mansmann, the Supreme Court in *Livadas* held that an employee's action based on a state law right to recover a penalty from an employer was not preempted by section 301, even though the penalty was attached to the plaintiff's wages that were governed by a collective bargaining agreement.[172] Judge Mansmann asserted that the *Livadas* Court, relying on *Lueck* and *Lingle*, held that section 301 should not be read so broadly that it preempts nonnegotiable state rights conferred to employees as a matter of state law.[173] The *Livadas* Court also stressed that a claim's characterization as "independent" of the collective bargaining agreement was what allowed the state law action to

168. *See id.* ("*Livadas* did not present the situation found in the case at hand where an employee could bypass arbitration by resorting to the statute.").

169. *See id.* ("Moreover, the employer here insists that there are uncertainties about eligibility for the types of vacation pay, as well as the correct amounts due in those instances."). Judge Mansmann, however, argued that the majority's distinction of *Livadas* was without merit because it would allow federal preemption to turn on whether or not an employer chooses to dispute the amount of damages that an employee is entitled to receive under state law. *See id.* at 1123 (Mansmann, J., dissenting). To accept the majority's distinction "would mean that an employer could utilize section 301 preemption to avoid liability by raising a dispute concerning the amount of wages owed in any given case." *Id.* (Mansmann, J., dissenting). For a discussion of Judge Mansmann's dissenting opinion in *Antol*, see *infra* notes 171-84 and accompanying text.

170. *See Antol*, 100 F.3d at 1119-21 (discussing individual liability of corporate officers under Pennsylvania statute).

171. *See id.* at 1121-22 (Mansmann, J., dissenting) ("I believe that the employees' [state law] claims are not preempted . . . . The Supreme Court's decision in *Lividas v. Bradshaw* guides my decision." (citation omitted)).

172. *See id.* at 1122 (Mansmann, J., dissenting) ("In *Livadas*, the Supreme Court held that an employee's action based upon a state law right to receive a penalty payment from her employer was not preempted under the LMRA even though the penalty was tacked to her wages, which were governed by a collective bargaining agreement."). For a discussion of the Supreme Court's decision in *Livadas*, see *supra* notes 64-69 and accompanying text.

173. *See* Antol, 100 F.3d at 1122 (Mansmann, J., dissenting) ("Relying upon its prior decisions in [*Lueck*] and [*Lingle*], the Court held that section 301 could not be read broadly to preempt non-negotiable rights conferred upon individual employees as a matter of state law.").

go forward.[174] Judge Mansmann noted that the *Livadas* Court stated "'[w]hen the meaning of contract terms is not the subject of the dispute, the bare fact that a collective bargaining agreement will be consulted in the course of state-law litigation plainly does not require the claim to be extinguished.'"[175]

Judge Mansmann found *Livadas* to be dispositive to the case at bar and stated that wages sought under the state law in *Antol* were identical to those provided by California state law in *Livadas*.[176] According to Judge Mansmann, this statutory remedy supplements, not supplants, the common law breach of contract action.[177] Judge Mansmann found the majority's distinction of *Livadas* unpersuasive because it based federal preemption on whether an employer chose to argue the amount of damages a plaintiff was due under state law.[178]

Furthermore, Judge Mansmann claimed that the defendants had failed to show that the plaintiffs' proper compensation could not be discerned without an "interpretation" of the collective bargaining agreement.[179] Relying on *Lingle*, Judge Mansmann stated that "[i]n order to determine whether a party's state law claim is preempted per section 301, we look to see whether the resolution of the claim depends on the meaning, or requires the interpretation, of a collective bargaining agreement."[180] In *Antol*, Judge Mansmann stated that one need only look to the appendix of the collective bargaining agreement to determine remunera-

---

174. *See id.* (Mansmann, J., dissenting) (stating that Supreme Court "stressed that it is the legal character of the claim as 'independent' of rights under the collective bargaining agreement that decides whether a state cause of action may go forward").

175. *Id.* (Mansmann, J., dissenting) (quoting Livadas v. Bradshaw, 512 U.S. 107, 124 (1994)).

176. *See id.* at 1123 (Mansmann, J., dissenting) ("Both state laws grant a right of compensation for earned wages, including vacation pay.").

177. *See id.* (Mansmann, J., dissenting) ("'The right to recover wages "earned" by the plaintiffs/employees upon separation from employment is a statutory remedy which supplements (rather than supplants) a common law cause of action for breach of contract.'" (quoting Adam v. Benjamin, 627 A.2d 1186, 1192 (Pa. Super. Ct. 1993))).

178. *See id.* (Mansmann, J., dissenting). Accordingly, Judge Mansmann stated:

> The Majority attempts to distinguish Livadas' case from this case because the Supreme Court in *Livadas* found that there was no dispute between Livadas and her employer over the amount of the penalty to which Livadas was entitled. I do not believe, however, that federal preemption can turn on whether or not an employer chooses to dispute the amount of wages an employee is entitled, under state law, to receive.

Id.

179. *See id.* (Mansmann, J., dissenting) (finding that dispute as to alleged entitlement to compensation and benefits was not implicated by specific provisions of collective bargaining agreement).

180. *Id.* at 1123-24 (Mansmann, J., dissenting) (citing Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 405-06 (1988)).

tion on a daily and hourly basis by job classification.[181] Judge Mansmann therefore asserted that in order to determine the wages owed to the plaintiffs, no interpretation of the collective bargaining agreement was necessary, and the plaintiffs' state law claims should not have been preempted by section 301.[182]

Finally, as a matter of policy, Judge Mansmann noted that the plaintiffs could not receive what they were owed through arbitration because the employer had declared bankruptcy.[183] Therefore, an assertion of this state right could not interfere with the arbitration process, but only with additional means of recourse under unusual circumstances.[184]

V. PRACTITIONER'S NOTES

Both the United States Supreme Court and the Third Circuit have established rules that a practitioner must face when attempting to litigate suits that involve rights articulated in a collective bargaining agreement.[185] First, section 301 has been interpreted as authorizing federal courts to create a substantive body of federal common law.[186] Although

181. *See id.* (Mansmann, J., dissenting) (stating that "[r]ecovery of these wages is expressly provided for by Pennsylvania's Wage Payment and Collection Law" and that in order to determine amount of wages former employees of Shannopin Mining Company were owed, "a court need only consult the appendix of the National Bituminous Coal Wage Agreement . . . at the conclusion of the collective bargaining agreement, which sets forth the remuneration that employees are to receive on a daily and hourly basis by job classification").

182. *See id.* at 1124 (Mansmann, J., dissenting) ("Since the resolution of these employees' claims for unpaid wages does not depend upon the meaning, or require the interpretation, of a collective bargaining agreement, their claims should not be preempted here.")

183. *See id.* (Mansmann, J., dissenting) ("It is important to note that the employees involved in this case could not receive their duly earned wages from the company through the arbitration process because the company was in bankruptcy . . . .").

184. *See id.* (Mansmann, J., dissenting) (arguing that section 301 preemption requirement should not apply in situation such as bankruptcy).

185. For a detailed discussion of the development and application of the rules of section 301 preemption, see *supra* notes 23-123 and accompanying text.

186. *See* Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 451-52 (1957) (stating that section 301 provides basis upon which federal courts take jurisdiction and apply procedural rules of section 301(b) of LMRA); *Antol*, 100 F.3d at 1115 (discussing that, although section 301 refers only to jurisdiction, Supreme Court has interpreted section 301 as allowing federal courts to create body of common law for governance of collective bargaining agreements); Herman, *supra* note 23, at 604-05 ("In 1957, a divided Court began to pour meaning into section 301 when it held in *Textile Workers v. Lincoln Mills* that '[section] 301(a) is more than jurisdictional—that it authorizes federal courts to fashion a body of federal [common] law for the enforcement of . . . collective bargaining agreements and includes within that federal law specific promises to arbitrate grievances.'" (quoting *Lincoln Mills*, 353 U.S. at 450-51)); Lane, *supra* note 46, at 1282-83 (discussing Supreme Court's decision in *Lincoln Mills*); Lyons, *supra* note 3, at 331-32 ("Under section 301 preemption jurisprudence, the Supreme Court has recognized the need for consistency and uniformity in the interpretation and application of collective bargaining

state court jurisdiction is not removed, the application of state law that provides rights to an aggrieved employee is preempted to the extent to which it contradicts federal common law.[187] Section 301 covers claims both by union and individual employee plaintiffs and preempts certain tort actions brought by employees covered under collective bargaining agreements.[188] Second, any state law cause of action that is "substantially

agreements."). One commentator stated: "In order to ensure this consistency, the Supreme Court has interpreted section 301 to require the development of a federal common law with respect to collective bargaining agreements." *Id.* (citations omitted); *see* Stein, *supra* note 3, at 3 (discussing Supreme Court's interpretation of section 301 as authorizing federal courts to create governing body of federal common law for enforcement of collective bargaining agreements); White, *supra* note 78, at 379 (stating that on its face, language of section 301 is deceptively simple and explaining Supreme Court's contrary substantive interpretation); Yates, *supra* note 7, at 484-85 (discussing Supreme Court's ruling that section 301 is more than jurisdictional as it empowers federal courts with ability to create federal common law).

187. *See* Local 174, Int'l Bhd. of Teamsters v. Lucas Flour Co., 369 U.S. 95, 103-04 (1962) (discussing federal preemption of state law in adjudication of collective bargaining agreement issues as necessary because of need for uniformity in law and possibility of disruptive effect upon negotiation and administration of collective bargaining agreements if individual contract terms were allowed to be given different meaning under state and federal law); Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 508-09 (1962) (holding that state courts have concurrent jurisdiction over section 301 claims, but failing to decide choice of law question of whether state court must apply state or federal law when deciding section 301 suit); Herman, *supra* note 23, at 605 (discussing *Lucas Flour* Court's decision that federal common law must govern in suits brought in state courts under section 301); White, *supra* note 78, at 377 ("This statute has long been interpreted as ousting state law claims for breach of contract when the contract involved is a collective bargaining agreement."); Abraham, *supra* note 4, at 739, 746 (discussing *Lucas Flour* and noting doctrine of preemption is that certain matters are of such national character and importance that federal laws take precedence over state laws); Lane, *supra* note 46, at 1284 (discussing *Lucas Flour* decision generally and stating "[t]he Court clarified the section 301 mandate by finding that federal rules of law apply regardless of the forum in which the suit is adjudicated"). One commentator noted: "'Justice Stewart noted the compelling need for a comprehensive and uniform body of federal substantive law to foster the process of 'free and voluntary collective bargaining [that] is the keystone of the federal scheme to promote industrial peace.'" *Id.* (quoting *Lucas Flour*, 369 U.S. at 104); *see* Marcus, *supra* note 84, at 214-15 (discussing *Lucas Flour* holding as straightforward because "states cannot use local rules to resolve breach" of collective bargaining agreements, but noting that when claim does not involve breach of contract but still implicates collective bargaining agreement there has been confusion over how to apply section 301 preemption).

188. *See* Smith v. Evening News Ass'n, 371 U.S. 195, 200 (1962) (stating that section 301 individual and union employee claims are allowable and such claims are consistent with congressional policy of administration of collective bargaining agreements under uniform federal law); White, *supra* note 78, at 382 & n.28 (stating that Supreme Court recognized that section 301 permits suits by individuals, not just unions and employers, who claim breach of collective bargaining agreement and noting "[t]he extension of section 301 to individuals claiming a breach of their collective bargaining agreements, necessarily means that section 301 displaces any state law breach of contract action"); Yates, *supra* note 7, at 485 (discussing *Smith* Court's extension of section 301 to individual employees' claims).

dependent" upon analysis of the terms of a collective bargaining agreement is preempted by section 301.[189] Third, and conversely, section 301 preemption is not triggered when a state law claim can be resolved without an interpretation of the collective bargaining agreement.[190] Fourth and finally, section 301 preemption may not be triggered when an issue is tangential to, and requires only limited interpretation of, the collective bargaining agreement.[191]

Although the Third Circuit has applied section 301 on an ad hoc basis, it has defined independent and tangential issues narrowly in its most recent decision.[192] In doing so, the Third Circuit suggests that a mere

189. *See* International Bhd. of Elec. Workers v. Hechler, 481 U.S. 851, 859 n.3 (1987) (stating that, in state law tort claim, union's breach of duty of care was preempted by section 301 because it was substantially dependent on union's obligations as delineated in collective bargaining agreement). "The rule there set forth is that, when a state-law claim is substantially dependent on analysis of a collective-bargaining agreement, a plaintiff may not evade the pre-emptive force of § 301 of the LMRA by casting the suit as a state-law claim." *Id.*; *see* Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 218-19 (1985) (stating as general rule that any state law cause of action that is "substantially dependent" on analysis of terms of collective bargaining agreement is preempted by section 301); Stein, *supra* note 3, at 6 (stating Supreme Court has indicated that real question in section 301 preemption is whether resolution of state law claim depends on collective bargaining agreement); Lane, *supra* note 46, at 1287-88 (discussing holding and language of *Lueck*'s "substantial dependence" test).

190. *See* Caterpillar, Inc. v. Williams, 482 U.S. 386, 396 (1987) (stating that plaintiff covered by collective bargaining agreement is allowed to assert legal rights independent of agreement); *see also* United Steelworkers v. Rawson, 495 U.S. 362, 369 (1990) (noting that *Lueck* "held that a state-law tort action against an employer may be pre-empted by § 301 if the duty to the employee of which the tort is a violation is created by a collective-bargaining agreement and without existence independent of the agreement"); *Lueck*, 471 U.S. at 211 (stating that not every dispute concerning employment or tangentially implicating term or provision of collective bargaining agreement is preempted by section 301).

191. *See* Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 413 n.12 (1988) (stating that not every dispute which tangentially implicates provision of collective bargaining agreement is preempted by section 301); Marcus, *supra* note 84, at 210-11 (noting that *Lingle* stated resolution of state law claim "does not require construing the collective bargaining agreement" and finding that Supreme Court's language in *Lueck* indicates that claims requiring any interpretation or analysis of collective bargaining agreement are "dependent" and, therefore, preempted); Stein, *supra* note 3, at 16 (noting that Supreme Court in *Lingle* left issue of how much contract interpretation was too much in confused state by dropping word "substantial" from dependence test and then bringing it up later in footnote as well as in later opinion); White, *supra* note 78, at 410-414 (discussing *Lingle* Court's decision and circumstances under which claim may or may not be preempted in favor of federal common law); Lyons, *supra* note 3, at 334 (discussing *Lingle* decision not to preempt state law claims that only tangentially implicated provision of collective bargaining agreement as based in part on reasoning that Congress intended to maintain minimum state labor standards after passage of federal labor law).

192. *See* Antol v. Esposto, 100 F.3d 1111, 1116 (3d Cir. 1996) (deciding case in which Third Circuit faced determining how much interpretation of terms of collective bargaining agreement was too much, thereby triggering section 301 preemption). The Third Circuit held that the plaintiff's entitlement to compensation

need to view a collective bargaining agreement for the calculation of damages may result in the preemption of a state law cause of action.[193] Furthermore, the Third Circuit has held that under section 301, employers can be held liable only in their corporate capacity and not as individuals.[194] Finally, the practitioner must be aware that the mere reliance on a collective bargaining agreement as a defense to a state law cause of action does not result in section 301 preemption.[195]

In the normal course of events, section 301 of the LMRA will be implicated following a unionized employee's commencement of suit against his or her employer in which the employee alleges that the employer violated state law.[196] Upon commencement of such a suit, corporate counsel for

was disputed and could not be resolved without an analysis of the terms of the collective bargaining agreement. *See id.* at 1117.

193. *See id.* at 1123 (Mansmann, J., dissenting) (noting that preemption in this situation appears to be what *Livadas* Court was trying to circumvent).

194. *See id.* at 1120 (holding that employers cannot be held liable as individuals under section 301). The Third Circuit stated that if the state law's broad definition of the term "employer" were applied to the federal law, a number of adverse effects would follow. *See id.* First, the long-standing insulation of officers from personal liability for corporate debts would be removed. *See id.* Second, a broad definition of the term "employer" that extended to corporate officers in their individual capacity would also allow employees to bypass both the grievance procedures established by the collective bargaining agreement and the section 301 federal statute of limitations. *See id.*

195. *See Caterpillar*, 482 U.S. at 392 (stating that presence or absence of federal question jurisdiction is controlled by well-pleaded complaint rule which provides for federal jurisdiction only when federal question is presented on face of plaintiff's complaint and that this "rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law"); Stein, *supra* note 3, at 13 (noting that Supreme Court in *Caterpillar* concluded claims are not removable solely because employer asserts defense that depends on collective bargaining agreement). One commentator noted that in contrast to the previous understanding of preemption doctrine, the *Caterpillar* Court "held that in some cases a section 301 preemption defense cannot serve as a basis for removal jurisdiction." *Id.* The Supreme Court has stated that federal preemption is ordinarily used as a federal defense to the plaintiff's suit and as such, it does not appear on the face of a well-pleaded complaint nor does it authorize removal to federal court. *See* Jay Judge, *Chemical Firm Fails to Keep Suit Out of State Court*, CHI. DAILY L. BULL., Jan. 23, 1996, at 5 (citing Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58 (1987)).

196. *See* Abraham, *supra* note 4, at 756 ("Typically, section 301 springs into force following a unionized employee's commencement of suit against his employer alleging some form of employer misconduct grounded upon state laws which prohibit the behavior."); *see also Lingle*, 486 U.S. at 402 (commencing action against employer alleging plaintiff had been discharged for exercising rights provided by Illinois state worker's compensation laws); Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 727 (1985) (bringing action, under Massachusetts statute, to enforce statute against defendant insurers); Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 206 (1985) (bringing state law tort action against employer and insurer that administered disability insurance plan in accordance with collective bargaining agreement, seeking damages for bad faith in handling claim); *Antol*, 100 F.3d at 1114 (filing complaint based on Pennsylvania Wage Payment and Collection Law, seeking liquidated damages and attorney's fees as well as unpaid wages); Goepel v. National Postal Mail Handlers Union, 36 F.3d 306, 308 (3d Cir. 1994) (filing complaint stating violation of state law, breach of contract and unfair

the employer should first seek removal of the claim to federal district court pursuant to the jurisdictional policy of section 301.[197] Next, counsel for the employer should file a motion for summary judgment based on the employee's failure to exhaust the arbitration provisions.[198] In the alternative, a motion for summary judgment may be grounded on the argument that an application of state law would countermand federal labor law policy by "upsetting the uniformity and predictability established by the collective bargaining system."[199] Counsel for the employer must also contend that the state law claim may only be resolved through, or is "substantially dependent" upon, an interpretation of the terms of the collective bargaining agreement and, thus, is preempted in favor of the federal common law.[200] If counsel for the employer's motion is granted, the union

---

claim settlement); Wheeler v. Graco Trucking Corp., 985 F.2d 108, 110 (3d Cir. 1993) (noting that defendant allegedly violated Pennsylvania Wage Payment and Collection Law by failing to pay plaintiff wages due to him); Angst v. Mack Trucks, Inc., 969 F.2d 1530, 1533 (3d Cir. 1992) (bringing suit against employer and union alleging violations of state and federal law arising from breach of buyout plan under which employees were promised lump sum and year of continued benefits in exchange for voluntary departure).

197. *See* Abraham, *supra* note 4, at 756 (citing 29 U.S.C. § 185 (1994)); *see also Lingle*, 486 U.S. at 402 (discussing defendant's removal of case to federal district court on basis of diversity of citizenship and filing motion to dismiss or stay proceedings based on section 301 preemption doctrine); *Lueck*, 471 U.S. at 206 (filing cross-motion for summary judgment on ground of section 301 preemption); *Antol*, 100 F.3d at 1114 (removing case to federal court asserting that contract of employment referred to in plaintiff's complaint was actually collective bargaining agreement between union and corporation, and therefore, case was really action to enforce terms of collective bargaining agreement under section 301 of LMRA); *Goepel*, 36 F.3d at 308-09 (removing case "immediately" to federal district court stating that case was removable pursuant to federal law); *Angst*, 969 F.2d at 1534 (arguing that district court had erred in not applying federal law to employees' complaint and stating employees had failed to exhaust collective bargaining agreement's internal grievance procedures).

198. *See Angst*, 969 F.2d at 1537 (holding that plaintiff must first exhaust grievance and arbitration procedure under collective bargaining procedure before bringing state law action); *Labor Management Relations Act: Independent State-Law Claims*, N.Y. L.J., May 25, 1990, at 21 (stating that before action can proceed under section 301, employee must exhaust grievance procedures provided by collective bargaining agreement).

199. Abraham, *supra* note 4, at 756-57; *see Lingle*, 486 U.S. at 410-11 (discussing Court's holding that state tort remedy was not preempted by section 301 as "consistent both with the policy of fostering uniform, certain adjudication of disputes over the meaning of collective-bargaining agreements and with cases that have permitted separate fonts of substantive rights to remain unpre-empted by other federal labor-law statutes"); *Lueck*, 471 U.S. at 219 (explaining need to preserve effectiveness of arbitration as one of central reasons that supports Supreme Court's holding in *Lucas Flour*); Local 174, Int'l Bhd. of Teamsters v. Lucas Flour Co., 369 U.S. 95, 103 (1962) (discussing policy behind federal labor law); *Labor Management Relations Act: Independent State-Law Claims*, *supra* note 198, at 21 ("The Supreme Court has held that the federal interest in uniform interpretation of collective bargaining agreements may preempt certain state-law tort actions.").

200. *See Lueck*, 471 U.S. at 220 (explaining that, as general rule, state law claim that is "substantially dependent" upon analysis of terms of collective bargaining

employee will be completely deprived from asserting his or her state law action.[201] Application of the federal common law and its six-month stat-

agreement is preempted by section 301); *see also* International Bhd. of Elec. Workers v. Hechler, 481 U.S. 851, 859 n.3 (stating that state law tort claim alleging union breached duty of care was preempted by section 301 because it was substantially dependent on union's obligations as set forth in collective bargaining agreement). The Supreme Court noted in *Hechler* that when a state law claim is substantially dependent on analysis of the terms of a collective bargaining agreement, the plaintiff may not evade the preemptive force of section 301 by bringing the suit as a state law claim. *Id.* For this reason, counsel for the defendant will always claim that a plaintiff's state law claim may only be resolved through or is substantially dependent upon an analysis of the terms of a collective bargaining agreement. *See Lingle*, 486 U.S. at 402 (discussing district court's dismissal of complaint based on contention that claim for retaliatory discharge was "inextricably intertwined" with collective bargaining provision and that allowing state law action to proceed would undermine arbitration procedures set forth in contract); *Antol*, 100 F.3d at 1115 (discussing defendants' argument that plaintiffs' claims are based on breach of collective bargaining agreement and determination of wages and benefits due would require interpreting agreement, necessitating federal preemption of state law claim); *Goepel*, 36 F.3d at 309 (discussing defendant's removal and argument for preemption based on contention that plaintiff's breach of contract claim was governed by federal law and other state law claims were "inextricably intertwined" with breach of contract claim); *Angst*, 969 F.2d at 1533 (agreeing with defendant that on face of employees' complaint alone, resolution of employees' claims against defendant required interpretation of collective bargaining agreement and any modification of said agreement and concluding that federal labor law preempted state law claims); Berda v. CBS, Inc., 881 F.2d 20, 25 (3d Cir. 1989) ("CBS responds that Berda's claims are based on an alleged individual contract that is inconsistent with the terms of the collective bargaining agreement, and that the claims substantially depend on interpretation of the collective agreement."). For instance in *Berda*, CBS "contend[ed] that the claims [were] preempted by the collective bargaining agreement and that the action must be brought, if at all, under section 301 of the LMRA." *Id.*

201. *See Lueck*, 471 U.S. at 220 (providing rule under which state law claim requiring analysis of collective bargaining agreement for resolution whether framed in contract or tort must be treated as claim brought under section 301 or be dismissed as preempted by federal labor contract law); Abraham, *supra* note 4, at 757 & n.115 ("Only claims alleging a breach of the collective agreement and exhaustion of internal grievance procedures are permissible under Section 301."); *see also* DelCostello v. International Bhd. of Teamsters, 462 U.S. 151, 169-72 (1983) (applying six-month statute of limitations to federal common law actions under LMRA). It should be noted that plaintiffs who are deprived from asserting their state rights often cannot bring federal action because six-month statute of limitation has run, or alternatively, plaintiffs have failed to satisfy arbitration and grievance procedures. *See Berda*, 881 F.2d at 22 (discussing district court's holding that plaintiffs could not maintain suit as LMRA suit because six-month statute of limitations expired); *see also Hechler*, 481 U.S. at 862 (holding that plaintiff is precluded from bringing state law claim due to federal preemption); *Lueck*, 471 U.S. at 220 (holding that state law claim is substantially dependent on analysis of terms of collective bargaining agreement and must be treated as section 301 claim or be dismissed); *Antol*, 100 F.3d at 1114 (holding that because state claims are based squarely on collective bargaining agreement, plaintiffs' state law action was preempted by LMRA); *Wheeler*, 985 F.2d at 113 (holding that plaintiff's state law claims are based on terms of collective bargaining agreement and, therefore, are exclusively governed by federal law, and further noting that, although plaintiff could have brought action under section 301, he was first required to make use of griev-

ute of limitations will likely result in the termination of the plaintiff's case.[202]

When counsel for the employer seeks removal of the claim to federal district court pursuant to section 301, counsel for the employee plaintiff must first argue that preemption under section 301 is inappropriate for the case at bar. This may be done by showing that satisfaction of the employee's state law claim is not "substantially dependent" upon an interpretation of the terms of the collective bargaining agreement.[203] Instead, counsel for the employee should contend either that a narrow definition of "dependence" would best suit a proper balance between federalism and

---

ance and arbitration procedures in collective bargaining agreement, which he failed to do); *Angst*, 969 F.2d at 1537 (holding that federal law governs portion of plaintiffs' suit originally brought as state law action).

202. *See* Herman, *supra* note 23, at 617-18 & n.105 (discussing suit in which defendant moved for summary judgment on basis that six-month statute of limitations under section 301 had run and noting that if "the case is held within § 301 or preempted by federal labor law, then wrongful discharge plaintiffs, when suing both the union and employer in a 'hybrid' breach of contract-duty of fair representation action, face a six month statute of limitations"); Yates, *supra* note 7, at 484 ("The employer has a distinct advantage when the federal court of removal treats the state law claims as preempted by section 301. With the panoply of procedural defenses to section 301 actions available to employers, few cases converted to section 301 actions survive the opening round of dispositive motions."); *see also Hechler*, 481 U.S. at 864-66 & n.6 (noting *DelCostello*'s application of six-month statute of limitation to section 301 actions and stating that, if plaintiff's case is under section 301, court must determine whether claim is time barred by applicable six-month statute of limitations); *DelCostello*, 462 U.S. at 169-72 (applying six-month statute of limitations to federal common law actions under LMRA); *Berda*, 881 F.2d at 22 (discussing district court's holding that plaintiffs could not maintain suit as LMRA suit because it was not filed within six-month statute of limitations); Malia v. RCA Corp., 794 F.2d 909, 913 (3d Cir. 1986) (reversing district court's holding that plaintiff's state law claims were preempted by section 301 and stating that "[g]iven this conclusion, the district court's decision concerning the statute of limitations is irrelevant. The six-month statute of limitations applicable to claims under § 301 of the LMRA does not govern state-law contract and tort claims").

203. *See* Caterpillar, Inc., v. Williams, 482 U.S. 386, 394-97 (1987) (holding that section 301 preemption is not triggered when state law claim can be resolved without interpretation of terms of collective bargaining agreement). In *Caterpillar*, the plaintiffs' state law claims were not preempted because they were not substantially dependent on an interpretation of the collective bargaining agreement. *Id.* at 387. This idea was extended in *Lingle*, in which the Supreme Court held that when an issue is tangential to and only requires a limited interpretation of the collective bargaining agreement, federal common law may not preempt a state law cause of action. *Lingle*, 486 U.S. at 413 n.12. The *Lingle* Court determined that the plaintiff's state law claim was not preempted, although the Court needed to look at the collective bargaining agreement to determine benefits and damages. *Id.* at 407. Moreover, in *Livadas*, the Supreme Court noted that "we were clear that when the meaning of the contract terms is not the subject of dispute, the bare fact that a collective-bargaining agreement will be consulted in the course of state law litigation plainly does not require the claim to be extinguished." Livadas v. Bradshaw, 512 U.S. 107, 124 (1994).

state rights or that the reasons for which federal common law was created are not implicated by the employee's case.[204]

If, however, the employee's claim is held to be preempted by section 301, the employee must satisfy many procedural requirements in order to prevail.[205] The employee must first exhaust all grievance and arbitration procedures under the collective bargaining agreement.[206] Next, counsel

204. *See Livadas*, 512 U.S. at 122-23 (noting that section 301 should not be read too broadly to preempt nonnegotiable state rights conferred on individual employees as matter of state law and stating that preemption should only be applied to ensure that "the purposes animating § 301" are not frustrated); *Antol*, 100 F.3d at 1124 (Mansmann, J., dissenting) (noting that aggrieved employees in case could not receive earned wages through arbitration process because company was bankrupt and arguing that uniform policy in favor of arbitration would not be disturbed by permitting Pennsylvania state law action that allows employees of bankrupt company additional means of redress); Abraham, *supra* note 4, at 761 ("The preemption of virtually any derivative tort claim arising out of an industrial relationship is inconsistent with the fact that Congress had not intended to occupy the entire field of labor law."); *see also* Marcus, *supra* note 84, at 225-30 (discussing problems with current approach to section 301 and arguing for new approach to federal preemption claims); Stein, *supra* note 3, at 2 (arguing "current preemption scheme should largely be discarded to avoid federal interference with legitimate state interests and to be fairer to individual employees covered by collective bargaining agreements"); Yates, *supra* note 7, at 494 (discussing delicate balance section 301 preemption seeks to strike between need for uniformity in federal labor law and protection of individual's rights under independent state law).

205. *See* Yates, *supra* note 7, at 483 (discussing how plethora of procedural requirements placed on plaintiff in section 301 actions "plays directly into the hands of employers").

206. *See* Clayton v. UAW, 451 U.S. 679, 681 (1981) ("An employee seeking a remedy for an alleged breach of the collective-bargaining agreement between his [or her] union and employer must attempt to exhaust any exclusive grievance and arbitration procedures established by that agreement before he [or she] may maintain a suit against his union or employer under § 301(a) of the Labor Management Relations Act."); Hines v. Anchor Motor Freight, Inc., 424 U.S. 554, 562 (1976) ("Courts are not to usurp those functions which collective-bargaining contracts have properly 'entrusted to the arbitration tribunal.'" (quoting United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 564, 569 (1960))); Vaca v. Sipes, 386 U.S. 171, 184 (1967) ("[I]f the wrongfully discharged employee himself [or herself] resorts to the courts before the grievance procedures have been fully exhausted, the employer may well defend on the ground that the exclusive remedies by such a contract have not been exhausted."); Republic Steel Corp. v. Maddox, 379 U.S. 650, 652-53 (1965) (holding that as general federal rule that individual employees who wish to assert contract grievances must attempt use of collective bargaining agreement grievance procedure agreed upon by employer and union as method of redress applicable to severance-pay grievances and precluding employee who had not exhausted grievance procedures established by agreement from instituting state lawsuit to recover severance pay under agreement pursuant to LMRA); *United Steelworkers*, 363 U.S. at 582-83 (discussing exhaustion of grievance and arbitration procedures); *Angst*, 969 F.2d at 1537 ("Under federal labor law, aggrieved employees must exhaust their [collective bargaining agreement's] grievance and arbitration procedures before filing a complaint in federal court 'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.'" (quoting *United Steelworkers*, 363 U.S. at 582-83)); Griesmann v. Chemical Leaman Tank Lines, Inc., 776 F.2d 66, 72 (3d Cir. 1985) ("Federal labor policy requires employees to ex-

for the employee must file suit within the six-month statute of limitations period.[207] Finally, counsel for the employee must prove a breach of both the collective bargaining agreement and the union's duty of fair representation.[208]

VI. CONCLUSION

Although preemption doctrine under section 301 of the LMRA has been visited often both by the Supreme Court and the Third Circuit, it still remains vague in many aspects of its application.[209] Such uncertainty has left the practitioner with room to argue his or her case, but this room to

haust any grievance procedure provided in the union's collective bargaining agreement when that agreement governs the manner in which the employee's rights may be enforced."); *Labor Management Relations Act: Independent State-Law Claims*, *supra* note 198, at 21 (stating that before bringing section 301 action, employee must first exhaust grievance procedures provided by relevant collective bargaining agreement); *see also* James A. Burstein & Carmel Sella, *Sexual Harassment's Second Generation: The Harasser as "Victim,"* 21 EMPLOYEE REL. L.J. 153, 158 (1995) (reporting that defamation claim based on coworkers' allegations of sexual harassment was preempted by section 301 when collective bargaining agreement required union and employer to identify and resolve sexual harassment complaints through contractual grievance-arbitration procedures).

207. *See DelCostello*, 462 U.S. at 169-72 (holding that section 10(b) of National Labor Relations Act, which establishes six-month period for making charges of unfair labor practices to National Labor Relations Board, is federal statute of limitations designed to accommodate balance of interests very similar to that sought by LMRA and therefore governs suits under LMRA section 301); Herman, *supra* note 23, at 617-18 (noting case in which defendant moved for summary judgment, alleging six-month statute of limitations under section 301 had run) (citing Garibaldi v. Lucky Food Stores, 726 F.2d 1367 (9th Cir. 1984); Yates, *supra* note 7, at 484 ("The employer has a distinct advantage when the federal court of removal treats the state law claims as preempted by section 301. With the panoply of procedural defenses to section 301 actions available to employers, few cases converted to section 301 actions survive the opening round of dispositive motions."); *see also Hechler*, 481 U.S. at 864-66 & n.6 (noting *DelCostello*'s application of six-month statute of limitation to section 301 actions and stating that, if plaintiff's case is under section 301, court must determine whether claim is time barred by applicable six-month statute of limitations); *Berda*, 881 F.2d at 22 (discussing district court's holding that plaintiffs could not maintain suit as LMRA suit because six-month statute of limitations expired); *Malia*, 794 F.2d at 913 (reversing district court's holding that plaintiff's state law claims were preempted by section 301 and stating "[g]iven this conclusion, the district court's decision concerning the statute of limitations is irrelevant. The six-month statute of limitations applicable to claims under § 301 of the LMRA does not govern state-law contract and tort claims.").

208. *See* Yates, *supra* note 7, at 483-84 ("To prevail in a section 301 action, a plaintiff must initially exhaust collective bargaining grievance procedures, then file suit within a six-month period of limitation, and ultimately prove a breach of both the collective bargaining agreement and the union's duty of fair representation." (citations omitted)).

209. *See Livadas*, 512 U.S. at 124 n.18 (noting courts of appeals have not been consistent in their interpretation and application of section 301 preemption); Stein, *supra* note 3, at 17 (discussing how confusion in proper application of section 301 has sparked controversy in lower courts); Abraham, *supra* note 4, at 764 ("The Supreme Court has set forth a rule that is vague and quite open-ended. As the rule stands, there is tremendous room for manipulation in its application.");

argue is gained at the expense of predictability.[210] Although both Supreme Court and Third Circuit jurisprudence establish certain rules that a practitioner must follow when attempting to avoid or invite section 301 preemption, section 301's attempt to strike a "delicate balance between the need for uniformity in federal labor law and the protection of individuals' rights under independent state law concepts"[211] will be better met by a clarification of the exact limits of "dependence" and section 301.[212]

Joshua H. Grabar

Lyons, *supra* note 3, at 339 ("The balance between minimum state rights and section 301 principles remains unclear under this vague standard.").

210. *See* Abraham, *supra* note 4, at 764 ("As the rule stands, there is tremendous room for manipulation in its application.").

211. Yates, *supra* note 7, at 494.

212. *See* Abraham, *supra* note 4, at 764-65 (asserting that preemption doctrine is problematic because vague and open-ended Supreme Court rulings have resulted in inconsistent application and stating "the Supreme Court should attempt to clarify the exact limits of section 301 preemption and the areas to which the state has the most significant interest in protecting its citizens"); Lane, *supra* note 46, at 1307 ("The new test of section 301 preemption potentially undercuts the effectiveness of the collective bargaining and arbitration process that remains central to the federal scheme of labor relations."); *see also* Marcus, *supra* note 84, at 219 (noting that *Lueck* Court stressed that "'[t]he full scope of the pre-emptive effect of federal labor-contract law remains to be fleshed out on a case-by-case basis'" (quoting Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 220 (1985))). Marcus noted that "[t]he interests in interpretive uniformity and predictability that require that labor-contract disputes be resolved by reference to federal law also require that the meaning given a contract phrase or term be subject to uniform federal interpretation." *Id.* at 228 (quoting *Lueck*, 471 U.S. at 211); *see also Livadas*, 512 U.S. at 125 n.18 (noting that courts of appeals have not been uniform in their understanding and application of concepts delineated in *Lingle* and *Lueck*, but refusing to resolve disagreements over proper scope of aforementioned decisions); Stein, *supra* note 3, at 5-7 (discussing Supreme Court's shifts among different tests for preemption, litigation caused by lack of clarity in preemption doctrine and need for reform in section 301 preemption).