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Lingle v. Norge Division of Magic Chef, Inc.: Revolutionizing the Application of Substantive State Labor Law to Unionized Employees

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NOTE

LINGLE V. NORGE DIVISION OF MAGIC CHEF, INC.: REVOLUTIONIZING THE APPLICATION OF SUBSTANTIVE STATE LABOR LAW TO UNIONIZED EMPLOYEES

Congress' power to preempt state law derives from the Supremacy Clause of the United States Constitution.[1] Despite this power, Congress left much control of labor relations to the states because labor law falls under traditional state police powers, which have generated a plethora of local regulations that touch on complex labor interrelationships.[2] Further, the Labor Management Relations (Taft-Hartley) Act (LMRA),[3] which governs labor-management disputes in the private sector, contains no express preemption provision. Consequently, congressional intent determines whether certain state action is preempted by federal law.[4] Therefore, the extent to which federal labor law preempts state labor law rests upon the courts' capacity to glean congressional purpose from the overall labor policy manifested in the LMRA.[5]

Deciphering congressional intent in this area of law led to the development of three tests to determine whether labor preemption exists:[6] the *Gar-*

1. U.S. CONST. art. II, § 2; Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 210-11 (1824).

2. *See* Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 21 (1987); Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971). "We cannot declare pre-empted all local regulation that touches or concerns in any way the complex interrelationships between employees, employers and unions; obviously, much of this is left to the States." *Id.* at 289; *see also* Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 208 n.4 (1985); Brown v. Hotel & Restaurant Employees & Bartenders Int'l Union, Local 54, 468 U.S. 491, 503 (1984).

3. 29 U.S.C. §§ 141-188 (1982 & Supp. IV 1986).

4. *Lueck*, 471 U.S. at 208. Generally, "courts sustain a local regulation 'unless it conflicts with federal law or would frustrate the federal scheme, or unless the courts discern from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the States.' " *Id.* at 209 (quoting Malone v. White Motor Corp., 435 U.S. 497, 504 (1978)).

5. *See* Retail Clerks Int'l Ass'n, Local 1625 v. Schermerhorn, 375 U.S. 96, 103 (1963); *see also Lueck*, 471 U.S. at 208.

6. *See generally* F. BARTOSIC & R. HARTLEY, LABOR RELATIONS LAW IN THE PRIVATE SECTOR 37-57 (2d ed. 1986).

mon/Sears "arguably protected/arguably prohibited" test;[7] the *Machinist* "arguably permitted conduct" test;[8] and preemption based on section 301 of the LMRA.[9] Absent express statutory language to the contrary, only state regulation of conduct within the scope of one of these three tests is federally preempted.

In *San Diego Building Trades Council v. Garmon*[10] and *Sears, Roebuck & Co. v. San Diego County District Council of Carpenters*,[11] the United States Supreme Court established the following test: a state cause of action or regulation is presumed preempted if the conduct it seeks to regulate is protected or arguably protected by section 7 of the LMRA,[12] or prohibited or arguably prohibited by section 8 of the LMRA.[13] The *Garmon* decision preserved the primary jurisdiction of the National Labor Relations Board (NLRB),[14] reasoning that Congress intended that the NLRB alone should administer the Taft-Hartley Act. Preempting state law would prevent state application of the Act from conflicting with national labor policy.[15] Nineteen years later, the Court became concerned that *Garmon* preemption unnecessarily impinged on state jurisdiction over conduct traditionally subject to state regulation. The Court remedied this problem by refining the *Garmon* analysis in *Sears*.[16]

Lodge 76, International Association of Machinists v. Wisconsin Employment Commission[17] articulated the second branch of labor preemption, the arguably permitted conduct test, which addressed Congress' concern that

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7. San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236 (1959); Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters, 436 U.S. 180 (1978).

8. Lodge 76, Int'l Ass'n of Machinists v. Wisconsin Employment Relations Comm'n, 427 U.S. 132 (1976).

9. Labor Management Relations (Taft-Hartley) Act (LMRA), § 301, 29 U.S.C. § 185(a) (1982).

10. 359 U.S. 236 (1959).

11. 436 U.S. 180 (1978).

12. 29 U.S.C. § 157.

13. *Id.* § 158; 436 U.S. at 187-89; 359 U.S. at 244; *see also* Cox, *Recent Developments in Federal Labor Law Preemption*, 41 OHIO ST. L.J. 277 (1980). Preemption in the labor area is resolved by balancing the federal interests in either regulating or not regulating particular conduct versus the legitimate interests of the states' in exercising their police powers. *Id.* at 287-88; *see also* Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 209 (1985). Local regulation is sustained unless it conflicts with or frustrates federal law, or Congress sought to fully occupy the field and exclude the states. *Id.*

14. 359 U.S. at 245. The United States Supreme Court held that both state and federal judiciaries must defer to the expertise of the NLRB in the regulation of conduct arguably protected or prohibited by § 7 or § 8 of the LMRA. *Id.*

15. *Id.*; *see also* Comment, *Employment at-Will in the Unionized Setting*, 34 CATH. U.L. REV. 979, 991 (1985).

16. 436 U.S. 180, 188-90 (1978); Comment, *supra* note 15, at 992.

17. 427 U.S. 132 (1976).

states would prohibit or regulate conduct protected by federal law.[18] The issue in such cases is "whether 'the exercise of plenary state authority to curtail or entirely prohibit self-help would frustrate effective implementation [and functioning of the Labor Management Relations] Act's processes.' "[19] If the state's exercise of authority would prohibit or regulate conduct which Congress intended to leave unregulated, then the state's action is preempted.[20]

Preemption based on section 301 of the LMRA, the third branch of labor preemption, operates independently of both the *Garmon/Sears* and *Machinist* preemption principles. Section 301 simply states that suits for violation of contracts between an employer and a representative labor organization may be brought in federal district court as a federal question.[21] State courts also may enforce collective bargaining agreements but must use federal standards.[22] Therefore, section 301 fosters uniformity of labor contract enforcement by federal and state courts.

Uniform contract interpretation and enforcement prevents courts from giving more than one meaning to the same contract terms in collective bargaining agreements.[23] Accordingly, states may not enforce local regulations if effectuation of those regulations requires a state court to interpret and apply state law to a term of a collective bargaining agreement.

Recently, state legislatures and courts have authorized contract and tort actions for the wrongful termination of employment.[24] The increase in these state actions presented difficult section 301 preemption issues when a unionized employee covered by a collective bargaining agreement commenced such a state claim for relief.[25] The federal courts reacted differently, some

18. *Id.* at 141; *see also* Hanna Mining Co. v. District 2, Marine Eng'rs Beneficial Ass'n, 382 U.S. 181, 187 (1965); NLRB v. Insurance Agents' Int'l Union, 361 U.S. 477, 488-89 (1960); F. BARTOSIC & R. HARTLEY, *supra* note 6, at 39.

19. *Machinists,* 427 U.S. at 147-48 (quoting Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 380 (1969)); *see also Sears,* 436 U.S. at 199-200 n.30 (permitted conduct is to remain unregulated, subject to private ordering and controlled by the free market); F. BARTOSIC & R. HARTLEY, *supra* note 6, at 39.

20. *Machinists,* 427 U.S. at 148.

21. 29 U.S.C. § 185(a) (1982).

22. *See* Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 209 (1985); Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 102 (1962).

23. *See infra* notes 96-108 and accompanying text.

24. *See* F. BARTOSIC & R. HARTLEY, *supra* note 6, at 51-52. Examples of such actions include the termination of an employee in violation of state public policy, a state statute, or the terms of an employment contract other than a collective bargaining agreement. *See, e.g.*, Garibaldi v. Lucky Food Stores, Inc., 726 F.2d 1367 (9th Cir. 1984) (employee who refused to deliver spoiled dairy products discharged in violation of state public policy), *cert. denied,* 471 U.S. 1099 (1985).

25. *See, e.g.*, F. BARTOSIC & R. HARTLEY, *supra* note 6, at 52.

holding that the collective bargaining agreement governs exclusively,[26] and others holding that section 301 has no preemptive effect unless the state claims allege a breach of the express terms of the collective bargaining agreement or otherwise require an application of state law to the collective bargaining agreement.[27] The Supreme Court recently attempted to bring coherence to this body of preemption law.

In *Lingle v. Norge Division of Magic Chef, Inc.*,[28] the Supreme Court faced the issue of whether an employee, covered by a collective bargaining agreement that provided the employee with a contractual remedy for discharge without just cause, could enforce the state law remedy for retaliatory discharge or whether the state law claim was section 301 preempted.[29]

Jonna Lingle, an employee of Norge Division of Magic Chef, Inc., covered by a collective bargaining agreement, was injured in the course of her employment.[30] She requested compensation for her medical expenses pursuant to the Illinois Workers' Compensation Act.[31] Six days after the filing of the claim, Magic Chef discharged Lingle for filing a "false worker's compensation claim."[32] Lingle's union filed a grievance pursuant to the collective bargaining agreement that covered employees in the Herrin, Illinois, manufacturing plant.[33] The grievance proceeded through an arbitration proceeding pursuant to the agreement, where an arbitrator ruled in Lingle's favor and ordered her reinstated with full back pay.[34]

Meanwhile, Lingle also commenced a state action against Magic Chef in the Illinois Circuit Court for Williamson County.[35] She alleged that she was discharged for exercising her rights under the Illinois Workers' Compensa-

26. *See, e.g.*, Schaeffer v. General Motors Corp., 586 F. Supp. 870 (E.D. Mich. 1984) (collective bargaining agreement exclusively governs when employee commences a state tort action for wrongful termination of employment and federal preemption is pleaded as a defense).

27. *See, e.g., Garibaldi*, 726 F.2d at 1371 (employer discharged employee, who refused to deliver spoiled dairy products, in violation of state public policy despite an arbitrator's decision that employee was fired for just cause).

28. 108 S. Ct. 1877 (1988).

29. *Id.* at 1879.

30. *Id.*

31. *Id.*; ILL. REV. STAT. ch. 48, para. 138.4(h) (1987).

32. Lingle v. Norge Div. of Magic Chef, Inc., 823 F.2d 1031, 1033 (7th Cir. 1987), *rev'd*, 108 S. Ct. 1877 (1988).

33. *Lingle*, 108 S. Ct. at 1879. The agreement protected all production and maintenance employees in the Herrin plant from discharge except for "proper" or "just" cause, and established a procedure for the arbitration of grievances. Lingle alleged a breach of the agreement by Magic Chef. *Id.*

34. *Id.*

35. *Id.*

tion Act.[36] Magic Chef removed the case to the federal district court on the basis of diversity of citizenship and then filed a motion to dismiss, claiming section 301 preemption.[37] The district court, applying the standards of *Allis-Chalmers Corp. v. Lueck,*[38] dismissed the case, holding that the claim for retaliatory discharge was "inextricably intertwined" with the collective bargaining provision[39] prohibiting wrongful discharge or discharge without just cause.[40] The court reasoned that allowing the state cause of action would undermine the arbitration procedures set forth in the parties' contract.[41]

The United States Court of Appeals for the Seventh Circuit agreed that section 301 of the LMRA preempted Lingle's claim for retaliatory discharge.[42] Also relying on *Lueck,* the court concluded that Lingle's claims of retaliatory discharge were substantially dependent upon the court's analysis of the terms of the collective bargaining agreement.[43]

The court refused to accept Lingle's argument that the definition of retaliatory discharge in Illinois did not expressly require an interpretation of a collective bargaining agreement.[44] The plaintiff argued that by analyzing the state tort first, the court could determine that the elements of the action were not "inextricably intertwined" with federal labor laws and would therefore survive section 301 preemption.[45] The court rejected Lingle's argument and held that the scope of the contract (the collective bargaining agreement) required analysis first.[46] The court hypothesized that if the state tort was not section 301 preempted, then a state court would decide precisely the same

36. *Id.*; *see* Kelsay v. Motorola, Inc., 74 Ill. 2d 172, 384 N.E.2d 353 (1978); *see also* ILL. REV. STAT. ch. 48, para. 138.4(h) (1987).

37. *Lingle,* 108 S. Ct. at 1879. Alternatively, Magic Chef asked the court to stay further proceedings pending the completion of the arbitration. *Id.*

38. 471 U.S. 202 (1985); *see also infra* text accompanying notes 108-23.

39. Lingle v. Norge Div. of Magic Chef, Inc., 618 F. Supp. 1448, 1449 (D. Ill. 1985), *aff'd,* 823 F.2d 1031, 1033 n.2 (7th Cir. 1987), *rev'd,* 108 S. Ct. 1877 (1988). "Article 26.2 of Lingle's collective bargaining agreement provided in part: [T]he right of the employer to discharge or suspend an employee for just cause is recognized." 823 F.2d at 1033 n.2.

40. *Lingle,* 618 F. Supp. at 1449.

41. *Id.*

42. *Lingle,* 823 F.2d at 1050-51; *accord* Jackson v. Consolidated Rail Corp., 717 F.2d 1045, 1054 (7th Cir. 1983) (exclusive administrative remedies established by the Railway Labor Act preempted any state court action for retaliatory discharge), *cert. denied,* 465 U.S. 1007 (1984).

43. *Lingle,* 823 F.2d at 1046.

44. *Id.*

45. *Id.*

46. *Id.* "To conclude otherwise . . . would allow the states . . . to circumvent the arbitration and grievance procedures envisioned by Congress as exclusive." *Id.*; *see also* Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 210-11 (1985); Twitchell, *Characterizing Federal Claims: Preemption, Removal and the Arising-Under Jurisdiction of the Federal Courts,* 54 GEO. WASH. L. REV. 812, 814 n.8 (1986).

issue as an arbitrator.[47] Because "the same analysis of the facts"[48] would be implicated under both arbitration and state court proceedings, preemption of the tort action was proper. The Supreme Court found the Seventh Circuit's logic faulty on this point and reversed.[49]

Lingle presented the Supreme Court with the opportunity to clarify the scope of section 301 preemption analysis and its applicability to state causes of action that are independent of the provisions of a collective bargaining agreement. However, the Court went beyond clarification and provided the states with a more active role in this area of extensive federal regulation.[50] The Court unanimously took the revolutionary step of recognizing the states' role in providing unionized employees with substantive rights, external to the rights union employees traditionally bargained for in collective bargaining agreements, without purportedly upsetting the traditional values behind federal labor law preemption.[51] The Court also provided unionized employees with a vehicle to escape the sometimes unfair results traditional preemption analysis produced.[52] The result in *Lingle* may have workers covered by collective employment contracts rejoicing because they now have several forums available to redress grievances. *Lingle* is a true revolution in an area of law that seemed committed to preemption.

This Note first discusses the procedural prerequisites for bringing a section 301 claim. Next, it surveys the history and parameters of section 301 preemption up through the revolutionary decision in *Lingle.* It then focuses on several key cases that brought the revolution to fruition and analyzes the Supreme Court's reasoning in *Lingle.* Finally, this Note attempts to analyze *Lingle's* impact on federal labor law preemption, address the issues resolved by the decision, and clarify the issues that remain following the decision.

I. Procedural Prerequisites to Bringing a Section 301 Claim

The significance of the *Lingle* decision, which narrowed the awesome preemptive force of section 301,[53] requires focusing on the procedural prerequisites to bringing a section 301 suit.[54] First, an action must be commenced within the six-month statute of limitations.[55] Second, pursuant to the *Mad-*

47. *Lingle,* 823 F.2d at 1046.
48. *Id.*
49. Lingle v. Norge Div. of Magic Chef, Inc., 108 S. Ct. 1877, 1883 (1988).
50. *Id.* at 1879; *see also infra* text accompanying notes 150-82.
51. *See infra* notes 150-82 and accompanying text.
52. *See infra* notes 57-95 and accompanying text.
53. International Bhd. of Elec. Workers v. Hechler, 481 U.S. 851, 859 (1987).
54. *See* Comment, *supra* note 15, at 998.
55. *See* DelCostello v. International Bhd. of Teamsters, 462 U.S. 151, 172 (1983); LMRA § 10(b), 29 U.S.C. § 160(b) (1982).

dox doctrine,[56] employees must exhaust available grievance procedures before seeking any other remedies. The procedural prerequisites that have developed reflect a congressional and judicial imposition of uniformity on the interpretation of collective bargaining agreements.

A. The Preference for Arbitration: Precursor to the Maddox *Doctrine*

"The preference for contractual grievance-arbitration procedures in resolving disputes is grounded in the Taft-Hartley Act."[57] The grievance procedure aids federal labor law in two ways. First, an agreement by employers to submit to grievance arbitration is the quid pro quo for the agreement by employees not to strike.[58] "Second, contractual arbitration provides effective resolution of disputes over the interpretation and application of a contract at the level those disputes are understood best, the plant."[59] The Supreme Court sanctioned arbitration as a mechanism for dispute resolution in the *Steelworkers Trilogy*.[60] All of the issues in the *Steelworkers Trilogy* involved breaches of collective bargaining agreements under section 301 of the Taft-Hartley Act.[61]

United Steelworkers v. American Manufacturing Co.,[62] the first case of the trilogy, asserted that courts should not intervene before a dispute is submitted to arbitration because they are in no position to adjudge the merits of the alleged contract violation.[63] Here, the union alleged that American Manufacturing breached their contract by refusing to arbitrate. The company defended its refusal by claiming they were not obligated to arbitrate meritless

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56. *See infra* text accompanying notes 74-95.

57. 29 U.S.C. § 173(d). "Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement." *Id.*; *see also* Comment, *supra* note 15, at 1001.

58. Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 455 (1957).

59. Comment, *supra* note 15, at 1002; United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 596 (1960).

60. United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960). These decisions were all announced the same day and the majority opinions were all penned by Justice Douglas.

61. LMRA § 301(a), 29 U.S.C. § 185(a) (1982).

62. 363 U.S. 564 (1960).

63. *Id.* at 568. The case involved "an injured worker who received compensation and was estopped in the district court from compelling the arbitration called for in his collective bargaining agreement." Comment, *supra* note 15, at 1002; *American Mfg. Co.*, 363 U.S. at 566. The United States Court of Appeals for the Sixth Circuit found that the grievance was baseless and frivolous. United Steelworkers v. American Mfg. Co., 264 F.2d 624, 628 (6th Cir. 1959), *rev'd*, 363 U.S. 564 (1960).

grievances.[64] Viewing the controversy as a simple breach of contract question and, therefore, clearly arbitrable,[65] the Court held that a refusal to arbitrate is an arbitrable dispute.

The second case in the trilogy, *United Steelworkers v. Warrior & Gulf Navigation Co.*,[66] proclaimed a presumption of arbitrability.[67] The Court determined that a dispute was arbitrable so long as the arbitration clause in a collective bargaining agreement was not susceptible to an interpretation that covered the asserted grievance.[68]

In the last case of the trilogy, *United Steelworkers v. Enterprise Wheel & Car Corp.*,[69] the Court precluded any further review of the merits of previously arbitrated grievances.[70] The Court reasoned that the parties to a collective bargaining agreement bargained for the arbitrator's judgment, not the courts'.[71]

The opinions in the *Steelworkers Trilogy* revealed the Court's desire to maintain a uniform system of federal labor laws in conformity with what they gleaned as the congressional intent behind the LMRA.[72] Any state law that frustrated that goal of uniformity faced section 301 preemption. An employee claim for breach of a collective bargaining agreement was better handled through the process established by the same agreement that was allegedly breached. In other words, if arbitration was the bargained for grievance procedure within a collective bargaining agreement, adjudication of that grievance was best left to the arbitrators.[73]

The preference for arbitration for resolving disputes necessarily made the arbitrator's decisions critical to employees. Yet the extent to which an arbitrator's decision bound employees and employers seemed unclear.

B. The Maddox *Doctrine: Requiring Exhaustion of Grievance Procedures*

The Court clarified the ambiguity regarding the binding nature of arbitra-

64. *American Mfg. Co.*, 363 U.S. at 569; Comment, *supra* note 15, at 1002.

65. *American Mfg. Co.*, 363 U.S. at 569.

66. 363 U.S. 574 (1960).

67. *Id.* at 582; Comment, *supra* note 15, at 1002.

68. *Warrior & Gulf Navigation Co.*, 363 U.S. at 582-83. "An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *Id.*; Comment, *supra* note 15, at 1002-03.

69. 363 U.S. 593 (1960).

70. *Id.* at 598-99.

71. *Id.* The Court held that refusal to review the merits of arbitrated grievances will follow so long as the arbitrator's award "draws its essence from the collective bargaining agreement." *Id.* at 597; *see* Comment, *supra* note 15, at 1003.

72. *See supra* notes 53-71 and accompanying text.

73. *Id.*

tors' decisions in *Republic Steel Corp. v. Maddox.*[74] To achieve clarity, federal labor policy favoring private arbitration of labor disputes induced courts to establish a requirement that employees suing under section 301 first exhaust their administrative remedies.[75]

1. Republic Steel v. Maddox

Maddox sued his employer, the Republic Steel Corporation, in state court for failure to provide him with severance pay under the terms of the collective bargaining agreement between Republic Steel and Maddox's union.[76] The collective bargaining agreement contained a three-step grievance procedure followed by binding arbitration. Maddox decided to forego the grievance process and directly sued his employer for breach of contract.[77]

The Supreme Court held that Maddox should have afforded the union the opportunity to use the agreed upon contract procedure for redressing grievances.[78] The Court promulgated the general rule that unless the collective bargaining agreement provides otherwise, employees with grievances must *attempt* the use of the contractual grievance procedures before they can bring suit against the employer.[79]

The Court set forth three justifications for its rationale. First, requiring individual employees to have their claim processed by their union strengthens the union's position as exclusive bargaining agent.[80] Second, an employer reduces the choice of remedies against it in contract disputes.[81] Finally, to the extent that the grievance procedure is established as the exclusive remedy, private dispute resolution is attractive and the purpose of the Taft-Hartley Act, to promote collective bargaining, is accomplished.[82]

However, what appeared as a doctrine of exhaustion, requiring the attempted use of the grievance procedures, in practice evolved into an exclusivity doctrine; this made the grievance procedure in the collective bargaining agreement an allegedly aggrieved employee's only available path

74. 379 U.S. 650 (1965).

75. *Id.* at 652.

76. *Id.* at 650-52.

77. *Id.* at 651.

78. *Id.* at 652. The Court claimed that the rationale behind such a position is that an employee cannot allege an inadequate grievance process without attempting its use. *Id.*; *see also* Smith v. Evening News Ass'n, 371 U.S. 195, 196 n.1 (1962).

79. *Maddox,* 379 U.S. at 652-53.

80. *Id.*; *see also* Comment, *supra* note 15, at 998.

81. *Maddox,* 379 U.S. at 656; Comment, *supra* note 15, at 998.

82. *Maddox,* 379 U.S. at 653; Comment, *supra* note 15, at 998; LMRA, 29 U.S.C. § 141 (1982).

to recovery.[83] There were, of course, exceptions, but they were limited to a narrow set of circumstances.[84]

Maddox eliminated all other avenues available to an employee that would permit the employee to sidestep the grievance process.[85] The Court reasoned that such sidestepping would have a twofold detrimental effect on the desired uniformity in labor law. First, if a grievance process was not exclusive, it would be less desirable as a "method of settlement."[86] Second, "such a [side route] 'would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements.' "[87] The Court reasoned that Maddox should have afforded the union an opportunity to act on his behalf.[88] By eliminating any other route of processing grievances, the Court preserved the underlying policy favoring uniformity by limiting the forums available to redress disputes.

The dissent in *Maddox* asserted that the Court overemphasized uniformity by effectively precluding other forms of contract remedy available to aggrieved employees through the expansion of the applicability of section 301.[89] Unless an employee could allege one of the narrow exceptions to the *Maddox* doctrine,[90] the arbitrator's decision would be final and binding.

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83. The *Steelworkers Trilogy* operated to transform the exhaustion doctrine into the exclusivity doctrine by implying that a grievance procedure was meant to be the exclusive means of dispute resolution whether the collective bargaining agreement was explicit or not. *See supra* text accompanying notes 57-73; *see also* Comment, *supra* note 15, at 981 n.8; *Maddox*, 379 U.S. at 652-53, 657-58.

84. *See infra* note 90 and accompanying text.

85. 379 U.S. at 653.

86. *Id.*

87. *Id.* (quoting Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 103 (1962)).

88. *Id.* at 652-53.

89. *Id.* at 662-63 (Black, J., dissenting). This was accomplished by forcing the employee to exhaust contract grievance procedures (e.g., arbitration) prior to attempting other forms of redress. Justice Black, expressing dissatisfaction with the decision, wrote that the majority holding "is the brainchild of this Court's recent consistently expressed preference for arbitration over litigation in all types of cases . . . ." *Id.* Exceptions to the *Maddox* exclusivity doctrine are discussed *infra* note 90.

90. See Glover v. St. Louis-San Fran. Ry. Co., 393 U.S. 324 (1969), which held that an employee need not resort to the grievance procedure if such action would be futile. Here, the union representative acted in concert with the employer to racially discriminate against blacks. Therefore, the Court held such an action would be futile. In Vaca v. Sipes, 386 U.S. 171 (1967), the Court said that if conduct of the employer amounts to a repudiation of contract procedures, an employer is precluded from asserting unexhausted agreement procedures as a defense to the suit. As *Vaca* highlights:

> Contractual remedies have been devised and are often controlled by the union and the employer, [therefore] they may well prove unsatisfactory or unworkable for the individual grievant. The problem then is to determine under what circumstances the individual employee may obtain judicial review of his breach-of-contract claim despite his failure to secure relief through the contractual remedial procedures.

2. Maddox *Applied*

Maddox placed an aggrieved unionized employee in a very poor position if he attempted to recover for union or employer contractual violations. First, if an employee did not attempt to use the grievance procedure provided for in the collective bargaining agreement, the *Maddox* exclusivity rule precluded a subsequent section 301 suit.[91] Second, if the employee used the procedure and received either an arbitration decision or a union decision not to proceed to arbitration, the Court's stated preference for arbitration also precluded a section 301 suit.[92] Third, if the employee attempted to bring suit against the employer and failed to allege either a breach of the union's duty of fair representation, a breach of contract by the employer, or futility of contractual remedy,[93] the employee was forced to abandon the suit and proceed through the established contract grievance procedure.[94]

Stated simply, the Court preferred arbitration over judicial determination as the method of redress for employment contract disputes. The result, which found its genesis in the concept of uniformity as the central value of labor law, proved hazardous for unionized employees because the Court limited employees' avenues of grievance redress. Thus, while adherence to arbitration clauses did serve to achieve the Court's desired uniformity, rights that states guaranteed their employees were subordinated to the lofty goal of a uniform labor policy.

Maddox, therefore, posed significant dispute resolution problems for employees covered by collective bargaining agreements because nearly all such agreements designated arbitrators as the adjudicators of contract disputes.[95]

Id. at 185. Exhaustion of the contractual remedies is not required where (1) the conduct of the employer amounts to a repudiation of the contract, *id.;* (2) the union has wrongfully refused to process a grievance, *id.*; or (3) exhaustion of contractual remedies would be futile, *Glover,* 393 U.S. at 330. *See also* Macon v. Youngstown Sheet & Tube Co., 698 F.2d 858, 860 (7th Cir. 1983) (discussing exceptions to *Maddox* exhaustion doctrine).

91. *See generally supra* notes 74-88 and accompanying text.

92. *See supra* notes 72-90 and accompanying text. The doctrine of exclusivity of contractual remedies applies whether or not a grievance is processed through the arbitration stage. *See* Hinds v. Anchor Motor Freight, Inc., 424 U.S. 554, 571 (1976) (arbitration decision is exclusive remedy absent breach of the duty of fair representation); Macon v. Youngstown Sheet & Tube Co., 698 F.2d at 860 (plaintiff-employee's suit dismissed because it was filed when grievance was pending before arbitration); Harp v. Kroger Co., 489 F.2d 1104, 1105 (6th Cir. 1974) (suit dismissed when plaintiff-employee failed to pursue available grievance procedures and union declined to process grievance). *See generally* F. BARTOSIC & R. HARTLEY, *supra* note 6, at 395-418.

93. *See Vaca,* 386 U.S. at 185, 190; *Glover,* 393 U.S. at 330.

94. *See generally supra* notes 57-73 and accompanying text.

95. *See, e.g.,* United Paperworkers Int'l Union v. Misco, Inc., 108 S. Ct. 364 (1987) (Court upheld arbitrator's determination that employee found with marijuana traces in car on company lot did not violate the company's policy regarding use or possession of marijuana on

Notwithstanding the limited set of exceptions, an overwhelming number of unionized employees were required to assert their rights in a nonjudicial forum for the sake of uniform application of the terms of their collective bargaining agreements. Moreover, judicial interpretation of the preemptive breadth of section 301 has prevented unionized employees from enjoying the work-related rights bestowed upon them by state law.

II. SURVEYING THE PREEMPTIVE SCOPE OF SECTION 301

In *Allis-Chalmers Corp. v. Lueck*,[96] the Supreme Court outlined the history of the preemptive scope of section 301.[97] The Court highlighted that the decisions of *Textile Workers Union v. Lincoln Mills*[98] and *Local 174, Teamsters v. Lucas Flour Co.*[99] gave meaning to the plain language of section 301.

A. Lincoln Mills *and* Lucas Flour

Despite its plain language, section 301 is more than merely a jurisdictional statute, as evidenced in *Textile Workers Union v. Lincoln Mills*.[100] There, the Court asserted that section 301 did more than simply confer jurisdiction on federal courts to hear suits regarding alleged violations of collective bar-

company property); Collective Bargaining Negot. & Cont. (BNA) Bull. No. 1140, § 51:5, at 25 (Feb. 9, 1989) ("Arbitration is called for in 98 percent of the sample contracts - 99 percent in manufacturing and 96 percent in non-manufacturing."); *see also* Comment, *supra* note 15, at 1004.

> [T]he practical effect of this *Maddox-Steelworkers* axis is that a union member wishing to sue for breach of his collective bargaining agreement must exhaust the agreement's arbitration procedure. Once the arbitration procedure has run its course, . . . the court will defer to that arbitration decision and will not allow suit to proceed under the *Steelworkers Trilogy* rationale. After exhaustion of such grievance procedure, a subsequent section 301 suit will be dismissed because of *Maddox* exclusivity principles.

Id. (footnotes omitted).

96. 471 U.S. 202 (1985).

97. *Id.* at 209. Section 301(a) of the LMRA states:

> 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.

29 U.S.C. § 185(a) (1982). Congress did not state explicitly whether and to what extent it intended § 301 to preempt state law. As a result, § 301's meaning comes from judicial interpretation. *Lueck*, 471 U.S. at 208-09.

98. 353 U.S. 448 (1957).

99. 369 U.S. 95 (1962).

100. 353 U.S. at 450-51 (interpreted § 301 as a congressional mandate to the federal courts to fashion a body of federal common law that would be used in addressing disputes arising out of labor contracts); *Lueck*, 471 U.S. at 209.

gaining agreements.[101] Through section 301, the Court reasoned, Congress had authorized federal courts to create a body of federal law for the enforcement of collective bargaining agreements.[102] Five years later, the Court determined in *Charles Dowd Box Co., v. Courtney* that state courts could exercise concurrent jurisdiction over section 301 claims so long as the state courts applied federal law.[103]

The Supreme Court analyzed the preemptive effect of section 301 in *Local 174, Teamsters v. Lucas Flour Co.*[104] The Court, faced with the dilemma of applying conflicting local and federal law regarding the interpretation of a no-strike clause, expressly held that federal law, not state law, must govern adjudication of section 301 claims.[105] In so holding, the Court attempted to further the policy of uniform interpretation of labor statutes.[106] The Court concluded that federal law must control when defining the terms in a collective bargaining agreement. It reasoned that federal law prevails over state law in order to minimize inconsistent interpretation of the terms of a labor contract.[107]

The Supreme Court attempted to ensure uniformity of interpretation of labor agreements while still reserving for the states their right to apply and enforce their various police powers. In *Allis-Chalmers Corp. v. Lueck,*[108] the Court devised a test which limited the preemptive effect of section 301.

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101. *Lincoln Mills,* 353 U.S. at 450-51.

102. *Id.*

103. 368 U.S. 502, 506 (1962). "[The Court] in *Dowd Box* proceeded upon the hypothesis that state courts would apply federal law in exercising jurisdiction over litigation within the purview of § 301(a) claims." *Lucas Flour,* 369 U.S. at 102 (discussing *Dowd Box,* 368 U.S. at 502).

104. 369 U.S. 95 (1962).

105. *Id.* at 102; *see also* International Bhd. of Elec. Workers v. Hechler, 481 U.S. 851, 856 (1987).

106. *Lucas Flour,* 369 U.S. at 103-04.

> 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.

Id.

107. *Id.*

108. 471 U.S. 202 (1985).

B. Allis-Chalmers v. Lueck: *The Parameters of Section 301 Preemption*

Lueck and Allis-Chalmers were parties to a collective bargaining agreement containing a disability grievance procedure that culminated in final and binding arbitration.[109] Lueck suffered a nonoccupational injury, notified Allis-Chalmers as required, and filed a disability claim with Aetna Life and Casualty Company, the administrators of the negotiated group health and disability plan funded by Allis-Chalmers.[110] Aetna approved Lueck's claim and he began receiving disability benefits.[111]

In the ensuing months, according to Lueck, Allis-Chalmers periodically ordered Aetna to terminate Lueck's payments.[112] After each termination, Aetna restored the payments for a variety of reasons.[113] Rather than utilize the grievance procedure, Lueck initiated a suit in Wisconsin state court alleging the tort of bad-faith handling of an insurance claim.[114]

The United States Supreme Court held that the state court should have dismissed Lueck's claim either for failure to make use of the grievance procedure[115] or as preempted by section 301.[116] The Court concluded that the right asserted by Lueck was rooted in the employment contract[117] and, under Wisconsin law, the parties' own contract of insurance supplies the scope of the duty of good-faith handling of insurance claims.[118] A breach of that duty, therefore, depended on an interpretation of that contract.[119] In *Lueck,* Allis-Chalmers was self insured.[120] The collective bargaining agree-

109. *Id.* at 204.

110. *Id.* at 205.

111. *Id.*

112. *Id.*

113. *Id.* Lueck, after each termination, would question the action or supply additional information, thus having the benefits restored. *Id.*

114. *Id.* Lueck alleged that as a result of these bad-faith actions, he incurred debts, emotional distress, physical impairment, and pain and suffering. *Id.* at 206. The Wisconsin trial court ruled in Allis-Chalmers' favor, holding that Lueck's claim was preempted as stating a claim under § 301. *Id.* The Wisconsin Court of Appeals, in an unpublished decision, agreed with the trial court that federal law preempted the claim against Allis-Chalmers. Lueck v. Aetna Life Ins. Co., No. 82-1041 (Wis. Ct. App. 1982). The Supreme Court of Wisconsin reversed. Lueck v. Aetna Life Ins. Co., 116 Wis. 2d 559, 342 N.W.2d 699 (1984). It held that the suit was neither § 301 preempted nor preempted under the *Garmon/Sears* § 7 and § 8 analysis. *Lueck,* 471 U.S. at 207. The United States Supreme Court granted certiorari, 469 U.S. 815 (1984), to determine whether § 301 "preempts a state-law tort action for bad-faith delay in making disability payments due under a collective-bargaining agreement." *Lueck,* 471 U.S. at 208.

115. *Lueck,* 471 U.S. at 221; *see also supra* text accompanying notes 57-73.

116. *Lueck,* 471 U.S. at 221.

117. *Id.* at 220.

118. *Id.* at 217.

119. *Id.*

120. *Id.* at 204.

ment governed the insurance coverage of disability claims.[121] Accordingly, "[u]nless federal law governed that claim, the meaning of the health and disability-benefit provision of the collective bargaining agreement would be subject to varying interpretations, and the congressional goal of a unified body of labor contract law would be subverted."[122]

The *Lueck* Court articulated the following test of section 301 preemption: if the state action is "inextricably intertwined" with consideration of the terms of the collective bargaining agreement, the law on which the plaintiff based that action is preempted.[123] Preemption applies to a state law which purports to define the meaning of the contract relationship.

Notwithstanding the foregoing, *Lueck* left unresolved the scope of section 301 preemption when an employee claims abridgement of state-created rights and obligations not evidently dependent on an interpretation of the labor contract, but the labor contract offers substantially equivalent redress of the harm alleged in the state court claim.[124]

C. *Post*-Lueck - *Pre*-Lingle: *The Struggle to Clarify "Inextricably Intertwined"*

Following *Lueck,* the Supreme Court, as well as the circuit courts, attempted to determine which state laws and regulations were not "inextricably intertwined" with the terms of collective bargaining agreements among employees, unions and employers and which would permit a state court action to proceed. The struggle surfaced most often when courts could not ascertain which state-created rights were actually dependent upon the terms of the collective bargaining agreement for resolution.

1. The Circuit Courts Conflict

The circuit courts found little guidance in *Lueck's* "inextricably intertwined" test when they tried to distinguish between collective bargaining agreement rights and state-created rights in retaliatory discharge suits. For example, the United States Court of Appeals for the Eighth Circuit struggled with the definition of "inextricably intertwined" in *Johnson v. Hussmann Corp.*[125] Johnson, an employee of Hussmann Corporation, suffered a work related injury, and filed a state workers' compensation claim.[126] Soon thereafter, he was discharged for alleged repeated violations of posted safety

121. *Id.*
122. *Id.* at 220.
123. *Id.* at 213.
124. *See* F. BARTOSIC & R. HARTLEY, *supra* note 6, at 55.
125. 805 F.2d 795 (8th Cir. 1986).
126. *Id.* at 796.

rules.[127] Johnson then protested his discharge and his union filed a grievance, but, following the employer's denial of the grievance, the union decided not to proceed to arbitration.[128] Eight months later, Johnson filed a complaint in state court against Hussmann for retaliatory discharge.[129] The Missouri district court held the claim for retaliatory discharge preempted on *Lueck* grounds, applied the six-month statute of limitations to the cause of action,[130] and dismissed the claim as time barred. The court of appeals affirmed, holding that the claim was preempted because resolution of the claim was substantially dependent upon analysis of the terms of the collective bargaining agreement.[131]

Simultaneously, other circuits addressed the issue with conflicting results. In *Herring v. Prince Macaroni of New Jersey, Inc.*,[132] the United States Court of Appeals for the Third Circuit held that section 301 did not preempt the retaliatory discharge claims.[133] The *Herring* court concluded that workers' compensation rights were rooted in state law, rather than the collective bargaining agreement and, accordingly, the state cause of action in question was an essential element of the state's workers' compensation scheme and not preempted.[134]

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127. *Id.*

128. *Id.*

129. *Id.* Johnson's complaint against Hussmann and Local 9014, United Steelworkers, alleged conspiracy, breach of contract, breach of fair duty of representation by the union (a hybrid § 301 fair representation claim), and retaliatory discharge for filing a workers' compensation claim. *Id.*

130. *Id.*; DelCostello v. International Bhd. of Teamsters, 462 U.S. 151, 155 (1983) (set forth six-month statute of limitations for § 301 claims); NLRA § 10(b), 29 U.S.C. § 160(b) (1982).

131. *Johnson,* 805 F.2d at 797. The court reasoned that although Johnson brought the state action for retaliatory discharge in tort rather than contract, and omitted the union as a defendant, he was "in fact suing the employer for wrongful discharge in violation of the collective bargaining agreement." *Id.*; *see also* Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 219-20 (1985); Vantine v. Elkhart Brass Mfg. Co., 762 F.2d 511, 516-18 (7th Cir. 1985) (state tort claim for retaliatory discharge for filing workers' compensation claim preempted by federal labor law); Bell v. Gas Serv. Co., 778 F.2d 512, 516-18 (8th Cir. 1985) (employee's claim of employer's fraudulent misrepresentation preempted by federal labor law).

132. 799 F.2d 120 (3d Cir. 1986) (employee covered by a collective bargaining agreement discharged after filing for and receiving workers' compensation benefits following work-related injury).

133. *Id.* at 123-24, 124 n.2.

134. *Id.* at 124 n.2; *see also* Baldracchi v. Pratt & Whitney Aircraft Div., United Technologies Corp., 814 F.2d 102, 107 (2d Cir. 1987) (claim of wrongful discharge in retaliation for filing workers' compensation claim not preempted), *cert. denied,* 108 S. Ct. 2819 (1988).

2. *The United States Supreme Court Attempted to Resolve the Issues Remaining After* Lueck

The Supreme Court attempted to resolve the open issues of *Lueck* in *International Brotherhood of Electrical Workers v. Hechler,*[135] and *Caterpillar, Inc. v. Williams.*[136] Yet, the lower courts did not adhere to the reasoning in these cases, but instead, repeatedly distinguished them on factual grounds. In *Hechler,* an employee sued her union for breach of its duty of care to provide a union member with a safe workplace.[137] The Court held that section 301 preempted such a state claim because, in Florida, the union's duty of care with respect to workplace safety, if any, arose as a result of the union's participation in the collective bargaining agreement.[138] Thus, the collective bargaining agreement governed the union's responsibility to Hechler.[139] A separate state action could not be maintained because the action would require interpretation of the collective bargaining agreement.[140]

The Court decided *Caterpillar*[141] on similar grounds. Caterpillar originally employed Williams and other employees in positions inside bargaining units covered by collective agreements.[142] The employees eventually held positions outside the bargaining unit as management or weekly salaried employees for extended time periods.[143] While in these latter positions, the employees alleged that Caterpillar repeatedly assured them new employment if their specific facility ever closed.[144] When the facility closed, respondents were laid off.[145] The respondents sued in state court for breach of their individual employment contracts.[146] The Supreme Court held that the cause of action for breach of an individual employment contract was not preempted by section 301 because the claim did not rely in any way on the collective bargaining agreement.[147] Therefore, Williams' state claim was not removable to federal court.[148] The Court reaffirmed that it would be inconsistent

135. 481 U.S. 851 (1987).
136. 482 U.S. 386 (1987).
137. 481 U.S. at 853.
138. *Id.* at 861-62.
139. *Id.* at 862.
140. *Id.* at 861-62.
141. 482 U.S. 386 (1987).
142. *Id.* at 388. A bargaining unit is a particular group of employees with a similar community of interests appropriate for collective bargaining. BLACK'S LAW DICTIONARY 136 (5th ed. 1979).
143. *Caterpillar,* 482 U.S. at 388.
144. *Id.* at 388-89.
145. *Id.* at 389.
146. *Id.* at 390.
147. *Id.* at 394-96.
148. *Id.* at 398.

with congressional intent under section 301 if the Court was to preempt state rules that proscribe conduct, or establish rights and obligations, independent of a labor contract.[149]

Thus, although *Lueck* appeared to have developed a clearly drawn section 301 preemption test, a proper application of the test apparently escaped some of the lower courts. Not until *Lingle* did the Supreme Court address the preemption issue in the context of rights provided by a state statute and a collective bargaining agreement. In *Lingle,* the Court tried to resolve the conflict between the circuits on the issue of whether section 301 preempted state causes of action which provided a remedy independent of a collective bargaining agreement.[150]

III. *LINGLE V. MAGIC CHEF:* THE SUPREME COURT'S ANALYSIS

In order to fill the interstices left by *Lueck,* the Supreme Court decided that the crucial inquiry for determining whether a state claim or cause of action is preempted is whether the elements of the claim can be examined without reliance upon any of the provisions of a collective bargaining agreement between an employee and employer.[151] In *Lingle v. Norge Division of Magic Chef, Inc.,* the Court, after reviewing the history of section 301, analyzed the elements of the Illinois tort of retaliatory discharge for the filing of a workers' compensation claim.[152]

The courts in Illinois recognize the tort of retaliatory discharge for filing a

149. *Id.* at 395; Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 212 (1985). "[I]t would be inconsistent with congressional intent under [§ 301] to pre-empt state rules that proscribe conduct, or establish rights and obligations independent of a labor contract." *Caterpillar,* 482 U.S. at 395 (quoting *Lueck,* 471 U.S. at 212).

150. The federal circuit decisions on the issue were inconsistent. *Compare* Baldracchi v. Pratt & Whitney Aircraft Div., United Technologies Corp., 814 F.2d 102 (2d Cir. 1987) (no preemption), *cert. denied,* 108 S. Ct. 2819 (1988) *and* Herring v. Prince Macaroni of New Jersey, Inc., 799 F.2d 120 (3d Cir. 1986) (same) *and* Peabody Galion v. Dollar, 666 F.2d 1309 (10th Cir. 1981) (no preemption, pre-*Lueck*) *with* Johnson v. Hussmann Corp., 805 F.2d 795 (8th Cir. 1986) (preemption) *and* Vantine v. Elkhart Brass Mfg. Co., 762 F.2d 511 (7th Cir. 1985) (same).

151. Lingle v. Norge Div. of Magic Chef, Inc., 108 S. Ct. 1877, 1882 (1988). The case history is discussed *supra* text accompanying notes 30-49.

152. 108 S. Ct. at 1881-83.

> [T]o show retaliatory discharge, the plaintiff must set forth sufficient facts from which it can be inferred that (1) he was discharged or threatened with discharge and (2) the employer's motive in discharging or threatening to discharge him was to deter him from exercising his rights under the [workers' compensation] Act or to interfere with his exercise of those rights.

Id. at 1882; Horton v. Miller Chem. Co., 776 F.2d 1351, 1356 (7th Cir. 1985) (summarizing Illinois state court decisions), *cert. denied,* 475 U.S. 1122 (1986); *Lingle,* 108 S. Ct. at 1882.

workers' compensation claim.[153] The tort applies to union as well as nonunion employees.[154] The elements for establishing a retaliatory discharge claim[155] in Illinois are purely factual questions pertaining to employee and employer conduct and the motivations behind the employer's conduct.[156] The Supreme Court held that neither element required the state courts to interpret any term of the collective bargaining agreement.[157] Moreover, an employer, in defense of a claim, must only demonstrate nonretaliatory reasons for the discharge, which also requires no agreement interpretation.[158] Therefore, the Court determined that the state law remedy in *Lingle* was "independent" of the collective bargaining agreement in the sense that resolution of the state law claim did not require construing the collective bargaining agreement.[159] This is the only independence that matters for section 301 preemption purposes. The Court contended that the independence in *Lingle* was not present in either *Lucas Flour, Lueck*, or *Hechler.*[160] In those cases, the pertinent principles of state law required construing the relevant collective bargaining agreement.[161]

The unanimous *Lingle* Court next clarified the reasoning behind section 301 preemption analysis.[162] An employee's right to be free from retaliatory discharge is a nonnegotiable right and applies to both unionized and nonunionized employees.[163] The terms of a collective bargaining agreement cannot alter that right.[164] The Court reasoned that most state laws that are

153. Kelsay v. Motorola, Inc., 74 Ill. 2d 172, 181-82, 384 N.E.2d 353, 357 (1978); *see also Lingle,* 108 S. Ct. at 1881. Recognition of the tort for retaliatory discharge for filing a workers' compensation claim was first substantiated in Frampton v. Central Indiana Gas Co., 260 Ind. 249, 253, 297 N.E.2d 425, 428 (1973) (retaliatory discharge for filing a workers' compensation claim held to violate public policy). For development of the cause of action in other states, see generally Annotation, *Recovery for Discharge from Employment in Retaliation for Filing Workers' Compensation Claim,* 32 A.L.R. 4th 1221 (1984 & Supp. 1988).

154. Midgett v. Sackett-Chicago, Inc., 105 Ill. 2d 143, 473 N.E.2d 1280 (1984), *cert. denied,* 474 U.S. 909 (1985).

155. *Lingle,* 108 S. Ct. at 1882.

156. *Id.*

157. *Id.; see supra* note 152.

158. *Lingle,* 108 S. Ct. at 1882; *cf.* Loyola Univ. v. Illinois Human Rights Comm'n, 149 Ill. App. 3d 8, 500 N.E.2d 639 (1986) (black employee, discharged in retaliation for charges of employer racial discrimination and civil rights violations, reinstated with back pay and attorney's fees by proving that employer's nonretaliatory reasons were pretextual).

159. 108 S. Ct. at 1882.

160. *Id.* at 1882 n.7; International Bhd. of Elec. Workers v. Hechler, 481 U.S. 851 (1987); Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985); Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962).

161. *See supra* text accompanying notes 104-24 and 135-40.

162. 108 S. Ct. at 1882.

163. *Id.* at 1882 n.7.

164. *Id.*

not preempted by section 301 will grant nonnegotiable rights shared by all state workers.[165] Conversely, the Court asserted, it was conceivable that a nonnegotiable state remedy could be created that still required interpretation of a collective bargaining agreement for its application and, therefore, would be preempted.[166] Furthermore, if a law covered only unionized workers but resolution of the claim did not require interpretation of the collective bargaining agreement, the claim would remain unpreempted.[167] Thus, the Court held that an application of state law is preempted by section 301 only if such application requires the interpretation of a collective bargaining agreement.[168] A collective bargaining agreement interpretation is necessary only if the elements for establishing the state cause of action implicate any term of the agreement.[169]

The Court next eliminated the "same analysis of the facts" test previously used by the circuit courts in analyzing the preemption issue.[170] This section 301 preemption determination hinged upon whether a state court judge would analyze the same facts that an arbitrator would in an arbitration proceeding.[171] The Seventh Circuit disposed of Lingle's claim under this analysis.[172] The Supreme Court posited that the parallelism between the analysis of the state court judge and that of the arbitrator was irrelevant.[173] Even if dispute resolution pursuant to a collective bargaining agreement or resolution of a state law claim addressed precisely the same factual situation, the claim was independent of the agreement for section 301 preemption purposes provided the state law claim could be resolved without interpreting any term of the collective bargaining agreement.[174] The Supreme Court buttressed its rationale with policy considerations.[175] For example, the Court reaffirmed that collective bargaining agreement interpretation remains firmly in the arbitral realm and that judges may determine state law labor-manage-

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.* at 1885.

169. *Id.* at 1882.

170. *Id.* at 1883; *see, e.g.*, Lingle v. Norge Div. of Magic Chef, Inc., 823 F.2d 1031, 1046 (7th Cir. 1986), *rev'd*, 108 S. Ct. 1877 (1988).

171. *See Lingle*, 823 F.2d at 1046.

172. *Id.*

173. Lingle v. Norge Div. of Magic Chef, Inc., 108 S. Ct. 1877, 1883 (1988).

174. *Id.*; *see also* Caterpillar, Inc. v. Williams, 482 U.S. 386 (1987) (section 301 governs claims founded directly on rights created by a collective bargaining agreement and claims substantially dependent on analysis of a collective bargaining agreement); International Bhd. of Elec. Workers v. Hechler, 481 U.S. 851, 859 n.3 (1987).

175. *Lingle*, 108 S. Ct. at 1884.

ment relations' questions only if those questions do not involve judges interpreting or construing the agreements.[176]

Allowing state tort actions that do not require interpretation of collective bargaining agreements to proceed in state courts preserved the effectiveness of arbitration because the Court's holding left the fundamental tenet, that arbitrators interpret collective bargaining agreements, intact.[177] In addition, the Court opined that the recognition of substantive rights in a labor relations context could exist without interpreting an employee-employer agreement; this was not novel.[178] In the past, the Court had refused to hold that an employee's claims under federal statutes were disallowed simply because arbitration was available.[179] Based on this reasoning, and despite the strong policies encouraging arbitration, the *Lingle* Court held that where an employee's claim is based on rights arising out of a statute designed to provide minimum substantive guarantees to individual workers, guaranteeing those rights is a stronger concern than the policies behind arbitration.[180]

Lingle accomplished two seemingly conflicting ends. It empowered states to establish minimum protection laws for its workers, a field previously regulated exclusively at the federal level,[181] while reaffirming the traditional values underlying preemption. On the one hand, *Lingle* recognized that, despite traditional federal regulation, state minimum protection laws for workers create causes of action which can survive a preemption challenge if the laws are sufficiently independent of the applicable collective bargaining agreement. On the other hand, the decision preserved the preference for arbitration, one of the central reasons supporting the *Lucas Flour* decision,[182] and still maintained one of the fundamental tenets of labor law—that only arbitrators interpret collective bargaining agreements.

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176. *Id.*

177. *Id.*; *see also* Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 219 (1985); Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 105 (1962).

178. *Lingle*, 108 S. Ct. at 1884.

179. *Id.*; *see, e.g.*, McDonald v. West Branch, 466 U.S. 284 (1984).

180. 108 S. Ct. at 1884; Barrentine v. Arkansas-Best Freight Sys., Inc., 450 U.S. 728, 737 (1981); Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974).

181. An example of an exception to the rule that state judges cannot interpret the collective bargaining agreement arises if the agreement is interpreted by a state judge only to determine information for damages. The state law, not otherwise preemptive, would remain so. *See Lueck*, 471 U.S. at 211 ("not every dispute . . . tangentially involving a provision of a collective-bargaining agreement[ ] is preempted by § 301 . . . ."); *see also* Baldracchi v. Pratt & Whitney Aircraft Div., United Technologies Corp., 814 F.2d 102, 106 (2d Cir. 1987), *cert. denied*, 108 S. Ct. 2819 (1988); *Lingle*, 108 S. Ct. at 1885 n.12.

182. *Lingle*, 108 S. Ct. at 1884; *see also* Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 104 (1962).

IV. THE EFFECTS OF *LINGLE* ON FEDERAL LABOR LAW PREEMPTION

The *Lingle* decision reinforced the general values behind federal labor law preemption: uniformity,[183] preservation of the effectiveness of arbitration,[184] and the need for arbitrators to interpret collective bargaining agreements.[185] The *Lingle* decision also raised several new issues regarding state law causes of action available to unionized employees. These new issues raise questions regarding the effects of *Lingle* on the *Maddox* doctrine and on employer-union relations when bargaining collectively; the significance of unionized employees now having two potential avenues for redressing employment claims; and, finally, whether *Lingle* is a step toward the deregulation of labor law.

A. Lingle *and* Maddox*: Employees' Two Avenues of Redress*

Lingle alleviated some of the unfair effects of the *Maddox* doctrine. Collective bargaining agreements often incorporate the same basic employment rights that states provide. *Maddox* required an employee alleging violation of those rights to use the grievance procedure in the agreement.[186] If this procedure was followed and the employee either received a final arbitration decision or the union decided not to process the grievance, then *Maddox* effectively precluded any further redress.[187] Because the unionized employee could not seek further redress beyond the arbitration process and nonunionized employees could file a state court claim, the unionized employee received less state law protection than the nonunionized employee as a result of the collective bargaining agreement.[188]

Lingle eliminated that result. If an employee's rights are rooted in state law, the employee now has the option to file a grievance, a state claim, or both.[189] However, if the employee's rights are rooted in the bargained-for agreement, the employee is limited to the bargained-for relief prescribed in the agreement. *Lingle* thus protects employees against the abuse of the *Maddox* exclusivity principles by both employers and unions. A right rooted in a state statute cannot be bargained away.[190] Moreover, the parties

183. *See supra* text accompanying notes 74-95.

184. *See supra* text accompanying notes 57-95.

185. *See supra* text accompanying notes 96-124.

186. *See* 379 U.S. 650, 652 (1965); *see also supra* text accompanying notes 74-95.

187. *See supra* notes 74-95 and accompanying text.

188. *See* Baldracchi v. Pratt & Whitney Aircraft Div., United Technologies Corp., 814 F.2d 102, 107 (2d Cir. 1987) (prima facie elements of retaliatory discharge in Connecticut do not require interpretation of the "just cause" provision in collective bargaining agreement), *cert. denied,* 108 S. Ct. 2819 (1988).

189. *See* Lingle v. Norge Div. of Magic Chef, Inc., 108 S. Ct. 1877, 1882 (1988).

190. *See, e.g., Baldracchi,* 814 F.2d at 105.

to a collective bargaining agreement do not have the right, under section 301, to contract for that which is illegal under state law.[191] Therefore, even if the collective bargaining agreement permitted Magic Chef to discharge Lingle for filing a workers' compensation claim, that provision would have no effect on Lingle's claim under the state statute. The state statutory rights are not dependent upon the collective bargaining agreement and do not require interpretation of that agreement.[192]

An interpretation that section 301 was meant to provide unionized workers with less state law protection than nonunionized workers, in the interest of uniform federal labor law, is inconsistent with congressional intent in enacting the LMRA. In a similar circumstance, the Supreme Court held, "[i]t would turn the policy that animated the Wagner Act on its head to understand it to have penalized workers who have chosen to join a union by preventing them from benefiting from state labor regulations imposing minimal standards on nonunion employers."[193] Therefore, *Lingle* assures unionized employees that simply because a collective bargaining agreement provides the same rights as state minimum protection laws, unionized employees will not be penalized by being denied access to the state courts.[194] If an employer is alleged to have violated an employee's right which is rooted in state law, as well as the contract agreement, the employee has the option of either form of redress. Simply stated, contractual protection is an extra benefit derived from exercising one's freedom of association rights by becoming a member of a union.

B. Does Lingle *Serve as a Disincentive to Employers to Accept Arbitration Agreements?*

Assume the Supreme Court rarely decides a case in which two polar opposites, union representatives and employers, disagree with the decision for similar reasons. Unions and employers may fear that *Lingle* will adversely affect trade unionism because the decision will ultimately serve as a disincentive to employers to readily accept arbitration agreements.[195] Unions sus-

191. Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 212 (1985).

192. *Cf. Baldracchi,* 814 F.2d at 105 (Connecticut retaliatory discharge elements are not dependent on the collective bargaining agreement).

193. Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 756 (1985); *Baldracchi,* 814 F.2d at 107.

194. *See generally* Lingle v. Norge Div. of Magic Chef, Inc., 108 S. Ct. 1877 (1988); *see also supra* text accompanying notes 151-82.

195. *See* Klare, *Workplace Democracy and Market Reconstruction: An Agenda for Legal Reform,* 38 CATH. U.L. REV. 1, 58-62 (1988); Herman, *Wrongful Discharge Actions After* Lueck *and* Metropolitan Life Insurance: *The Erosion of Individual Rights and Collective Strength?,* 9 INDUS. REL. L.J. 596 (1987); *see, e.g.,* Lingle v. Norge Div. of Magic Chef, Inc.,

pect that an employer will no longer be willing to forfeit certain rights in collective bargaining if the arbitration procedure can still leave the employer vulnerable to state suits.[196]

This concern is groundless. Considerable incentives to entertain arbitration agreements continue after *Lingle.* If an employer has a collective bargaining agreement that does not provide for arbitration, then nothing prevents employees from suing an employer in state court to enforce state statutory or common law rights, or in federal court to enforce contractual rights. However, under a collective bargaining agreement that contains a grievance arbitration clause, contract claim procedural prerequisites[197] must be met to preserve a claim. As noted above, to enforce a right rooted in the collective bargaining agreement having an arbitration clause, the employee must initiate grievance proceedings through the channels established by the agreement.[198] Even if the union declines to process a member's grievance, it is a binding decision.[199] The employer incurs no attorney's fees, suffers no discovery, and avoids the burdens associated with litigation. Therefore, an employer suffers no disincentive to negotiate or accept a collective agreement with arbitration channels as a result of *Lingle.*

To be sure, an employer violating an employee's right rooted in state law is exposed to a state action.[200] Therefore, if a state has promulgated protective legislation, *Lingle* enhances the possibility of increased state litigation in the employment realm. However, comparing the amount of litigation a unionized employer may be subjected to as a party to a collective bargaining agreement without an arbitration clause, to the lesser amount of litigation a unionized employer with an arbitration clause faces, it is fairly obvious that *Lingle* does not serve as a disincentive to employers to accept arbitration agreements. In addition, employees may see an incentive to pursue litigation in state courts because state claims provide for recovery of compensatory and punitive damages, as opposed to reinstatement and recovery of back pay through arbitration.

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823 F.2d 1031, 1047 (7th Cir. 1986), *rev'd,* 108 S. Ct. 1877 (1988). The United States Court of Appeals for the Seventh Circuit noted that failure to preempt state retaliatory discharge claims would be detrimental to unions. The court reasoned that if workers were protected from wrongful and unjust discharges by state statute or common law, the benefits of analogous protection from unions eviscerates, thus leaving unions without a major recruiting tenet. *See also supra* notes 74-84 and accompanying text. *But see* Wheeler & Browne, *Federal Preemption of State Wrongful Discharge Actions,* 8 INDUS. REL. L.J. 1 (1986).

196. *Lingle,* 823 F.2d at 1047; *see supra* sources cited note 195.

197. *See supra* text accompanying notes 53-73.

198. *See* Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Smith v. Evening News Ass'n, 371 U.S. 195 (1962).

199. *See supra* text accompanying notes 91-95.

200. *See* Lingle v. Norge Div. of Magic Chef, Inc., 108 S. Ct. 1877, 1884 (1988).

C. *Is* Lingle *Another Step Toward Deregulation?*

Lingle presents another development in labor law which conflicts with the values that underlie federal labor law. The Supreme Court, in *Fort Halifax Packing Co. v. Coyne,*[201] held that preemption should not be lightly inferred in the area of state substantive labor law because "the establishment of labor standards falls within the traditional police power of the State."[202] *Lingle* reinforced that message by allowing unionized employees two avenues of redress. In an area of law that has been federally regulated for the last half century, the Court has begun to retreat from preempting state actions within the labor realm, and has become more selective when asserting preemption power.

The reasons for this change are speculative. Perhaps the Supreme Court is inviting the states to more actively determine labor rights by sending the eighteen million Americans covered by labor contracts into state courts. Of course, the more workplace rights state or federal statutes provide to all workers, the less apparent the need becomes to seek union representation. However, federal preemption is still a viable doctrine as evidenced by the *Lingle* Court's declaration that its decision was consistent both with the policy of fostering uniform and certain adjudication of disputes over the interpretation of collective bargaining agreements, and with cases that have permitted separate fonts of substantive rights to remain unpreempted by other federal labor law statutes.[203] Any other motivations must await the judgment of history. All things considered, a politically conservative Court weighed two values, uniformity in federal labor law and federalism. By calling the states to a more active role, the Court seemingly came down on the side of federalism.

V. CONCLUSION

With the passage of the Taft-Hartley Act more than four decades ago, Congress gave the federal judiciary the power to establish the extent to which federal labor law preempts state labor law. The federal courts decided that uniform interpretation and enforcement of collective bargaining agreements was one of the fundamental tenets upon which they would build their preemption guidelines. To establish the desired uniformity, the federal

201. 482 U.S. 1 (1987) (Maine law establishing minimum labor standards does not impermissibly intrude upon the collective bargaining process and, therefore, is not preempted by LMRA).

202. *Id.* at 21.

203. 108 S. Ct. at 1884.

courts preempted state labor regulations that conflicted with federal labor laws regarding contract enforcement and interpretation.

Moreover, the courts sanctioned private arbitration as the preferred dispute resolution mechanism. As a result, employees that engaged in contract disputes with employers were relegated to the arbitration machinery found in their collective bargaining agreements, and were also effectively precluded from state tribunal protection.

Recently, state legislatures and courts have authorized state contract and tort actions for alleged wrongful termination of employment. As these actions increased, so did the degree of difficulty in ascertaining whether such actions were section 301 preempted when a unionized employee, covered by a collective bargaining agreement that called for arbitration, commenced a state action for wrongful termination.

The Supreme Court in *Lingle v. Norge Division of Magic Chef, Inc.* held that if state court judges do not interpret any term of the collective bargaining agreement when adjudicating state claims, then section 301 preemption principles do not apply. The Court reasoned that such state actions are inapposite to the objective of minimizing inconsistent contract interpretation. Therefore, independent state contract and tort actions do not interfere with the fundamental goal of uniform contract interpretation and enforcement.

Lingle represents a significant shift in the development of labor law. The decision provides employees, who are covered by collective bargaining agreements providing for arbitration and who allege state created wrongful discharge claims, an alternative avenue of dispute resolution. This decision is a major reversal of law in an area that previously attempted to minimize state involvement.

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