1987

# Note, Labor Law Preemption: Allis-Chalmers v. Lueck

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## LABOR LAW PREEMPTION: *Allis-Chalmers Corp. v. Lueck*

Roderick S. Lueck, a member of Local 248 of the United Automobile, Aerospace and Agricultural Implement Workers of America (Local 248), worked for the Allis-Chalmers Corporation (Allis-Chalmers). Allis-Chalmers and Local 248 entered into a collective bargaining agreement that provided a group health and disability plan for the Allis-Chalmers employees administered by Aetna Life and Casualty Company (Aetna).[1] The collective bargaining agreement created a three-step procedure for arbitrating grievances involving disability benefits.[2] In 1981, Lueck sought disability benefits for a nonoccupational injury by notifying Allis-Chalmers of his injury and by filing a claim with Aetna.[3] Aetna approved the claim and eventually paid all of Lueck's benefits, but allegedly in an untimely manner. Lueck argued that Allis-Chalmers and Aetna "intentionally, contemptuously and repeatedly" failed to make payments which caused Lueck to experience emotional distress, physical impairment, pain and suffering and the accumulation of debts.[4] Lueck sought relief by bringing a cause of action in state court, based on the state tort claim of bad faith handling of an insurance claim. He chose not to seek redress through the grievance channels created by the parties' collective bargaining agreement. The Circuit Court of Milwaukee County found, alternatively, that Lueck's cause of action arose under section 301 of the Labor Management Relations Act,[5] which requires redress under the grievance

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1. Lueck v. Aetna Life Ins. Co., 116 Wis. 2d 559, 562, 342 N.W.2d 699, 701 (1984) (the plan entitled all union employees to disability benefits for nonoccupational illnesses).

2. Allis-Chalmers Corp. v. Lueck, 105 S. Ct. 1904, 1907-08 (1985). The agreement provides a four-step grievance procedure for contract disputes and, in a separate letter of understanding, the contract establishes the arbitration procedure for grievances concerning disability benefits. An employee asserting an insurance-related complaint must first bring it to the Supervisor of Employee Relations. The second step requires the employee to bring the complaint before the Joint Plant Insurance Committee. Finally, if the issue remains unresolved, the employee may seek relief under the arbitration agreement established in the collective bargaining agreement.

3. *Id.* at 1908. Lueck injured his back carrying a pig to a pig roast at a friend's home.

4. *Id.*; Lueck v. Aetna Life Ins. Co., 116 Wis. 2d 559, 562, 342 N.W.2d 699, 701 (1984).

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

procedure,[6] or, if section 301 did not control, that federal law preempted the state tort claim.[7] The Wisconsin Court of Appeals affirmed.[8] The Wisconsin Supreme Court reversed, finding that the state tort claim presented a separate and independent cause of action not covered by section 301[9] and, furthermore, that federal law did not preempt the state law claim.[10] The United States Supreme Court reversed and *held* that a state law claim that is "substantially dependent" for its resolution on the terms of a collective bargaining agreement must be considered to be a section 301 claim or must be dismissed due to its preemption by federal labor law. *Allis-Chalmers Corp. v. Lueck*, 105 S. Ct. 1904 (1985).

The supremacy clause of article VI of the United States Constitution grants Congress the power to preempt state law.[11] Federal preemption of conflicting or parallel state regulations ensures the establishment of a single, uniform body of law.[12] In the field of labor relations, substantial litigation has arisen con-

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6. Allis-Chalmers Corp. v. Lueck, 105 S. Ct. 1904, 1915-16 (1985); Republic Steel Corp. v. Maddox, 379 U.S. 650, 653 (1965); Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 105 (1962).

7. Allis-Chalmers Corp. v. Lueck, 105 S. Ct. 1904, 1909 (1985).

8. The Wisconsin Court of Appeals decision is unpublished. *See id.*

9. *Id.* at 1909; Lueck v. Aetna Life Ins. Co., 116 Wis. 2d 559, 566, 342 N.W.2d 699, 703 (1984).

10. Lueck v. Aetna Life Ins. Co., 116 Wis. 2d 559, 575-76, 342 N.W.2d 699, 707 (1984).

11. U.S. CONST. art. VI, § 32, cl. 2. The supremacy clause reads as follows:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

12. Amalgamated Ass'n of Street Employees v. Lockridge, 403 U.S. 274, 285-86 (1971). For more general information concerning the preemption doctrine, see Note, *The Preemption Doctrine: Shifting Perspectives on Federalism and the Burger Court*, 75 COLUM. L. REV. 623 (1975). Federal preemption occurs when Congress occupies the field or when state law conflicts with a federal regulation. "A congressional design to occupy the field supersedes the operation of state law on federally regulated subject matter whether or not state regulation impairs the actual operation of the federal law." *Id.* at 625. Preemption based on the conflict of state and federal law requires the Court to interpret the statute and determine the existence of a conflict. "The clearest conflict case arises when a federal law mandates action forbidden by state law, or vice versa. As the scope of state interference with a federal legislative scheme diminishes, however, the presence of conflict becomes progressively more subtle." *Id.* at 626. In the area of federal labor regulation, Congress did not seek to occupy the field entirely. Thus, courts must determine whether state law conflicts with the federal legislative scheme.

cerning the relationship between federal and state regulations and the doctrine of preemption.[13]

Prior to the late 1930s, individual states regulated the field of labor relations.[14] However, in *National Labor Relations Board v. Jones & Laughlin Steel Corp.*,[15] the United States Supreme Court upheld Congress's power to regulate labor relations under the commerce clause of the United States Constitution.[16] Congress exercised this power by establishing the National Labor Relations Act[17] and the Labor Management Relations Act.[18]

By creating the National Labor Relations Act and the Labor Management Relations Act, Congress sought to promote industrial peace and stability by providing a comprehensive, uniform body of law to govern labor relations.[19] Congress did not intend to preempt all state regulations that may affect employers, employees, and unions.[20] Neither did Congress, however, articulate specific guidelines to limit the reach of federal labor regulations. As a result, the Supreme Court has attempted to establish the scope of federal labor law preemption without expressed congressional directives.[21]

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13. *See, e.g.*, Brown v. Hotel & Restaurant Employees & Bartenders Int'l Local 54, 104 S.Ct. 3179 (1984); Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters, 436 U.S. 180 (1978); Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974); Amalgamated Ass'n of Street Employees v. Lockridge, 403 U.S. 274 (1971); San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236 (1959); Garner v. Teamsters Local 776, 346 U.S. 485 (1953); National Labor Relations Bd. v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937). *See generally*, Cox, *Labor Law Preemption Revisited*, 85 HARV. L. REV. 1337 (1972); *see also generally*, A. COX, D. BOK & R. GORMAN, CASES AND MATERIALS ON LABOR LAW 916-19 (9th ed. 1981). Cox outlines two primary lines of the preemption doctrine. The first line concerns the primary jurisdiction of the National Labor Relations Act. The second line presents the question of how far federal law will reach in preempting conflicting or parallel state law.

14. A. COX, D. BOK & R. GORMAN, *supra* note 13, at 916; *see also* Carter v. Carter Coal Co., 298 U.S. 238 (1936); Adair v. United States, 208 U.S. 161 (1908).

15. 301 U.S. 1 (1936).

16. U.S. CONST. art. I, § 8, cl. 3 ("The Congress shall have Power To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.").

17. 29 U.S.C. §§ 151-169 (1982).

18. 29 U.S.C. §§ 141-197 (1982).

19. *See generally* Amalgamated Ass'n of Street Employees v. Lockridge, 403 U.S. 275 (1971); Cox, *supra* note 13, at 1352; Comment, New York Telephone v. New York State Department of Labor: *Limiting the Doctrine of Implied Labor Law Pre-emption*, 46 BROOKLYN L. REV. 297, 297 (1980).

20. Cox, *supra* note 13, at 1352; Comment, *supra* note 19, at 297-98. This approach reflects concern for and deference to a state's interests in traditionally local matters.

21. Comment, *supra* note 19, at 298 n.8.

The Supreme Court has established two basic lines of preemption in the field of labor relations. The first line concerns the primary jurisdiction of the National Labor Relations Board over matters involving sections 7 and 8 of the National Labor Relations Act. The second line involves the extent to which federal law may preempt state law, and, in particular, the extent to which a state may regulate the collective bargaining process and the terms of the contract.[22]

The Court considered the primary jurisdiction of the National Labor Relations Board (hereinafter the Board) in *San Diego Building Trades Council v. Garmon.*[23] The Court concluded that " [w]hen an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the competency of the . . . Board."[24] There exist two exceptions to the *Garmon* rule. First, federal labor law will not preempt state law only remotely affecting the Act.[25] Second, the Court will not preempt state regulation of activity "touch[ing] interests . . . deeply rooted in local feeling and responsibility."[26] These core concerns have included libel,[27] violence[28] and the intentional infliction of mental distress.[29]

The Supreme Court considered federal preemption as it af-

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22. A. Cox, D. Bok & R. Gorman, *supra* note 13, at 916-18.

23. 359 U.S. 236 (1959) (denying state court jurisdiction over an employer's action against the union for picketing even though the Board had earlier declined to exercise its jurisdictional authority over the controversy).

24. *Id.* at 245.

25. International Ass'n of Machinists v. Gonzales, 356 U.S. 617, 621 (1958) (allowing a state court jurisdiction over a case involving an employee bringing action against the union for wrongful expulsion).

26. Lodge 76, Int'l Ass'n of Machinists v. Wisconsin Employment Relations Comm'n, 427 U.S. 132, 136 (1976) (quoting San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 244 (1959)).

27. Linn v. United Plant Guard Workers, Local 214, 383 U.S. 53 (1966) (finding that a state libel cause of action brought by an official of the employer against the union was not preempted and requiring compelling congressional direction to preempt because, first, the cause of action was of traditional state concern, second, the cause of action was of peripheral concern to the Act, and third, the action did not infringe on federal policy).

28. Youngdahl v. Rainfair, Inc., 355 U.S. 131 (1957) (upholding state jurisdiction to issue an injunction against picketing employees who threaten violence).

29. Farmer v. United Brotherhood of Carpenters, Local 25, 430 U.S. 290 (1977) (concluding that National Labor Relations Board jurisdiction does not preempt an individual employee's right to bring a tort action in state court against a union for the intentional infliction of emotional distress).

fects collective bargaining agreements[30] in *Local 24, International Brotherhood of Teamsters v. Oliver*.[31] In *Oliver*, the Court found that state law could not interfere with certain collectively bargained solutions to wage problems and working conditions.[32] However, the Court focused on state regulations designed to regulate industry and indicated that state health and safety regulations may not necessarily be preempted.[33] In *Malone v. White Motor Corp.*[34] the Court reaffirmed *Oliver*[35] and found that federal preemption occurs when state law "conflicts with federal law or would frustrate the federal scheme, or . . . the courts discern from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the States."[36] The result of these decisions is that some state laws affecting the mandatory terms of a collective bargaining agree-

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30. *See* Comment, *NLRA Preemption of State Wrongful Discharge Claims*, 34 HASTINGS L.J. 635 (1983). The second branch of federal labor law preemption, preemption of state substantive law affecting the collective bargaining agreement, may be broken down into cases involving the bargaining process and cases involving the bargaining agreement. *Id.* at 644-45. *Allis-Chalmers* does not address the bargaining process type of preemption since Lueck's claim involved an established agreement. However, the bargaining process type of preemption and the bargaining agreement preemption share some common themes. In Local 20, Teamsters v. Morton, 377 U.S. 252 (1964), the Supreme Court determined that preemption "ultimately depends upon whether the application of state law . . . would operate to frustrate the purpose of the federal legislation." *Id.* at 258. In Lodge 76, Int'l Ass'n of Machinists v. Wisconsin Employment Relations Comm'n, 427 U.S. 132 (1976), the Court stated that "[t]he failure of Congress to prohibit certain conduct warrant[s a] negative inference that it was deemed proper, indeed desirable . . . . Thus, the state is not merely filling a gap when it outlaws what federal law fails to outlaw; it is denying one party to an economic contest a weapon that Congress meant him to have available to him." *Id.* at 140 n.4 (citing Lesnick, *Preemption Reconsidered: The Apparent Reaffirmation of* Garmon, 72 COLUM. L. REV. 469, 478 (1972)). *Machinists* does provide an exception to this expansive preemptive power. The Court will not preempt state regulations of activity "touch[ing] interests . . . deeply rooted in local feeling and responsibility." *Id.* at 136 (quoting San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 244 (1959)); *see also* Comment, *supra* note 19, at 302-07.

31. 358 U.S. 283 (1959). In *Oliver*, a provision of the collective bargaining agreement governing the terms of the rental of motor vehicles was found by the Ohio courts to violate state antitrust law.

32. *Id.* at 294-97. The Court reasoned that the Ohio antitrust law undermined Congress's intent to promote industrial peace through arbitration pursuant to the terms of the collective bargaining agreement in force between the parties.

33. *Id.* at 297; *see* Comment, *supra* note 30, at 646 n.57.

34. 435 U.S. 497 (1978). The Court upheld the validity of a Minnesota pension fund that affected employers involved in collective bargaining agreements.

35. *Id.* at 512-14. The Court found that *Malone* fell within an exception to the *Oliver* rule. The exception occurs when Congress explicitly indicates that it intends to allow states to regulate an aspect of labor relations.

36. *Id.* at 504.

ment are presumed to be preempted.

There exist two exceptions to this presumption of preemption. First, it is possible that the Court may not preempt a state health and safety regulation.[37] Second, the Court will not preempt state law when Congress explicitly indicates that it intends to allow states to regulate that area of law.[38]

Recently, in a case involving state law affecting the bargaining process, the Court seemed to shift the presumption.[39] In *New York Telephone Co. v. New York State Department of Labor*,[40] a plurality of the Court concluded that state laws of general application[41] should receive greater deference and enjoy a presumption of validity.[42] Preemption will occur when a "compelling congressional direction" requires that the Court find that the state law is preempted.[43] However, Justice Blackmun, in his concurrence, denounced this shift in the preemption analysis.[44]

In addition to the rules governing preemption of a cause of action under state law, section 301 of the Labor Management Relations Act[45] affects the ability of an employer, an employee, or a union to seek relief in state court on a state cause of action. Individual employees seeking relief must first attempt to use the grievance procedure established in the collective bargaining

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37. *See Oliver*, 358 U.S. at 297; *Malone*, 435 U.S. at 513 n.13.

38. *Malone*, 435 U.S. at 512-13.

39. *See* A. Cox, D. Bok & R. Gorman, *supra* note 13, at 948. *See generally* Comment, *supra* note 19; Comment, *supra* note 29.

40. 440 U.S. 519 (1979) (involving the payment of state unemployment compensation benefits to strikers).

41. A state law of general applicability is one that is not specifically designed to regulate employers, employees or unions. *Id.* at 533.

42. *Id.* at 533; *see also* Comment, *supra* note 19, at 308.

43. *New York Tel. Co.*, 440 U.S. at 547-51; *see also* Comment, *supra* note 19, at 313.

44. *New York Tel. Co.*, 440 U.S. at 551. Justice Blackmun maintained that Congress specifically intended to permit New York's unemployment compensation law to coexist with the federal labor law. Thus, he concluded that federal law would not preempt the state regulation.

45. Labor Management Relations Act § 301 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).

agreement before seeking relief in state or federal court.[46] Section 301 then allows employers, employees, and unions to sue in federal or state court for contract violations.[47]

Preemption under section 301 must be viewed in light of the national policy underlying this provision. This policy is that uniform interpretation of the terms of contracts is necessary to ensure smooth negotiation and administration of collective bargaining agreements.[48] Section 301 seeks to promote and protect the collectively bargained arbitration procedures in order to maintain peaceful labor relations.[49] Section 301 allows federal courts to fashion a body of federal common law that will control collectively bargained agreements.[50] Federal substantive law, therefore, governs section 301 claims brought in federal or state court.[51] Moreover, the Court has deemed that the collective bargaining agreement governs "the whole employment relationship."[52] Thus, to a certain extent, federal law will preempt state law affecting the terms of the employment relationship.

Furthermore, the Supreme Court has articulated a policy preference for arbitration under the collective bargaining agreement.[53] In particular, the Court has expressed its approach to state law claims, section 301, and the role of arbitration in *Republic Steel Corp. v. Maddox*.[54] In *Maddox*, an individual employee brought a suit for severence pay in state court without first availing himself of the binding grievance procedure.[55] The

46. Republic Steel Corp. v. Maddox, 379 U.S. 650, 652 (1965).

47. Charles Dowd Box Co. v. Courtney, 368 U.S. 502 (1962) (section 301 provides concurrent jurisdiction); *see also* Smith v. Evening News Ass'n, 371 U.S. 195 (1962) (permitting individual employees to bring suit against an employer for contract violations).

48. Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 104 (1962).

49. *Maddox*, 379 U.S. at 653.

50. Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 456-57 (1957). As an example of courts fashioning federal common law, see Lewis v. Benedict Coal Corp., 361 U.S. 459 (1960). In this case, the Court held that "parties to a collective bargaining agreement must express their meaning in unequivocal words before they can be said to have agreed that the union's breaches of its promises should give rise to a defense against the duty assumed by an employer to contribute to a welfare fund." *Id.* at 470-71.

51. Avco Corp. v. Aero Lodge No. 735, 390 U.S. 557, 560 (1968).

52. United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 578-79 (1960).

53. *See* United Steelworkers v. American Mfg. Co., 363 U.S. 564, 567-68 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 585 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 599 (1960).

54. 379 U.S. 650 (1965).

55. *Id.* at 651.

Court found that "Congress has expressly approved contract grievance procedures as a preferred method for settling disputes."[56] The binding arbitration agreement prevented the employee from bypassing the grievance procedure and seeking relief in state court.[57]

In the noted case, the claimant Lueck asserted a tort claim.[58] The tort claim is significant because the cause of action is a claim of general application rather than a law directly affecting the labor relations of the parties. Further, the cause of action indirectly arises from the collective bargaining agreement. This is true because the tort is not a tortious breach of contract but rather a "separate intentional wrong" resulting from a duty created by the contractual relationship between the insurer and the insured.[59] The insurer's breach of this duty does not depend upon a corresponding breach of the contract.

The United States Supreme Court, in *Allis-Chalmers v. Lueck*, addressed the issue of whether federal labor policy allows an individual employee who does not attempt to seek relief through a grievance procedure to bring a state claim in state court for the bad faith handling of an insurance claim.[60] The issue involves preemption affecting the terms of the collective bargaining agreement; it does not involve board preemption. Justice Blackmun, writing for a unanimous court,[61] examined the case under the *Oliver-Malone* analysis. As a result, the crucial question was whether the state claim would "frustrate the federal labor-contract scheme."[62] In this particular case, the federal la-

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56. *Id.* at 653.

57. *Id.* at 652-53.

58. There is a cause of action for the bad faith handling of an insurance claim under Wisconsin law. *See* Anderson v. Continental Ins. Co., 85 Wis. 2d 675, 271 N.W.2d 368 (1978). *See generally* Hilker v. Western Auto. Ins. Co., 204 Wis. 1, 235 N.W. 413 (1931) (duty to handle a contract in good faith derives from the contract).

59. Anderson v. Continental Ins. Co., 85 Wis. 2d 675, 687, 271 N.W.2d 368, 374 (1978); *see also* Lueck v. Aetna Life Ins. Co., 116 Wis. 2d 559, 342 N.W.2d 699 (1984) (asserting that Lueck's claim is not premised on a breach of contract but rather on the manner in which the claim was handled that gave rise to the tort cause of action). *But see* Allis-Chalmers Corp. v. Lueck, 105 S. Ct. 1904, 1914 (1985) ("[T]here is no indication in Wisconsin law that the tort is anything more than a way to plead a certain kind of contract violation in tort in order to recover exemplary damages not otherwise available under Wisconsin law.").

60. *Allis-Chalmers*, 105 S. Ct. at 1910.

61. *Id.* at 1907.

62. *Id.* at 1910.

bor-contract scheme concerns the resolution of contractual disputes as established by section 301 and federal common law.[63]

The Court held that under Wisconsin law the good faith obligation "sounded in both tort and contract"[64] and that the parties may establish the "reasonable" or "good faith" performance of their contract.[65] The Court reasoned that the good faith obligation fails to create a nonnegotiable, independent state right.[66] Applying a broad reading to the scope of the collective bargaining agreement, the Court concluded that Lueck's claim constitutes a contractual dispute covered by the contract and thus within the scope of the arbitration agreement.[67] To allow Lueck to pursue such a claim would run counter to the federal policy requiring individual employees to attempt to use the grievance procedure established in the collective bargaining agreement before seeking relief in state or federal court.[68] Therefore, the Court ruled "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."[69]

Justice Blackmun's analysis of Lueck's claim provides an analytical framework from which one can consider other state tort claims that affect or touch upon the terms of the collective bargaining agreement. This requires examining the Court's ap-

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63. Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 104 (1962). Under section 301, "[s]tate law which frustrates the effort of Congress to stimulate the smooth functioning of that process thus strikes at the very core of federal policy." *Id.* at 104.

64. *Allis-Chalmers*, 105 S. Ct. at 1914; *see* Anderson v. Continental Ins. Co., 85 Wis. 2d 675, 271 N.W.2d 368 (1978).

65. *See* Anderson v. Continental Ins. Co., 85 Wis. 2d 675, 271 N.W.2d 368 (1978); Hilker v. Western Auto. Ins. Co., 204 Wis. 1, 235 N.W. 413 (1931).

66. *Allis-Chalmers*, 105 S. Ct. at 1912-16.

67. *Id.* at 1911; *see* Bowen v. United States Postal Serv., 459 U.S. 212 (1983). In *Bowen*, the Court stated that:

> [A] collective-bargaining agreement "is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate." Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 547, 578 (1960). In defining the relationships created by such an agreement, the Court has applied an evolving federal common law grounded in national labor policy.

*Id.* at 224-25. It is from this notion of the scope of collective bargaining agreements that the Court derives its approach in *Allis-Chalmers*.

68. This federal policy was also discussed in Republic Steel Corp. v. Maddox, 379 U.S. 650, 652 (1963).

69. *Allis-Chalmers*, 105 S. Ct. at 1916.

proach to preemption in this case and how this approach influences the scope of the phrase "substantially dependent."

The *Allis-Chalmers* Court rejects any analogy between Lueck's claim and state tort claims that fall under the primary judisdiction preemption doctrine.[70] Two arguments support the Court's position. First, the Court has previously maintained that the primary jurisdiction preemption doctrine is "not relevant" to section 301 cases.[71] Second, since *Allis-Chalmers* involves a conflict between state law and federal common law, the case does not fall within the primary jurisdiction line of preemption. The policy reason for the distinction between these two lines of preemption demonstrates the delicate balance which the Court seeks to maintain in the area of federalism. In primary jurisdiction cases, the "core concerns" or "local interest" exception applies because "appropriate consideration for the vitality of our federal system and for a rational allocation of functions belies any easy inference that Congress intended to deprive the States of their ability to retain jurisdiction over such matters."[72] On the other hand, the Court seems to afford less deference to the states when preemption will be based on a conflict between state and federal substantive law. "Where . . . the issue is one of an asserted substantive conflict with a federal enactment, then '[t]he relative importance to the State of its own law is not material . . . for the Framers of our Constitution provided that the federal law must prevail.' "[73]

The Court's approach under the substantive law preemption

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70. *Id.* at 1911 n.6. The Wisconsin Supreme Court found that the state tort claim touched state interests, concerned the Labor Management Relations Act only peripherally, and did not interfere with the federal scheme. The *Lueck* court reached this analysis after concluding that § 301 was not applicable to the case. *Id.* at 566, 342 N.W.2d at 703. Lueck v. Aetna Ins. Co., 116 Wis. 2d 559, 566-77, 342 N.W.2d 699, 703-08 (1984). The Wisconsin analysis closely followed Farmer v. United Bhd. of Carpenters, Local 25, 430 U.S. 290 (1977), where the Supreme Court found an exception to the preemption doctrine based on a state tort action, brought against the union, for emotional distress. *Carpenter* falls under the primary jurisdiction line of preemption.

71. Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 101 n.9 (1962). The Court stated that "[s]ince this was a suit for violation of a collective bargaining contract within the purview of § 301(a) of the Labor Managment Relations Act of 1947, the pre-emptive doctrine of cases such as . . . *Garmon* . . . based upon the exclusive jurisdicton of the National Labor Relations Board, is not relevant." *Id.*

72. Brown v. Hotel & Restaurant Employees & Bartenders Int'l Local 54, 104 S. Ct. 3179, 3187 (1984).

73. *Id.* (quoting Free v. Bland, 369 U. S. 663, 666 (1962)).

doctrine in this case appears to reject the *New York Telephone* presumption with respect to laws of general applicability.[74] Instead, the Court analogizes to *Malone* and also looks to the policy and rules established in *Maddox* and other section 301 cases.[75] Since *Malone* endorses the presumption of preemption, it seems likely that the Court in *Allis-Chalmers* operates under the same presumption. In fact, the Court asserts that section 301 demands that federal law override conflicting state law.[76] In light of the less deferential approach to states under this analysis of preemption, it seems clear that the Court is announcing a broad approach to preemption in section 301 cases.

The preemptive approach of *Allis-Chalmers* is founded on certain policy considerations. The primary concern of the Court is that to allow an individual employee to pursue a state claim without first attempting to use the grievance procedure would result in an overwhelming number of employees bringing contractual grievances disguised as state tort claims.[77] The grievance procedure preserves industrial peace by providing an orderly mechanism to hear and resolve contractual disputes. Permitting Lueck to pursue his state cause of action would undermine this fundamental policy of labor law.

The manner in which courts may extend *Allis-Chalmers* depends on the interpetation of the phrase "substantially dependent." This language fails to give a clear definition as to which state claims will fall within the ambit of *Allis-Chalmers*. The phrase must be viewed in the context of the Court's strong position on the fundamental role of the grievance procedure and its application of preemption to the state claim.

Lueck's state tort claim was a separate and independent cause of action that arose from a contractual relationship.[78] Similarly, other state tort actions that arise from a contractual rela-

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74. The Court distinguishes *New York Telephone* as falling under § 7 or § 8 of the National Labor Relations Act. *Allis-Chalmers*, 105 S. Ct. at 1911-12 n.6. *Allis-Chalmers* rejects the state law presumption of general applicability in the area of § 301 and the grievance procedure. It is possible that the *New York Telephone* presumption may continue to be applied in other areas of labor law.

75. *Allis-Chalmers*, 105 S. Ct. at 1912 n.7.

76. *Id.* at 1910 (citing Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 103-06 (1962)).

77. *Id.* at 1915-16.

78. *Id.* at 1916.

tionship would fall within the ambit of *Allis-Chalmers*.[79] Also, the policy basis underlying preemption in this case was that the impact of the state tort claim adversely affected federal common law governing the grievance procedure.[80] Hence, state tort actions impinging on the grievance procedure will fall within *Allis-Chalmers*. Finally, according to the Court, Lueck's cause of action did not constitute a nonnegotiable right.[81] Unless a claimant can maintain that the state tort confers nonnegotiable rights independent of the contract, the cause of action will be preempted by federal law under the *Allis-Chalmers* decision. Therefore, a state tort that relies on a contract for its existence potentially undermines the federal policy goals of settling labor disputes through the grievance procedure and fails to confer nonnegotiable rights on the claimant. Such tort claims will be preempted according to *Allis-Chalmers*.

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79. An example of this type of tort would be wrongful discharge claims. *See infra* note 81.

80. *Allis-Chalmers*, 105 S. Ct. at 1911-12.

81. *Id.* at 1914-15. This argument has arisen in wrongful discharge cases that have followed *Allis-Chalmers*. In Harper v. San Diego Transit Corp., 764 F.2d 663 (9th Cir. 1985), the Ninth Circuit, in dicta, argued that the California tort for wrongful termination conferred "non-negotiable state-law rights" on the employee. *Id.* at 668. Thus, wrongful discharge claims may survive preemption as interpreted in *Allis-Chalmers*. The Eighth Circuit reached the opposite result. In Johnson v. Hussman Corp., 610 F. Supp. 757 (E.D. Mo. 1985), the court found that the ruling in *Allis-Chalmers* compelled the preemption of the cause of action for retaliatory discharge under the state's workers' compensation law. The court argued that "the Missouri law in this case is related directly to and affects the contractual relationship between the parties, [and, therefore,] it is preempted by federal law." *Id.* at 759.

It is unclear how *Allis-Chalmers* will apply to wrongful discharge claims. However, the broad reading of preemption that the Court applied tends to support the conclusion that the state law will be preempted.