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Miller v. AT & T Network Systems: Toward Consistency in Collective Bargaining Agreement Preemption of State Law Causes of Action.

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Miller v. AT&T Network Systems: Toward Consistency in Collective Bargaining Agreement Preemption of State Law Causes of Action.

Until recently, confusion has been the by-product of federal labor law preemption.[1] The federal labor law preemption doctrine was developed to prevent states from altering the regulatory scheme that Congress set out in the National Labor Relations Act[2] and in the later Labor Management Relations Act.[3] The intent of Congress in regulating labor relations is to provide a uniform body of laws to promote industrial peace.[4] Congress purposefully left the federal guidelines vague to enable the courts to develop the law as individual cases required.[5] In *Miller v. AT&T Network Systems*[6] the Ninth Circuit Court of Appeal's rationale suggests that federal labor law preemption of state law claims is expanding.[7]

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1. Bryson, *A Matter of Wooden Logic: Labor Law Preemption and Individual Rights*, 51 Tex. L. Rev. 1037 (1973) (discussing the background and confusion surrounding the preemption doctrine). *See also*, Cox, *Recent Developments in Federal Labor Law*, 41 Ohio St. L.J. 277 (1980) (commenting that there has been more than thirty years of fighting over the boundary lines defining the realm of exclusive federal control in the field of industrial relations).
2. *See infra* notes 24-41 and accompanying text (discussing NLRA preemption).
3. *See infra* notes 42-48 and accompanying text (discussing LMRA preemption).
4. *See* Textile Workers Union of Am. v. Lincoln Mills, 353 U.S. 448, 453 (1957) (quoting S. Rep. No. 105, 80th Cong., 1st Sess., 17-18). "Statutory recognition of the collective bargaining agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace." *Id.*
5. *See* Bowen v. United States Postal Serv., 459 U.S. 212, 224-225 (1983). The relationships created by a collective bargaining agreement are to be defined by application of an evolving federal common law governed by national labor policy. *Id.*
6. 850 F.2d 543 (9th Cir. 1988).
7. *See infra* notes 33-36 and accompanying text (discussing the *Farmer* exception and its application to LMRA claims).

Consistent with Congressional intent, the Supreme Court has determined that state employment laws will be preempted if the determination of a claim is inextricably intertwined with the consideration of the terms of a collective bargaining agreement.[8] A cause of action that is not inextricably intertwined with the terms of the collective bargaining agreement is distinguished as a nonnegotiable independent state law right.[9] The *Miller* court stated that nonnegotiable, independent state law rights are not preempted by federal labor law.[10] A claim that is substantially dependent upon the terms of the collective bargaining agreement is inextricably intertwined with the terms of a collective bargaining agreement. The *Miller* court developed a three-pronged test to assist courts in determining whether a cause of action is inextricably intertwined with the terms of the collective bargaining agreement.[11] In *Miller*, the Ninth Circuit held that an employee's claim for violation of state anti-discrimination legislation was not preempted by the collective bargaining agreement.[12] The claim did not require an interpretation of the collective bargaining agreement.[13] The Ninth Circuit Court of Appeals also held that a claim for intentional infliction of emotional distress was preempted by federal regulation because determination of outrageous conduct, which is required for the claim of intentional infliction of emotional distress, may require interpretation of the terms of the collective bargaining agreement.[14]

Part I of this Note examines federal regulations and United States Supreme Court decisions regarding legislative attempts to regulate employer/employee relations. Part II summarizes the facts and opinion of the *Miller* decision. Part III explores the possible legal ramifications of the decision in *Miller*.

I. Legal Background

A. Labor Law Preemption

The Commerce Clause of the United States Constitution empowers Congress to regulate labor relations in industries affecting interstate

8. *See infra* notes 52-62 and accompanying text (discussing the Supreme Court case of Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985)).
9. *See Miller*, 850 F.2d at 545. *See also* Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 213 (1985).
10. *Miller*, 850 F.2d at 546. *See infra*, notes 100-136 and accompanying text (discussing the *Miller* holding).
11. *Miller*, 850 F.2d at 548.
12. *Id.* at 551.
13. *Id.* at 548-49.
14. *Id.* at 550-51.

commerce.[15] Laws enacted by Congress pursuant to the Commerce Clause preempt state regulations of industries affecting interstate commerce in three ways.[16] First, Congress may preempt state law by expressly stating an intention to occupy the entire field.[17] Second, congressional intent to preempt state law can be inferred by comprehensive legislation that eliminates the possibility of state regulation.[18] Third, preemption occurs when there is an actual conflict between state and federal law.[19] That is, state law conflicts with federal law when compliance with the regulations of both is impossible[20] or when complying with the state law creates a barrier to achieving the full purpose and objectives of Congress.[21]

Congress regulates labor relations through the National Labor Relations Act (NLRA) and the Labor Management Relations Act (LMRA).[22] Each requires a separate analysis.[23] A discussion of preemption under the NLRA and the LMRA follows.

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15. U.S. CONST. art. I, § 8, cl. 3. Clause 3 provides : "[Congress shall have the power] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." *Id.*

16. U.S. CONST. art. VI, cl. 2. *See generally* Herman, *The Preemption Doctrine: Shifting Perspectives on Federalism and the Burger Court*, 9 INDUS. REL. L.J. 623 (1987) (discussing federal preemption and the Court's approach to concurrent state-federal regulation on the preemption doctrine).

17. *E.g.*, Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977). Section 408 of the Federal Meat Inspection Act, expressly preempted section 12211 of the California Business and Professions Code, and Article 5 of Title 4 of the California Administrative Code. *Id* at 530-32.

18. *E.g.*, Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947). The 1931 amendments to the United States Warehouse Act preempted an Illinois public utilities statute, except to the extent that the federal statute failed to cover the field or provide express exceptions in favor of state law. *Id.* at 234 n.12, 235-37.

19. *E.g.*, California Fed. Sav. & Loan Ass'n v. Guerra, 107 S. Ct. 683, 689 (1987). Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978, did not preempt section 12954(b)(2) of the California Government Code because the state statute was not inconsistent with the purposes of the federal act and did not require the commission of an unlawful act under Title VII. *Id.* at 694-95.

20. *C.f.*, Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963). Dual compliance with California law, certifying the maturity of avocados based upon oil content, and federal regulations, certifying the maturity of avocados based upon picking date, size, and weight, was not physically impossible. *Id.* at 133-34, 139, 143.

21. *E.g.*, Hines v. Davidowitz, 312 U.S. 52, 66-68 (1941). The Pennsylvania Alien Registration Act of 1939 stood as an obstacle to the accomplishment of the full objective of Congress, spelled out in the Alien Registration Act of 1940. *Id.* at 72-74.

22. Note, DeTomaso v. Pan American World Airways, Inc.: *Preemption of State Tort Claims by the Railway Labor Act*, 19 PAC. L.J. 905 (1988) (discussing labor law preemption and noting that Congress also regulates labor relations through the Railway Labor Act (RLA) and the Labor-Management Reporting and Disclosure (Landrum-Griffin) Act (LMRDA)). These acts are beyond the scope of this Note.

23. *See generally Miller*, 850 F.2d at 545-46 (determining that different policy factors are to be considered when there is an employer/employee relationship controlled by a collective bargaining agreement). *See also*, Newberry v. Pacific Racing Ass'n, 854 F.2d 1142, 1146 (9th Cir. 1988) (holding that, without regard to how the claim is framed, the threshold question will be whether the claim can be resolved by referring to the terms of the collective bargaining agreement).

B. Federal Statutory Law

1. NLRA Preemption

Congress enacted the NLRA[24] to give employees the right to collective bargaining. The NLRA also gives employees the right to freedom of association,[25] to self organization,[26] and to designate representatives to negotiate the terms and conditions of employment in industries affecting interstate commerce.[27] The NLRA preempts state regulation of labor relations in two distinct situations.[28] In the first situation, developed in *San Diego Building Trades Council v. Garmon*,[29] the NLRA preempts state regulation where the conduct the state seeks to prohibit is either arguably prohibited by section 8 of the NLRA[30] or arguably protected by section 7 of the NLRA.[31] The United States Supreme Court established an exception to the *Garmon* rule in *Farmer v. Carpenters*,[32] which allows the state jurisdiction in a situation where state law would otherwise be considered preempted under *Garmon*.[33] Under *Farmer*, a state-created tort cause

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24. 29 U.S.C. § 151 (1935). Section 151 states that the policy of the United States is to eliminate the causes of certain interferences with the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the use of collective bargaining. *Id. See also*, Comment, *NLRA Preemption of State Wrongful Discharge Claims*, 34 Hastings L.J. 635 (1983) (discussing NLRA preemption of state laws).

25. 29 U.S.C. § 151 (1935). Section 151 states that the right of employees to freedom of association is protected to further the free flow of interstate commerce. *Id.*

26. *Id.* Section 151 states that it is the policy of the United States to encourage the free flow of commerce by protecting the right of workers to self-organize. *Id.*

27. *Id.* Section 151 protects the right of workers to designate representatives of their own choosing, for the purpose of negotiating the terms and condition of their employment or other mutual aid or protection as a method of eliminating an obstruction to the flow of interstate commerce. *Id.*

28. *See generally*, Cox, *Recent Developments in Federal Labor Law Preemption*, 41 Ohio St. L.J. 277 (1980) (providing an exhaustive analysis of NLRA preemption).

29. San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236 (1959). The NLRA preempted a state claim by an employer against a union for picketing which was arguably governed by sections 7 or 8 of the NLRA. *Id.* at 246.

30. 29 U.S.C. § 158 (1935). Section 8 defines acts constituting unfair labor practices. *Id.*

31. *See Garmon*, 359 U.S. at 244; 29 U.S.C. § 157 (1935). Section 7 protects the rights of employees to self-organization and collective bargaining. *Garmon*, 359 U.S. at 144.

32. Farmer v. Carpenters, 430 U.S. 290, 305 (1977) (recognizing that the state tort claim law for intentional infliction of emotional distress was not preempted by the NLRA). A union member brought the claim against his union and its officials, alleging that he was the victim of a plan of harassment, ridicule, verbal abuse, and hiring discrimination. *Id.* at 292-293. The Court reasoned that *Garmon* did not apply because no provision of the NLRA protected against conduct which was so outrageous that no person in a civilized society should be expected to endure it. *Id.* at 302.

33. *Id.* at 302.

of action must be either unrelated to employment discrimination, or integral to the abusive manner in which the discrimination is accomplished or threatened.[34] The *Farmer* exception has, by analogy, been recognized as applicable to LMRA section 301 preemption issues involving state law emotional distress claims.[35]

In the second situation, the NLRA preempts state regulation when state regulation upsets the balance of power between labor and management established by the NLRA.[36] This rationale is consistent with the congressional intent that the interplay between labor and management should be controlled by the free play of economic forces and not regulated by the individual states.[37] There are two different types of preemption based upon the balance of power.[38] The first, bargaining process preemption, involves state laws that affect parties currently engaged in collective bargaining agreements.[39] The second, known as bargaining agreement preemption, results when state regulation interferes with the rights and duties of parties to a collective bargaining agreement.[40]

2. *LMRA Preemption*

Section 301 of the Labor Management Relations Act (LMRA) provides that suits may be brought by labor or management for

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34. *Id.* at 305.

35. *See* Garibaldi v. Lucky Food Stores, Inc., 726 F.2d 1367 (9th Cir. 1984) *cert. denied*, 471 U.S. 1099 (1985) (applying *Farmer* by analogy to a LMRA section 301 claim); Olguin v. Inspiration Consolidated Copper Co., 740 F.2d 1468 (9th Cir. 1984) (also applying *Farmer* to a LMRA section 301 case). *See also Newberry*, 854 F.2d 1142, 1149 (determining that the employee's state claim for intentional infliction of emotional distress is preempted by section 301). In *Newberry*, the court explicitly rejected the application of the *Farmer* exception in the context of section 301 preemption analysis. *Newberry*, at 1148-49.

36. Cox, *Labor Law Preemption Revisited*, 85 HARV. L. REV. 1337, 1352-53 (1972). Federal labor laws provide a framework within which employees can organize themselves and bargain collectively with employers concerning the terms and conditions of employment. *Id.* The framework strikes a balance of protection, prohibition, and laissez faire which would be upset if states could enforce their views concerning accommodation of the same interests. *Id.* at 1352. The legal framework for self-organization and collective bargaining, established by the NLRA, determines the extent to which the conduct of employers and unions should be regulated. *Id.*

37. Machinist v. Wisconsin Employment Relations Comm'n, 497 U.S. 132 (1976), (holding that states are not free to interfere with a union's concerted refusal to work overtime.) *Id.* *See also* Teamsters v. Morton, 377 U.S. 252 (1964) (holding that a state could not interfere during a labor dispute with a union's attempt to non-coercively persuade customers to boycott the union's employer).

38. Comment, *NLRA Preemption of State Wrongful Discharge Claims*, 34 HASTINGS L.J. 635, 644-47 (1983).

39. *Id.*

40. *Id.*

violations of a collective bargaining agreement.[41] Congress enacted section 301 to give courts jurisdiction to enforce collective bargaining agreements and to compel uniformity in the application of federal labor law.[42] By enacting section 301, Congress also intended to stabilize industrial relations by encouraging agreements not to strike.[43] In addition, section 301 permits parties to specify the method of enforcement of the contract, including mediation and arbitration.[44] If arbitration is part of the collective bargaining agreement, and the parties have not expressly designated it as a nonexclusive remedy, the parties must exhaust arbitration before seeking a judicial remedy.[45]

The United States Supreme Court has held that federal labor law preempts state law in deciding section 301 claims because Congress intended that doctrines of federal labor law would apply uniformly over inconsistent local law.[46] Federal law must prevail in cases involving collective bargaining agreements because a different result would be completely at odds with the federal policy to replace economic warfare with arbitration.[47]

C. Case Law

The Supreme Court distinguishes between an independent nonnegotiable state law right and a right negotiated between the parties that is inextricably intertwined with the terms of the collective bar-

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41. Labor Management Relations Act, Pub. L. No. 80-101, 61 Stat. 136 (1947) (codified as amended at 29 U.S.C. §§ 141-197 (1982 & Supp. III 1985)). Section 301 of the LMRA is set forth at Title 29 of the United Stated Code, section 185(a) (1947). Section 185(a) states in relevant part: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties." 29 U.S.C. § 185(a) (1947).

42. Textile Worker's Union v. Lincoln Mills, 353 U.S. 448, 456-57 (1957) (holding that federal laws govern suits brought for breach of a collective bargaining agreement, even if brought in state court).

43. *See id.* at 452-458 (citing several Senate and House Reports to support its holding).

44. 29 U.S.C. § 171 (1947) (declaration of the purpose and policy of the NLRA).

45. Republic Steel Corp. v. Maddox, 379 U.S. 650, 652-53 (1965). The LMRA preempted employee's claim for severance pay because he failed to exhaust the grievance and arbitration procedures expressed in the collective bargaining agreement before instituting the law suit. *Id.* at 659.

46. *See* Local 174 Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962). The state law claim was for bad faith breach of contract. *Id.* at 97. The Court's specific holding was "that in a case such as this, incompatible doctrines of local law must give way to principles of federal labor law." *Id.* at 102. *See also*, Caterpillar Inc. v. Williams, 107 S. Ct. 2425, 2427 (1987) (holding that a suit for breach of an individual employment contract which is independent of a subsequent collective bargaining agreement is not preempted by section 301).

47. *Lucas Flour*, 369 U.S. at 105.

gaining agreement.[48] Where resolution of a dispute requires the interpretation of the collective bargaining agreement, the state law cause of action is preempted because the state law cause of action is inextricably intertwined with the terms of the collective bargaining agreement.[49] If a state court can uphold state claims without interpreting the terms of a collective bargaining agreement, then a cause of action based upon state law is an independent state law right and does not undermine the purpose of section 301.[50] The recognition of this distinction has developed from the cases that follow.

Before the Supreme Court decision in *Allis-Chalmers Corp. v. Lueck*,[51] section 301 had been applied only to causes of action arising from breach of a collective bargaining agreement.[52] *Lueck* extended the preemption principle for section 301 breach of the collective bargaining agreement claims to include suits based on tortious conduct.[53] *Lueck* involved a tort claim for bad faith breach of contract.[54] The Court held that where Congress intends to provide an exclusive remedy for employment contract disputes, a plaintiff cannot rely on a state tort law remedy to bypass the exclusivity of the federal policy.[55] A cause of action based upon state law is an independent state law right only if the state court can uphold the claim without interpreting the terms of the collective bargaining agreement.[56]

Further, the court stated that section 301 does not allow parties to a collective bargaining agreement to contract for what is illegal under state law.[57] Rights that are controlled by state law are nonnegotiable

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48. *See supra* notes 100-117 and accompanying text.
49. *See supra*, notes 100-117 and accompanying text.
50. *See Miller*, 850 F.2d 543 (9th Cir. 1988). *See also*, *Newberry*, 854 F.2d 1142 (9th Cir. 1988).
51. 471 U.S. 202 (1985).
52. *See supra* notes 45-47 and accompanying text.
53. *Lueck*, 471 U.S. at 216 (holding that if the duty of either party depends upon the terms of the collective bargaining agreement in a tort cause of action, the question of duty is tightly bound to questions of contract interpretation that must be left to federal law).
54. *Id.* at 203. Roderick Lueck worked for Allis-Chalmers, and his working conditions were governed by a collective bargaining agreement. *Id.* at 204. The agreement included by reference a separately negotiated health and disability plan which was funded by Allis-Chalmers, but distributed by an insurance company. *Id.* After suffering a nonoccupational back injury, Lueck notified Allis-Chalmers of his injury, and followed all other procedures required of him in accordance with the agreement. *Id.* at 205. Lueck's claim was approved, but his payments were periodically cut off without substantial reason. *Id.* Although the benefits were eventually paid, Lueck was required to be reexamined by different doctors each time. *Id.* Lueck filed a suit for breach of good faith and fair dealings. *Id.* at 206.
55. *Id.* at 220.
56. *Id.* at 213.
57. *Id.* at 212. *See also*, Malone v. White Motor Corp., 435 U.S. 497, 504-05 (1978)

and independent of any right established by the collective bargaining agreement.[58] Nonnegotiable independent state law rights are not preempted by federal labor law.[59]

In contrast, if evaluation of the claim is inextricably intertwined with consideration of the terms of the collective bargaining agreement, federal labor law preempts the state law claim.[60] A state law right is inextricably intertwined with the terms of the collective bargaining agreement if it does not exist independently from the collective bargaining agreement and, as a result, can be negotiated by the parties.[61]

In *Lingle v. Norge Division, Magic Chef*,[62] the United States Supreme Court further explained the section 301 preemption analysis.[63] Pursuant to a collective bargaining agreement, the employee in *Lingle* sought reinstatement after being fired for allegedly filing a false worker's compensation claim.[64] The collective bargaining agreement protected the employee from discharge except for "proper" or "just cause," and the collective bargaining agreement also called for arbitration of grievances.[65] Before the arbitrator ultimately made the decision to reinstate the employee with back pay, the employee filed suit in state court alleging that the employer wrongfully discharged her for pursuing her rights under the state worker's compensation laws.[66] The employer removed the case to federal court on the basis of diversity.[67] The district court dismissed the employee claim for retaliatory discharge, reasoning that the claim was inextricably inter-

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(concluding that there is little doubt that under the federal labor management relations, an employer must bargain about wages, hours, and working conditions but there is nothing in LMRA expressly foreclosing all state regulatory power with respect to issues such as pension plans that may be the subject of collective bargaining).

58. *Lueck*, 471 U.S. at 213.
59. *Id.* at 213.
60. *Id.*
61. *Id.*
62. 108 S. Ct. 1877 (1988).
63. *Id.* at 1883.

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

Id.

64. *Id.* at 1879.
65. *Id.*
66. *Id.*
67. *Id.*

twined with the collective bargaining agreement provision requiring just cause before the employee could be fired.[68]

Further refining the labor law preemption doctrine, the Supreme Court reversed, holding that section 301 preempts the application of state law in an action only if applying state law requires the interpretation of a collective bargaining agreement.[69] In *Lingle*, the state tort law of retaliatory discharge required the employee to show that the employer discharged or threatened to discharge the employee and that the threat or discharge was to discourage the employee from exercising rights under the state worker's compensation laws.[70] Because neither of these elements required a court to interpret the terms of a collective bargaining agreement, the Court held that the state law cause of action was not inextricably intertwined with the collective bargaining agreement and was not preempted.[71] The Court explained that a state law is not inextricably intertwined with the collective bargaining agreement unless the court must interpret the terms of the collective bargaining agreement to determine whether the state law has been violated.[72] The Court held that a state law right that can not be altered by private agreement is nonnegotiable. A nonnegotiable state law right is not preempted because it can never be included within the terms of a collective bargaining agreement.[73]

A consistent body of law interpreting section 301 preemption analysis is developing.[74] The U.S. Supreme Court has held that federal labor law preempts state law where employment relationships are governed by collective bargaining agreements.[75] *Lueck* extended section 301 preemption to include causes of action based on tort law, drawing a distinction between claims whose determination is inextricably in-

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68. *Id.*

69. *Id.* at 1885. "[The] application of state law is pre-empted by section 301 of the Labor Management Relations Act of 1947 only if such application requires the interpretation of a collective-bargaining agreement." *Id.*

70. *Id.* at 1882.

71. *Id.*

72. *Id.* at 1883.

73. *Id.* at 1884. Specifically, the Court said, "[T]here is nothing novel about recognizing that substantive rights in the labor relations context can exist without interpreting collective bargaining agreements." *Id.* (citing Barrentine v. Arkansas-Best Freight System, Inc., 450 U.S. 728 (1981)). The Court notes that different policy considerations apply when the employee's claim is based on rights arising out of a statute designed to provide minimum substantive guarantees to individual employees. *Id.*

74. *See supra* notes 52-74 and accompanying text (discussing *Lueck* and *Lingle*) and *infra* notes 84-136 (discussing *Miller*). *See also Newberry*, 854 F.2d 1142 (9th Cir. 1988).

75. *Lucas Flour*, 369 U.S. at 104 (concluding that Congress intended section 301 to prevail over inconsistent local rules).

tertwined with the collective bargaining agreement, and therefore preempted, and those that are based on nonnegotiable, independent state law rights.[76] *Lingle* further refined the preemption analysis by explicitly holding that claims are inextricably intertwined only if a cause of action under state law requires interpretation of the collective bargaining agreement.[77] By the time *Miller v. AT&T Network Systems*[78] was decided, the concept of "nonnegotiable" was clear.[79] The meaning of "independent state law right," however, remained vague.[80] Confusion occurred because it was unclear how much overlap could exist between the collective bargaining agreement and state law.[81] The *Miller* court defined the degree of overlap allowable.[82]

II. The Case

In *Miller v. AT&T Network Systems*,[83] the Ninth Circuit clarified the factors used in determining whether a state law right is independent.[84] The Ninth Circuit considered Supreme Court precedent and the policies underlying section 301 preemption to determine whether preemption occurs merely because a collective bargaining agreement offers relief similar to that available in state court.[85] The Ninth Circuit held that federal law does not preempt a claim based on a state statute that imposes a mandatory and independent duty on employers that does not require interpretation of the collective bargaining agreement.[86] Conversely, federal law will preempt a state law claim that requires a court to consider the terms of the collective bargaining

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76. *Lueck*, 471 U.S. at 202 (holding that when resolution of a state claim is substantially dependent on the terms of the collective bargaining agreement, the claim must be treated as a section 301 claim or dismissed as preempted by federal laws governing labor contracts).

77. *Lingle*, 108 S. Ct. at 1877 (holding that preemption occurs only if the application of state law requires the interpretation of the collective bargaining agreement).

78. 850 F.2d 543 (9th Cir. 1988).

79. *Id.* at 546. A right is nonnegotiable if the state law does not permit it to be waived, alienated, or altered by private agreement. *Id.*

80. *Id.* at 546 (stating that the concept of a right independent of any right established by the contract establishes some difficulty).

81. *Id.* (recognizing that the parties disagreed about the significance of overlap between the terms of the collective bargaining agreement and state law).

82. *Id.* at 548. *See infra* note 114 and accompanying text (discussing the three-prong test developed by the *Miller* court).

83. 850 F.2d at 543.

84. *See infra* note 112.

85. *Miller*, 850 F.2d at 543.

86. *Id.* at 551.

agreement in determining whether an employee violated a standard of care.[87]

A. The Facts

Daryl Miller worked for AT&T for over twenty years.[88] His working conditions were governed by a collective bargaining agreement, which included an exclusive grievance procedure that required binding arbitration in the event of a disagreement between labor and management.[89] Miller had heart problems.[90] Heat affected his heart rate and caused him to faint in temperatures above ninety degrees.[91] Although AT&T always assigned him to cool climates, in May 1985, AT&T assigned Miller to work for thirteen weeks in Mesa, Arizona, where the temperature is frequently over ninety degrees.[92] While on the job in Mesa, Miller lost consciousness.[93] Miller refused to return to work in Mesa, but was willing to work in cooler climates.[94] Nonetheless, AT&T fired him.[95] Miller filed suit against AT&T in Oregon state court for discrimination based on physical handicap and for intentional infliction of emotional distress.[96] AT&T removed the suit to federal court based on diversity and the presence of a federal question under section 301 of the LMRA.[97] The district court granted AT&T a summary judgment based on federal labor law preemption of Miller's state law claims.[98]

B. The Opinion

The Ninth Circuit Court of Appeals reversed the district court's summary judgment of the discrimination claim and affirmed the dismissal of the claim of intentional infliction of emotional distress.[99]

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87. *Id.* at 551. Whether Miller's reassignment and dismissal were outrageous could have depended upon the terms of the collective bargaining agreement. *Id.*
88. *Id.* at 545.
89. *Id.*
90. *Id.*
91. *Id.*
92. *Id.*
93. *Id.*
94. *Id.*
95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.*
99. *Id.* at 551.

The court, relying on *Lueck*, stated that section 301 preempts state law when the evaluation of any state claim, whether in tort or in contract, is inextricably intertwined with consideration of the terms of a collective bargaining agreement.[100] As long as a claim does not require interpretation of the collective bargaining agreement and evaluation of the claim depends upon an independent state law right, then section 301 does not preempt state law.[101] If the state law establishes criteria for deciding the issue without looking to the collective bargaining agreement, the state law right is independent and therefore not preempted by section 301.[102] When the state right is not preempted, any overlap that might exist between the terms of the collective bargaining agreement and the state law claim is not relevant.[103] This is so because the policy underlying section 301 requires a uniform interpretation of the terms of labor contracts.[104] According to the *Miller* court, the use of independent state-established criteria to decide an issue does not therefor conflict with the policies governing section 301 preemption of causes of action created by state law.[105]

1. Defining an Independent State Law Right

Since federal labor law does not preempt an independent state law right, the *Miller* court initially evaluated the state law to determine whether the law is in fact independent.[106] According to the *Miller* court, if a distinction were not drawn between independent state law rights and those governed by the collective bargaining agreement, then mere overlap between a state law created cause of action and

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100. *Id.* at 545 (reaffirming and quoting the holding of Allis-Chalmers v. Lueck, 471 U.S. 202, 213) (even suits based on tort, rather than breach of the collective bargaining agreement, are governed by federal labor law if their evaluation is inextricably intertwined with consideration of the terms of a labor contract).

101. *Id.* at 546 (citing *Lueck*). *See also* Paige v. Henry J. Kaiser Co., 826 F.2d 857, 863 (9th Cir. 1987) (holding that a wrongful discharge claim based on violation of a state public policy is not preempted, because it is a nonnegotiable independent state law right). *See also* Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 753-58 (1985) (holding that state minimum labor standards do not interfere with the collective bargaining process and are not preempted).

102. *Miller*, 850 F.2d at 546.

103. *Id.*

104. *See id.* at 547. *See also Lueck*, 471 U.S. at 211.

105. *Miller*, 543 F.2d at 546.

106. *Id.* at 546. Although the concept of nonnegotiable is clear, the concept of independent state law right causes difficulty: "A right is nonnegotiable if the state law does not permit it to be waived, alienated, or altered by private agreement." *Id.*

one governed by section 301 would trigger preemption.[107] Section 301 would control the substance of agreements that private parties might reach in a collective bargaining agreement.[108] An employer could include terms in a collective bargaining agreement similar to state law rights, effectively exempting the employer from any state labor standards.[109] The court in *Miller* asserted that it is contrary to the policy of section 301 to allow unions and union employers to exempt themselves from state regulation by merely including similar terms in the collective bargaining agreement.[110]

The *Miller* court stated that the Supreme Court analyzes the independence of a state law right by considering whether the state intended to have courts rely on the terms of the collective bargaining agreement when adjudicating alleged violations of state law.[111] If the state intended to create terms that the collective bargaining agreement could not alter, the state law right is not preempted.[112] Consistent with the analysis of independence by the Supreme Court, the *Miller* court developed a three-pronged test to determine when section 301 preempts state law.[113] First, a court must look to the state statute and determine whether the collective bargaining agreement contains terms that govern the action.[114] Second, a court must also consider whether the state has articulated sufficiently clear standards for determining when the state law right is violated.[115] Third, if the state has articulated sufficiently clear standards, preemption does not occur unless the state fails to show an intent to prohibit alteration of the right by private contract.[116]

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107. *Id.*
108. *Id.* at 547.
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.* at 547-48.
113. *Id.* at 548.

> In deciding whether a state law is preempted under section 301 . . . a court must consider (1) whether the CBA contains provisions that govern the actions giving rise to a state claim, and if so, (2) whether the state has articulated a standard sufficiently clear that the state claim can be evaluated without considering the overlapping provisions of the CBA, and (3) whether the state has shown an intent not to allow its prohibition to be altered or removed by private contract. A state law will be preempted only if the answer to the first question is "yes," and the answer to either the second or third is "no."

Id.

114. *Id.*
115. *Id.*
116. *Id.*

2. *Discrimination Claim*

The court applied its three-pronged test and determined that the Oregon civil rights statute protecting the handicapped[117] relied on standards of what constituted discriminatory firings that were independent of any standard of reasonable treatment set forth in the collective bargaining agreement.[118] Even though the collective bargaining agreement contained certain provisions that dictated working conditions and discharges, the antidiscrimination statute did not rely upon interpretation of these provisions of the collective bargaining agreement in determining fault.[119] The court found the state-articulated standards sufficiently clear so that the claim could be evaluated without consideration of the terms of the collective bargaining agreement.[120] A claim challenging discharge will not be preempted merely because certain aspects of the collective bargaining agreement govern work assignments.[121]

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117. *Id.* at 548. Oregon Revised Statutes section 659.425 makes it illegal to fire an employee because of a physical handicap if, with reasonable accommodation by the employer, the employee could do the work required. OR. REV. STAT. § 659.425 (1989).

118. *Miller*, 543 F.2d at 548-50. The court first distinguished the following cases cited by AT&T. (1) Truex v. Barrett Freightlines, Inc., 784 F.2d 1347 (9th Cir. 1985) (emotional distress claim was preempted because it was based on the employer's sending unjustified warning letters and excessive supervision of the employee). The court stated that Truex was not relevant because intentional infliction of emotional distress would require an inquiry into the terms of the collective bargaining agreement to determine whether Truex's behavior was reasonable (*Miller*, 543 F.2d at 549). (2) Olguin v. Inspiration Consol. Copper Co., 740 F.2d 1468 (9th Cir. 1984) (claims for breach of contract, wrongful discharge, wrongful discharge in violation of public policy, and intentional infliction of emotional distress were preempted). None of the claims were based on a state tort which was independent of reference to the collective bargaining agreement (*Miller*, 543 F.2d at 549). *Olguin* was no longer a binding precedent since the court decided *Lueck* (*Miller*, 543 F.2d at 549). (3) Magnuson v. Burlington Northern Inc., 576 F.2d 1367 (9th Cir.), *cert. denied*, 439 U.S. 930 (1978) (same rationale and outcome as *Olquin*). (4) Bale v. General Telephone Co., 795 F.2d 775 (9th Cir. 1986) (state law fraud and misrepresentation actions were preempted because the court would have had to inquire into the terms of the collective bargaining agreement to see if they differed significantly from the individual employment contracts the plaintiffs believed they had made). In *Miller*, the state tort at issue did not require a comparison of the discharge provisions of the collective bargaining agreement with the requirements of the statute. The tort only required the employee to show that there was no probability that he could not have done the job properly or that he could have done so only by putting himself at risk. *Miller*, 543 F.2d at 549.

119. *Miller*, 543 F.2d at 549. The state tort of discrimination based upon handicap does not require a comparison of the discharge provisions of the collective bargaining agreement with the requirements of the statute. *Id.*

120. *Id.* The discrimination statute only requires a showing that there is no probability that Miller cannot do the job satisfactorily or that he can do so only at the risk of incapacitating himself. *Id.*

121. *Id.* at 548.

The court concluded that a handicapped person's right to equal treatment is nonnegotiable because all citizens are guaranteed this right; consequently, it cannot be waived.[122] No interpretation of the terms of the collective bargaining agreement is relevant to determining whether an employer has violated the antidiscrimination statute.[123]

3. *Claim of Intentional Infliction of Emotional Distress*

The court concluded that Miller's claim for intentional infliction of emotional distress was preempted because the claim required interpretation of the collective bargaining agreement.[124] The cause of action of intentional infliction of emotional distress failed prong one of the three-pronged test.[125] The *Miller* court recognized the difficulty involved in determining whether section 301 preempts a state law claim for intentional infliction of emotional distress.[126] A claim for intentional infliction of emotional distress requires the employee to show that the employer's conduct was "outrageous, extremely unreasonable, or in some way inappropriate."[127] A showing of outrageous conduct will often require consideration of the terms of the collective bargaining agreement, since behavior that would normally be considered outrageous is not actionable if the parties have agreed to permit the behavior in the collective bargaining agreement.[128] In *Miller*, the court concluded that the claim for intentional infliction of emotional distress depended on whether AT&T behaved unreasonably.[129] AT&T's reasonableness would depend on whether the behavior violated the collective bargaining agreement.[130]

The court found that the claim alleging discrimination was not preempted because the state law provided for an analysis of that claim without requiring interpretation of the collective bargaining

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122. *Id.* at 550 (quoting OR. REV. STAT. § 659.405(2)) ("employment without discrimination because of handicap . . . [is] declared to be the right[] of all people in this state.").

123. *Id.* at 550.

124. *Id.* at 551.

125. *Id.* at 550. "Actions that the collective bargaining agreement permits might be deemed reasonable in virtue of the fact that the CBA permits them." *Id.*

126. *Id.* at 550. "Preemption analysis becomes more complicated, however, when evaluating intentional infliction of emotional distress claims." *Id.*

127. *Id.*

128. *Id.*

129.. *See supra* notes 125-128 and accompanying text.

130. *Miller*, 543 F.2d at 550.

agreement.[131] The claim for intentional infliction of emotional distress was preempted because the court needed to look at the terms of the collective bargaining agreement to determine whether the behavior of AT & T was outrageous.[132] The first claim arose from a nonnegotiable independent state law right.[133] The determination of the claim of for intentional infliction of emotional distress, on the other hand, required interpretation of the terms of the collective bargaining agreement.[134] Therefore, the claim of emotional distress was inextricably intertwined with the terms of the collective bargaining agreement.[135]

III. Legal Ramifications

In *Miller*, the Ninth Circuit has affected future labor law cases in two ways. First, the court developed a three-pronged test to clear up the confusion created by distinguishing between a nonnegotiable state law right and a right where the determination of the outcome is inextricably intertwined with the terms of the collective bargaining agreement.[136] A formalistic application of the test will indicate whether most claims based upon state law are preempted.[137] Labor law attorneys should proceed with caution, however, when considering claims for intentional infliction of emotional distress.

A. Restricted Intentional Infliction of Emotional Distress Claims

The state law claim for intentional infliction of emotional distress in the context of a labor dispute is, after *Miller*, far more restricted because of the difficulty in proving that the state-created tort was intended to prevent contractual arrangements that would alter other-

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131. *Id.* at 550 (finding the rights and duties imposed by the Oregon Legislature to be mandatory).

132. *Id.* Determining the appropriateness of the defendant's behavior may require an examination of the behavior by comparing it to the terms of the collective bargaining agreement. *Id.*

133. *Id.* at 550. Oregon's mandatory anti- discrimination statute applied to all citizens. *Id.*

134. *Id.* at 551. Actions permitted by the collective bargaining agreement may be deemed reasonable because the collective bargaining agreement allows them. *Id.*

135. *Id.* Even if a state does develop a standard for what constitutes outrageous conduct without looking to the terms of the collective bargaining agreement, there will be little evidence to determine whether the state tort was intended to preclude collective bargaining agreement provisions that would "otherwise give rise to an emotional distress claim." *Id.*

136. *See supra* note 114 and accompanying text.

137. *Miller*, 850 F.2d at 548-550. *See supra* notes 114-117 and accompanying text.

wise outrageous behavior.[138] This is true even if the state tort law was developed so as to do away with the need to interpret the collective bargaining agreement.[139] Suppose, for example, that a dispute concerning the charge of wrongful discharge goes to arbitration in accordance with the terms of the collective bargaining agreement, and the arbitrator determines that the employee was released for just cause within the meaning of the collective bargaining agreement. A legitimate claim by the employee of intentional infliction of emotional distress cannot be maintained since the employer's action was reasonable under the terms of the collective bargaining agreement.

The collective bargaining agreement may permit behavior that would be shocking under state tort law but for the fact that the parties agreed to it in the labor contract.[140] There will rarely be evidence that the state law cause of action for intentional infliction of emotional distress was intended to preclude contractual agreements that otherwise allow for behavior beyond the "farthest reaches of socially tolerable behavior" without referring to the terms of the collective bargaining agreement to determine the boundaries of the parties' relationship.[141] It will not matter whether an employee or an employer wins in arbitration. If there is a collective bargaining agreement outlining grievance procedures, then any state law cause of action that may substantially rely upon the terms of the collective bargaining agreement will be preempted.

B. Expanding Preemption

Second, the court in *Miller* broadened the arena in which preemption occurs. The *Farmer* exception to the *Garmon* rule had been applied by analogy to section 301 cases.[142] *Farmer*, however, originated

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138. *Miller*, 543 F.2d at 550 (stating that "both independence and mandatoriness will be difficult to find" when evaluating a state law claim for intentional infliction of emotional distress). "Such claims may not be preempted if the particular offending behavior has been explicitly prohibited by mandatory statute or judicial decree, and the state holds violation of that rule in all circumstances sufficiently outrageous to support an emotional distress claim." *Id.* at 550 n.5.

139. *See id. See also Newberry*, 854 F.2d at 1149 (explaining that *Lueck* controls preemption analysis in section 301 cases).

140. *Miller*, 850 F.2d at 551. "The farthest reaches of socially tolerable behavior is not an independent, nonnegotiable standard of behavior." *Id.*

141. *Id.* at 551. The outrageousness of the behavior may depend on whether the behavior violated the terms of the collective bargaining agreement. *Id.*

142. *Newberry*, 854 F.2d at 1148 (stating that earlier cases from the 9th Circuit assumed that *Farmer* was relevant to section 301 cases). *See supra* notes 28-35 and accompanying text.

in the context of the NLRA, and not in the context of the LMRA.[143] The court in *Miller* implied that the *Farmer* exception no longer applies to LMRA cases.[144] The underlying policy for expanding federal labor law preemption is a recognition of the benefit of creating a uniform body of law in the labor law/collective bargaining agreement area.[145]

IV. Conclusion

Congress, by enacting the NLRA and the LMRA intended to have industrial relations governed by a uniform body of laws. To achieve this purpose in the realm of collective bargaining agreements, Congress purposely left it up to the courts to determine when the LMRA would preempt state law causes of action. Acting in conformity with the intent of Congress, the Supreme Court in *Lueck* determined that section 301 of the LMRA preempts state law causes of action not only for breach of the collective bargaining agreement, but also for suits brought in tort.[146] The Court recognized, however, that not all state regulation of labor relations is to be preempted.[147] The Court drew a distinction between nonnegotiable state law rights and those whose determination is inextricably intertwined with the terms of the collective bargaining agreement.[148] A nonnegotiable state law right is not preempted by section 301.[149] According to the holding of the Court in *Lingle*, a state law right is preempted by section 301 if determination of whether the state law right has been violated requires interpretation of the collective bargaining agreement; if it does, it is inextricably intertwined with the terms of the collective bargaining agreement and preempted by section 301.[150]

The *Miller* opinion applied *Lueck* and *Lingle* faithfully. *Miller* interpreted the meaning of the terms "nonnegotiable independent

143. *Farmer*, 430 U.S. 290 (1977).

144. *See Miller*, 850 F.2d 543. *See also*, *Newberry*, 854 F.2d at 1149 (making explicit what was inferred in *Miller*; *Lueck*, not *Farmer*, controls preemption by section 301).

145. *See supra* notes 36-40 and accompanying text.

146. *Lueck*, 471 U.S. 202 (1985).

147. *Id.* at 220. The full scope of federal preemption in the labor contract context must be fleshed out on a case by case basis. *Id.*

148. *Id.* at 210. State rules that purport to define the meaning and scope of terms in a collective bargaining agreement are preempted. *Id.*

149. *Id.* at 212. Section 301 does not allow the parties to a labor contract to contract for what is clearly illegal under state law. *Id.*

150. *Lingle*, 108 S. Ct. at 1885.

state law right'' and ''inextricably intertwined'' and created a test to determine when section 301 of the LMRA will preempt state law. The *Miller* court interpreted the distinction between nonnegotiable state law rights and those inextricably intertwined with the terms of the collective bargaining agreement as broadening federal labor law preemption. Specifically, the court in *Miller* recognized the difficulty of finding independence of a state law cause of action for intentional infliction of emotional distress. In broadening the preemption analysis, the court rejects the application of *Farmer* to section 301 preemption analysis. Although the Ninth Circuit approach may appear confusing, it is fully consistent with the overriding policy which has guided the development of labor law preemption: to maintain a uniform body of laws.

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