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Hawaiin Airlines, Inc. v. Norris: Railway Labor Act Preemption of State-Law Claims

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HAWAIIAN AIRLINES, INC. V. NORRIS: RAILWAY LABOR ACT PREEMPTION OF STATE-LAW CLAIMS

LABOR LAW—Railway Labor Act[1] preemption of state-law claims. The threshold question in Railway Labor Act preemption is whether the state law claim is independent of a collective bargaining agreement such that adjudication may proceed on a purely factual determination and does not require interpretation of a collective bargaining agreement. *Hawaiian Airlines, Inc. v. Norris*[2]

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[1] 45 U.S.C. § 151 (1988).
[2] 114 S. Ct. 2239 (1994).

I. INTRODUCTION

ON JULY 15, 1987, Grant Norris, a mechanic employed by Hawaiian Airlines, discovered that one of the tires on a DC-9 preparing for take-off was worn. Upon further inspection, Norris discovered damage to the axle sleeve indicating potential landing gear failure. Grooves and ridges had worn into the sleeve, which should have been smooth under normal circumstances. Norris reported the damage to his supervisor and recommended replacement of the entire sleeve. Instead of replacement, the supervisor ordered that the sleeve be sanded down, and the plane took off with the repaired axle sleeve.

Federal Aviation Administration (FAA) safety regulations require that mechanics sign off on all repairs and certify that the repaired airplane is suitable for flight.[3] At the end of his shift, Norris refused to sign the maintenance repair record for the axle sleeve and the supervisor suspended him. Norris immediately reported the incident to the FAA.[4]

In response to his suspension, Norris filed a grievance in accordance with the terms of the collective bargaining agreement that governed his employment relationship with Hawaiian Airlines.[5] At the grievance hearing, the airline accused Norris of insubordination, based on his refusal to sign the maintenance record, and stated this as the reason for his termination.[6] Norris appealed the hearing officer's decision on the grounds that the collective bargaining agreement between Hawaiian Airlines and the IAMAW prohibited termination without just cause and protected his refusal to violate safety regulations.[7] Prior to a second hearing, Hawaiian Airlines offered to reinstate Norris with a sus-

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[3] Maintenance, Preventive Maintenance, Rebuilding and Alteration Records, 14 C.F.R. § 43.9(a) (1995). The maintenance record requires:

> If the work performed on the aircraft, airframe, aircraft engine, propeller, appliance, or component part has been performed satisfactorily, [the record must include] the signature, certificate number, and kind of certificate held by the person approving the work. The signature constitutes the approval for return to service only for the work performed.

14 C.F.R. § 43.9(a)(4).

[4] Following an investigation, the FAA assessed Hawaiian Airlines was assessed a civil penalty of $964,000. *Norris*, 114 S. Ct. at 2242 n.1.

[5] Norris was a member of the International Association of Machinists and Aerospace Workers (IAMAW). *Id.* at 2242.

[6] *Id.*

[7] *Id.*

pension without pay and a probationary period.[8] Norris rejected the offer and filed suit against Hawaiian Airlines in state court, alleging breach of contract and wrongful discharge in violation of FAA safety regulations and the Hawaii Whistleblowers' Protection Act.[9] Hawaiian Airlines removed the suit to the United States District Court for the District of Hawaii.[10] The district court, holding that the Railway Labor Act preempted the contract claim, dismissed the breach of contract action and remanded the wrongful discharge claims to state court.[11] The state court dismissed the remaining claim, holding that the Railway Labor Act's arbitration mechanisms were Norris's sole source of relief.[12]

On appeal, the Supreme Court of Hawaii reversed and held that the Railway Labor Act did not preempt Norris's tort claims for wrongful discharge under state law.[13] The Hawaii Supreme Court, citing the United States Supreme Court opinion in *Consolidated Rail Corp. v. Railway Labor Executives' Ass'n*,[14] held that the Railway Labor Act preempts only "contractually defined" disputes that are the subject of a collective bargaining agreement.[15] In so holding, the Hawaii Supreme Court also relied upon *Lingle v. Norge Division of Magic Chef, Inc.*[16] In *Lingle* the Supreme Court held that the Labor Management Relations Act could not preempt a state law wrongful discharge claim if the action did not require interpretation of the collective bargaining agreement and could be resolved by "purely factual questions."[17]

The first part of this note examines the Railway Labor Act and the Labor Management Relations Act. Both Acts govern labor disputes and provide the framework for federal preemption.

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[8] *Id.*

[9] *Norris*, 114 S. Ct. at 2242-43; *see also* Hawaii Whistleblowers' Protection Act, HAW. REV. STAT. §§ 378-61 to 378-69 (1995).

[10] *Norris*, 114 S. Ct. at 2243.

[11] *Id.*

[12] *Id.* Additionally, Norris filed a second suit in Hawaii state court against Hawaiian Airlines officers for retaliatory discharge in violation of the Hawaii Whistleblower Protection Act. *Id.* These claims were also dismissed on the basis of preemption by the Railway Act. *Id.*

[13] *Id.*; *see also* Norris v. Hawaiian Airlines, Inc., 847 P.2d 263 (Haw. 1993); Norris v. Hawaiian Airlines, Inc., 842 P.2d 634 (Haw. 1992). These cases were consolidated for appeal to the United States Supreme Court in *Norris*, 114 S. Ct. at 2243.

[14] 491 U.S. 299 (1989).

[15] *Norris*, 114 S. Ct. at 2243.

[16] 486 U.S. 399 (1988).

[17] *Norris*, 114 S. Ct. at 2243; *see also* Labor Management Relations Act, 29 U.S.C. § 185(a) (1994) and discussion *infra* Parts II.B and III.B.

The second part traces the development of two lines of Supreme Court opinions, those finding preemption and those carving out exceptions to this preemption. The final part of this note analyzes the *Norris* decision, its treatment of prior Supreme Court holdings, and the adequacy of its response to the preemption conflict.

II. STATUTORY BACKGROUND

A. THE RAILWAY LABOR ACT[18]

Congress passed the Railway Labor Act in 1934 as a dispute resolution mechanism for actions "growing out of grievances or out of the interpretation and application of agreements concerning rates of pay, rules, or working conditions."[19]

The main purpose of the Railway Labor Act is to promote effective and orderly settlement of labor disputes and to create uniformity in labor practices.[20] Congress recognized that collective bargaining agreements encompass the divergent interests of the railroad unions and carriers and that particularized disputes would be more efficiently solved in an industry forum emphasizing arbitration rather than litigation.[21] This recognition led to

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[18] 45 U.S.C. §§ 151-188 (1988). Congress extended the Railway Act in 1936 to include the airline industry. *Id.* §§ 181-188. "All of the provisions . . . are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce . . . ." *Id.* § 181. *See also* International Ass'n of Machinists v. Central Airlines, Inc., 372 U.S. 682 (1963).

[19] 45 U.S.C. § 151(a). Specifically, 45 U.S.C. § 151(a) provides:

> The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

[20] Atchison, Topeka and Santa Fe Ry. v. Buell, 480 U.S. 557, 562 (1987); Comment, *Enjoining Strikes and Maintaining the Status Quo in Railway Labor Disputes*, 60 COLUM. L. REV. 381, 383 (1960) [hereinafter *Railway Labor Disputes*]. *See generally* H.R. REP. NO. 1944, 73d Cong., 2d Sess. (1934); S. REP. NO. 1065, 73d Cong., 2d Sess. (1934).

[21] Lloyd K. Garrison, *National Railroad Adjustment Board, A Unique Administrative Agency*, 46 YALE L.J. 567, 568-75 (1937).

the establishment of a specialized "quasi-judicial tribunal" to develop and promulgate a uniform theory of labor agreement interpretation.[22]

To meet its goals of creating a uniform body of law and promoting the efficient settlement of disputes, the Railway Labor Act established a detailed administrative system to address employee grievances.[23] When a dispute arises between employees and management, the parties must first attempt to settle the matter themselves and may not proceed until they have exhausted all internal procedures.[24] If the internal process fails, then the parties must appear before a National Mediation Board, a panel established by the Railway Labor Act to hear such disputes.[25] Finally, there is a compulsory arbitration mechanism for certain kinds of disputes.[26] The National Railroad Adjustment Board has exclusive jurisdiction over minor disputes and the outcome of arbitration is binding.[27] The rationale for binding arbitration in minor disputes is that:

> There are too many people, too many problems, too many unforeseeable contingencies to make the words of the contract the exclusive source of rights and duties . . . . Within the sphere of collective bargaining, the institutional characteristics and the governmental nature of the collective-bargaining process demand a common law of the shop which implements and furnishes the context of the agreement.[28]

But, arbitration is not mandatory for disputes classified as major, and the parties are not precluded from seeking a judicial rem-

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[22] *Id.* at 593. A specialized industry forum was viewed as an advantage to employees afforded few common law and statutory protections. *See* Richard Schoolman, *Developments in the Preemption of Otherwise Justiciable Employment-Related Claims by the Railway Labor Act*, ALA-ABA COURSE OF STUDY (Apr. 1, 1993). Employees, through union representatives, now had a forum in which to air grievances. "Such men from now on can hold their heads erect and feel that they can negotiate through representatives freely chosen by themselves in regard to any dispute they may have with the owners of the railroads." *Hearings Before Comm. on Interstate Commerce on S.3266*, 73d Cong., 2d Sess. (1934), *reprinted in* 78 CONG. REC. 12,553, 12,554 (1934).

[23] 45 U.S.C. §§ 152-162.

[24] *Id.* § 152.

[25] *Id.* § 154.

[26] *Id.* § 153.

[27] *Id.*

[28] Archibald Cox, *Reflections Upon Labor Arbitration*, 72 HARV. L. REV. 1482, 1498-99 (1959).

edy.[29] It is the appropriateness of the major/minor distinction and its effect on the dispute resolution process that is at the root of the current preemption controversy.[30]

B. THE LABOR MANAGEMENT RELATIONS ACT[31]

Section 301 of the Labor Management Relations Act authorizes federal preemption of labor contract disputes and provides:

> 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.[32]

Like the Railway Labor Act, the Labor Management Relations Act governs airlines as an "industry affecting commerce."[33]

Congress enacted the Labor Management Relations Act to promote collective bargaining agreements and to encourage labor and management to honor the terms of the agreements.[34] Although preemption was clear for breach of contract claims, the emergence of competing state employment rights challenged the scope of federal preemption.[35] Originally, courts interpreted the Labor Management Relations Act to create concurrent federal and state jurisdiction in employment related contract disputes.[36] But, in *Teamsters v. Lucas Flour Co.*,[37] the

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[29] 45 U.S.C. § 152; *Railway Labor Dispute*, *supra* note 20, at 385. For further discussion of the major/minor dispute distinction, see discussion *infra* Part III.

[30] *See* discussion *infra* Part III. According to Justice Frankfurter, the unique aspects of the relationship between labor, management and collective bargaining agreements admonish against mutilating the comprehensive and complicated system governing railroad industrial relations by episodic utilization of inapposite judicial remedies. Elgin v. Burley, 325 U.S. 711, 749-61 (1945) (Frankfurter, J., dissenting).

[31] 29 U.S.C. § 185 (1993).

[32] *Id.* § 185(a).

[33] *Id.* § 185(b); *see* H.R. REP. NO. 510, 80th Cong., 1st Sess. 1172 (1947).

[34] Mark Adams, *Struggling Through the Thicket: Section 301 and the Washington Supreme Court*, 15 BERKELEY J. EMPLOYMENT & LAB. L. 106, 117 (1994).

[35] Rebecca H. White, *Section 301's Preemption of State Law Claims: A Model for Analysis*, 41 ALA. L. REV. 377, 383-91 (1990). Generally, state law will not be preempted unless the law directly conflicts with federal law or policy. *See* U.S. CONST. art. IV, § 1, cl. 2; Adams, *supra* note 34, at 108-09.

[36] Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 209-10 (1985).

[37] 369 U.S. 95 (1962).

Supreme Court held that Congress intended the preemption clause of the Labor Management Relations Act to create a uniform body of substantive federal labor law.[38] Because Congress did not specify the scope of preemption, courts have focused on federal labor policies encouraging uniformity and maintaining "the integrity of the grievance and arbitration process."[39] These policies require that the scope of preemption extend beyond pure adjudication of contract disputes to any dispute arising out of a labor relationship governed by a collective bargaining agreement.[40]

> Thus, questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort.[41]

The Labor Management Relations Act requires federal preemption so long as the claim invokes an employment right either created or governed by the collective bargaining agreement.[42] Courts have struggled, however, in determining whether an employment right is created by state law or by a collective bargaining agreement.[43] As with preemption under the Railway Labor Act, the question turns on an analysis of the disputed right and whether the collective bargaining agreement is implicated.[44]

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[38] *Id.* at 103-04; *see also* Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957).

[39] White, *supra* note 35, at 381. For a discussion of the inadequacy of federal labor policy as a justification for the development of section 301 preemption doctrine, see Michael Harper, *Limiting Section 301 Preemption: Three Cheers for the Trilogy, Only One for* Lingle *and* Lueck, 66 CHI.-KENT L. REV. 685 (1990).

[40] *Lueck*, 471 U.S. at 211.

[41] *Id.*

[42] Adams, *supra* note 34, at 125.

[43] *See, e.g.*, Livadas v. Bradshaw, 114 S. Ct. 2068 (1994); Steelworkers v. Rawson, 495 U.S. 362 (1990); Lingle v. Norge Div. of Magic Chef., Inc., 486 U.S. 399 (1988); Caterpillar Inc. v. Williams, 482 U.S. 386 (1987); *Lueck*, 471 U.S. at 202. Some commentators have characterized the confusion surrounding LMRA preemption as a "thicket." Adams, *supra* note 34, at 107.

[44] *See Lingle*, 486 U.S. at 399; Mock v. T.G. & Y. Stores Co., 971 F.2d 522 (10th Cir. 1992); Tellez v. Pacific Gas and Elec. Co., 817 F.2d 536 (9th Cir.), *cert. denied*, 484 U.S. 908 (1987); *see also* discussion *infra* Parts III.B and IV. *But see* Grote v. Trans World Airlines, Inc., 905 F.2d 1307 (9th Cir.), *cert. denied*, 498 U.S. 958 (1990) (holding that the scope of preemption under the Railway Labor Act is broader than Labor Management Relations Act preemption).

III. SUPREME COURT INTERPRETATION OF THE RAILWAY LABOR ACT

A. SUPREME COURT DECISIONS FAVORING PREEMPTION - *BURLEY, ANDREWS,* AND *CONRAIL*

1. The Major/Minor Dispute Distinction and the "Omitted" Case Doctrine

In *Elgin, J. & E. Railway v. Burley*,[45] the Supreme Court examined whether an adjustment board decision under the Railway Labor Act was valid and legally effective.[46] Standard Oil employed the original plaintiffs as yardmen in its Whiting, Indiana facility. On July 24, 1934, the Elgin, Joliet and Eastern Railway Company took over the Whiting yard and the plaintiffs became Elgin employees and members of the Brotherhood of Railroad Trainmen (the Brotherhood). Subsequently, the Brotherhood entered into contract negotiations with Elgin on behalf of the yardmen. The negotiations were productive except in determining shift starting time.[47] The controversy was whether the previous collective bargaining agreement between the Brotherhood and Elgin was applicable to the newly admitted yardmen, or, alternatively, if the terms of that agreement were suspended pending a new agreement.[48] Work continued during the ongoing negotiations.

Ultimately, the Brotherhood filed a complaint on behalf of the yardmen for violations of the collective bargaining agreement and commenced procedures before the National Railroad Adjustment Board (Board).[49] On October 31, 1938, the Brotherhood accepted an offer by Elgin to settle the claim, advised the Board of their agreement, and withdrew the complaint.[50] Within the year, a new dispute arose over the same issue and the Brotherhood filed a new claim with the National Railroad Adjustment Board.[51] The Board ruled that the dispute had already been settled and denied further relief.[52]

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[45] 325 U.S. 711 (1945).

[46] *Id.* at 712.

[47] *Id.* at 713. While employed by Standard Oil, the yardmen's starting times varied according to operational need. *Id.* Elgin, however, determined start times in accordance with its collective bargaining agreement with the Brotherhood. *Id.*

[48] *Id.* at 713.

[49] *Id.* at 714.

[50] *Burley*, 325 U.S. at 715-16.

[51] *Id.* at 715.

[52] *Id.* at 718.

After being denied by the Board, the yardmen filed suit in United States district court, alleging that the Board was authorized to act "merely as an arbiter" and was, therefore, acting beyond the scope of its authority in issuing a final judgment on a legal question.[53] In addition to their claim that the Board's decision was void, the yardmen challenged the authority of the Brotherhood to act on their behalf in settling any disputes with Elgin. Further, the yardmen argued that the Railway Labor Act denied them due process by prohibiting judicial review of Board decisions.[54] The district court granted summary judgment for Elgin and the Seventh Circuit Court of Appeals reversed.[55] The Supreme Court affirmed the appeals court and remanded to the district court.[56]

The Supreme Court focused on the yardmen's position that the judgment of the Board was advisory and, therefore, the parties were free to accept or reject any decision or award rendered by the Board.[57] Relying on *Moore v. Illinois Central Railroad*,[58] the yardmen claimed that the Board's decision was not legally binding and it did not preclude them from seeking recourse in the district court.[59] The *Burley* Court distinguished the *Moore* decision, rejecting it as controlling authority because *Moore* addressed neither the issue of the validity of an award nor the Board's authority to bind the parties.[60] Additionally, unlike *Moore*, subsequent interpretations of the Railway Labor Act relied upon the distinction between minor grievances and major disputes.[61]

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[53] *Id.* at 718-19.

[54] *Id.* at 719.

[55] *Burley*, 325 U.S. at 720.

[56] *Id.*

[57] *Id.*

[58] 312 U.S. 630 (1941). The *Moore* Court held that the Railway Labor Act's dispute resolution mechanisms were voluntary and that an employee "was not required by the Railway Labor Act to seek adjustment of this controversy with the railroad as a prerequisite to suit for wrongful discharge." *Id.* at 636.

[59] *Burley*, 325 U.S. at 720-21.

[60] *Id.* at 721. The petitioner in *Moore* was a member of the Brotherhood of Railroad Trainmen and brought a wrongful discharge suit in Mississippi state court. *Moore*, 312 U.S. at 632. The railroad argued that the Railway Labor Act required that "disputes growing out of grievances or out of the interpretation or application of agreements" be referred to an adjustment board, but the Court declined to deny a wrongful discharge claim based upon that language. *Moore*, 312 U.S. at 635.

[61] *Burley*, 325 U.S. at 721.

Identifying two classes of labor disputes, the *Burley* Court identified separate procedural mechanisms for each.[62] In its general purposes provision, the Railway Labor Act lists five distinct goals: subsection (4) provides for the settlement of "disputes concerning rates of pay, rules, or working conditions," whereas subsection (5) seeks settlement of "disputes growing out of grievances, or application of agreements covering rates of pay, rules, or working conditions."[63] Major disputes are those described by subsection (4) and revolve around the formation of collective bargaining agreements and the assertion of employment rights.[64] Major disputes "look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past."[65] These disputes involve rights that exist beyond any existing or contemplated collective bargaining agreement.[66] Minor grievances are described in subsection (5) and occur after the negotiation of a collective bargaining agreement. They are disagreements about interpretation or application of the terms and conditions of the existing agreement "to a specific situation or to an omitted case."[67] An "omitted case" is a claim arising out of the employment relationship but not addressed by the existing collective bargaining agreement.[68]

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[62] *Id.* at 722-23.

[63] 45 U.S.C. § 151(a) (1989); *Burley*, 325 U.S. at 722.

[64] *Burley*, 325 U.S. at 723.

[65] *Id.*

[66] *Id. See, e.g.*, Association of Flight Attendants v. USAir Inc., 24 F.3d 1432 (D.C. Cir. 1994) (dispute determining applicability of collective bargaining agreement); CSX Transp. Inc. v. Marquar, 980 F.2d 359 (6th Cir. 1992); United Transp. Union v. Cuyahoga Valley Ry., 979 F.2d 431 (6th Cir. 1992), *cert. denied*, 113 S. Ct. 1646 (1993) (dispute challenging validity of collective bargaining agreement); Railway Labor Executives' Ass'n v. Boston and Main Corp., 808 F.2d 150 (1st Cir. 1986), *cert. denied*, 484 U.S. 830 (1987) (dispute challenging carrier's practice of abolishing positions subject to collective bargaining agreement).

[67] *Burley*, 335 U.S. at 723. *See, e.g.*, United Transp. Union v. Conemaugh & Black Lick Ry., 894 F.2d 623 (3d Cir. 1990); Southeastern Pa. Transp. Auth. v. Brotherhood of R.R. Signalmen, 882 F.2d 778 (3d Cir.), *cert. denied*, 493 U.S. 1044 (1989) (dispute challenging union's right to engage in sympathy strike); Brotherhood of Maintenance of Way Employees v. Atchison, Topeka & Santa Fe Ry., 840 F. Supp. 1221 (N.D. Ill. 1993) (dispute challenging crew size, scheduling, and meal periods); Verdon v. Consolidated Rail Corp., 828 F. Supp. 1129 (S.D.N.Y. 1993); International Bhd. of Boilermakers v. Atchison, Topeka and Santa Fe Ry., 835 F. Supp. 1293 (D. Kan. 1993) (dispute challenging railroad's voluntary resignation program).

[68] *Burley*, 325 U.S. at 723. *But cf.* Davies v. American Airlines, 971 F.2d 463 (10th Cir. 1992), *cert. denied*, 113 S. Ct. 2439 (1993) (interpreting *Conrail* to overrule the "omitted case" distinction) and *infra* notes 200-11 and accompanying text.

Under the Railway Labor Act, attempted settlement through internal negotiation is required for both major and minor disputes.[69] Any potential agreement at this stage is voluntary, but both parties have an affirmative duty to enter into negotiations.[70] After initial negotiations, major disputes continue to be subject to voluntary dispute resolution mechanisms ranging from mediation to arbitration.[71] The settlement of minor disputes, on the other hand, is not voluntary.[72] "The adjustment board is established with 'jurisdiction' to determine grievances and make awards concerning them. Each party to the dispute may submit it for decision, whether or not the other is willing, provided he has himself discharged the initial duty of negotiation."[73]

After drawing this distinction between major disputes with a non-compulsory dispute resolution process and minor disputes with a compulsory and binding arbitration, the *Burley* Court went on to examine the authority of the Brotherhood to represent the yardmen and to submit their disputes to the adjustment board.[74] Holding that the union did not have such authority, the Court defined the boundary between collective bargaining issues (major disputes) and the settling of grievances pursuant to an existing collective bargaining agreement (minor disputes).[75] Although a union may be authorized to represent an employee in securing future rights, in some instances it may not be authorized to negotiate a dispute involving a violation of the employee's rights prior to the creation of a collective bargaining agreement.[76] The basis of the *Burley* Court's reasoning seems to be that because employees are represented by the union in the making of collective bargaining agreements, the individual employee may not be compelled to arbitrate a major dispute. An employee embroiled in a minor dispute, however, may refuse to authorize continued representation before a mandatory and binding adjustment board hearing.[77] The Court, therefore, re-

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69 *Burley*, 325 U.S. at 724-25; 45 U.S.C. § 152.

70 *Burley*, 325 U.S. at 724-25.

71 *Id.* at 725.

72 *Id.* at 727.

73 *Id.*

74 *Id.* at 728-37.

75 *Burley*, 335 U.S. at 739-40.

76 *Id.*

77 *Id.* at 740-41.

manded the case for a factual determination as to whether the yardmen had authorized the Brotherhood to represent them.[78]

Justice Frankfurter's dissent foreshadows the controversy the major/minor distinction would cause in Railway Labor Act preemption questions. Frankfurter criticized the majority's willingness to "sever what is organic" and recognize two classes of disputes with "illadapted judicial interferences."[79] Frankfurter argued that the purpose of the Railway Labor Act was to impose a uniform system of dispute resolution on a unique employment relationship and that the Act's dispute resolution mechanisms should be self-contained, without any form of judicial oversight:[80] "The considerations making for harmonious adjustment of railroad industrial relations through the machinery designed by Congress in the Railway Labor Act are disregarded by allowing that machinery to be by-passed and by introducing dislocating differentiations through individual resort to the courts in the application of a collective agreement."[81] Justice Frankfurter concluded that the Railway Labor Act precludes all judicial review of all aspects of the dispute resolution process.[82]

2. *Strict Application of the Major/Minor Distinction*

In *Andrews v. Louisville & Nashville Railroad*,[83] the Louisville & Nashville Railroad Company employed Andrews, whose employment was subject to a collective bargaining agreement. Andrews did not work during his recovery from a car accident. When Louisville & Nashville refused to allow him to return to work following his recovery, Andrews sued Louisville & Nashville for wrongful discharge in Georgia state court.[84] Louisville & Nashville removed the action to United States district court and the case was dismissed for failure to exhaust administrative remedies under the Railway Labor Act.[85] The Fifth Circuit Court of Ap-

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78 *Id.* at 749.

79 *Id.* at 752-57 (Frankfurter, J., dissenting).

80 *Burley*, 325 U.S. at 752-57 (Frankfurter, J., dissenting); *see also* discussion *supra* Part II.A.

81 *Burley*, 325 U.S. at 760 (Frankfurter, J., dissenting). It is important to note, however, that the major/minor distinction outlined by the majority permitted resort to the courts not "in the application of a collective agreement," but only for major disputes independent of or in the formation of a collective bargaining agreement. *Burley*, 325 U.S. at 723. *See supra* notes 62-73 and accompanying text.

82 *Burley*, 325 U.S. at 761 (Frankfurter, J., dissenting).

83 406 U.S. 320 (1972).

84 *Id.* at 320-21.

85 *Id.* at 321.

peals affirmed the dismissal.[86] The Supreme Court affirmed, holding that the Railway Labor Act preempted Andrews' claim.[87]

In *Andrews*, the Supreme Court was once again confronted with the holding of *Moore*[88] and the inevitable argument that the dispute resolution mechanisms of the Railway Labor Act are "optional," and parties are therefore free to turn to the courts for adjudication.[89] After reviewing the Court's subsequent treatment of Railway Labor Act preemption issues, the *Andrews* Court concluded: "[T]he notion that the grievance and arbitration procedures provided for minor disputes in the Railway Labor Act are optional, to be availed of as the employee or the carrier chooses, was never good history and is no longer good law."[90]

The Court next addressed the question of whether a claim for wrongful discharge should be classified as a major or minor dispute.

The Court examined Andrews' proposition that an employment contract is a creation of state law and that a dispute concerning its breach is beyond the reach of the Railway Labor Act.[91] In rejecting this argument, the Court found that Andrews, by framing his claim as a breach of contract action, was merely attempting to circumvent the mandatory dispute resolution procedures of the Railway Labor Act.[92] First, the Court noted that the expansion of state law jurisdiction in *Moore* was later rejected by the Court in the context of the Labor Management Relations Act.[93] Next, the Court refused to make a distinction between a wrongful discharge claim and a minor grievance arising out of a dispute over termination, the latter subject clearly covered by the collective bargaining agreement.[94] The

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[86] *Id.*

[87] *Id.*

[88] *See supra* note 58 and accompanying text.

[89] *Andrews*, 406 U.S. at 321-22.

[90] *Id.* at 322. *See* Walker v. Southern Ry., 385 U.S. 196 (1966); Brotherhood of R.R. Trainmen v. Chicago River & Ind. R.R., 353 U.S. 30 (1957).

[91] *Andrews*, 406 U.S. at 323; *see also Moore*, 312 U.S. at 633-34 (reversing the 5th Circuit's rejection of state law analysis in favor of "the interpretation and application of a collective contract of an interstate railroad with its employees."); Transcontinental & Western Air, Inc. v. Koppal, 345 U.S. 653 (1953).

[92] *Andrews*, 406 U.S. at 323-24.

[93] *Id.* at 323 (citing Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965)). In *Maddox*, the Court declined to preserve state breach of contract claims under the Labor Management Relations Act and stated in dicta that the *Moore* rule may be incorrect under the Railway Labor Act as well. *Maddox*, 379 U.S. at 655-56.

[94] *Andrews*, 406 U.S. at 324.

mandatory dispute resolution procedures of the Railway Labor Act controlled, according to the Court, because the basis for resolving Andrews' wrongful discharge claim could be found in the terms of the collective bargaining agreement.[95] Resolution of that claim, therefore, required interpretation of the collective bargaining agreement. Interpretation of the dispute revealed a minor dispute warranting compulsory arbitration under the Railway Labor Act.[96] For these reasons, the Court overruled *Moore* and held that disputing parties are obligated under the Railway Labor Act to settle minor disputes before the adjustment board.[97]

Justice Douglas dissented from the majority's opinion because of the nature of the relief Andrews sought and because Louisville & Nashville no longer employed Andrews.[98] First, Andrews did not seek reinstatement and back pay, the only kinds of relief provided for in a collective bargaining agreement.[99] Because Andrews sought financial compensation for his wrongful discharge, not reemployment, the collective bargaining agreement, according to Justice Douglas, did not apply.[100] Second, Justice Douglas argued that because Louisville & Nashville no longer employed Andrews, the terms of the collective bargaining agreement did not apply to him, the Railway Labor Act did not apply, and, thus, the adjustment board had no authority to issue a decision.[101] This argument would insulate Andrews' claim from characterization as a major or minor dispute and would require that Andrews look solely to state contract law for relief.

Justice Douglas argued that the Railway Labor Act should not preempt a state wrongful discharge claim because "[e]veryone who joins a union does not give up his civil rights."[102] He outlined three reasons why the adjustment board was not competent to hear Andrews' claim: (1) board members were unlikely to know the local law governing employment contracts; (2)

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95 *Id.*

96 *Id.*

97 *Id.* at 325-26.

98 *Id.* at 326-27 (Douglas, J., dissenting).

99 *Andrews*, 406 U.S. at 327 (Douglas, J., dissenting).

100 *Id.*

101 *Id.* at 326-28. Justice Douglas distinguished the criticized *Moore* opinion from the instant controversy because the employees in *Moore* were current employees seeking relief by the terms of the collective bargaining agreement. *Id.* at 328.

102 *Id.* at 330.

board members were not usually legal professionals; and (3) a discharged employee seeking damages may be entitled to have the claim heard by a jury.[103] Justice Douglas therefore concluded that when an employee leaves the employment relationship, the dispute moves beyond the reach of the Railway Labor Act mechanisms.[104] Instead, Justice Douglas advocated leaving the choice to the disgruntled employee: either maintain employment and be satisfied with the rights enumerated in the collective bargaining agreement, or quit employment (forsaking all accompanying rights and privileges) and seek recourse under the laws of the state.[105] He saw no other adequate method of protecting discharged employees and was concerned that their former unions would not provide a fair hearing: "Given the nature of permanent dischargees' weak positions vis-a-vis their former unions, the personnel manning the adjustment mechanism, its haphazard decisional process, and the absence of judicial review of Board decisions, the risk is substantial that valid complaints of permanent dischargees such as Andrews will be unfairly treated."[106]

3. Refining the Major/Minor Distinction

In *Consolidated Rail Corp. v. Railway Labor Executives' Ass'n*,[107] long-standing company policy required employees to submit to periodic physical examinations which, under certain circumstances, included drug testing.[108] Conrail, the employer, subsequently changed this policy and unilaterally declared that drug testing would be routinely included in all standard physical examinations.[109] Conrail employees filed suit in United States district court through their union, the Railway Labor Executives' Association.[110] Although both parties agreed the Railway Labor Act governed the instant labor dispute, they disagreed as to whether the dispute, which arose out of Conrail's new policy, should be classified as a major or minor dispute.[111] The district

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103 *Id.* at 329.

104 *Andrews*, 406 U.S. at 330 (Douglas, J., dissenting).

105 *Id.* at 330-31.

106 *Id.* at 333-34.

107 491 U.S. 299 (1989) [hereinafter *Conrail*].

108 *Id.* at 300.

109 *Id.*

110 *Id.*

111 *Id.* at 301. This case illustrates the difficulty of separating the major/minor dispute question and its implications for voluntary or mandatory procedural requirements from the larger issue of whether or not preemption is appropriate.

court classified the dispute as minor because the terms of the collective bargaining agreement included Conrail's general policy of physical examinations, thus it was within Conrail's discretion to conduct drug testing under the agreement.[112] The Court of Appeals for the Third Circuit reversed, holding that the dispute was major because the terms of the existing collective bargaining agreement related to physical examinations and could not be extended to justify an entirely new policy of comprehensive drug testing.[113] The Supreme Court reversed the Third Circuit, holding that challenges to conduct that is "arguably justified" by an existing collective bargaining agreement are preempted by the Railway Labor Act.[114]

The Court began by discussing the major/minor dispute distinction outlined in *Burley*.[115] The focus, according to the Court, should be on whether the controversy arises out of the enforcement or the creation of contract rights.[116] Denying that the distinction between major and minor disputes could be determined on a case-by-case basis, the Court stated:

> [T]he line drawn in Burley looks to whether a claim has been made that the terms of an existing agreement either establish or refute the presence of a right to take the disputed action. The distinguishing feature of such a case is that the dispute may be conclusively resolved by interpreting the existing agreement.[117]

According to this definition, classification of a dispute as a major or minor depends on how the complaining party pleads the cause of action.[118] The Court contemplated the potential for abuse if one party pleads so as to characterize the dispute as minor, thereby presupposing an interpretation of the collective bargaining agreement, which may effectively create terms and conditions not necessarily contemplated by the agreement.[119] When this happens, a court is justified in substituting its own characterization of the dispute to ensure an impartial major/

The threshold question of whether a dispute is preempted should not turn on a classification that is subject to manipulation by the disputing parties. *Railway Labor Disputes, supra* note 20, at 395-96. *See also* discussion *infra* Part V.

112 *Conrail*, 491 U.S. at 301.

113 *Conrail*, 845 F.2d 1187 (3d Cir. 1988).

114 *Conrail*, 491 U.S. at 301.

115 *Id.* at 302-03. *See supra* notes 62-73 and accompanying text.

116 *Conrail*, 491 U.S. at 302.

117 *Id.* at 305.

118 *Id.*

119 *Conrail*, 491 U.S. at 306.

minor classification.[120] The *Conrail* Court set forth a standard for evaluating disputes when confronted by artful pleading: "'[I]f the disputed action of one of the parties can "arguably" be justified by the existing agreement or . . . if the contention that the labor contract sanctions the disputed action is not "obviously insubstantial," the controversy is a [minor dispute] within the exclusive province of the National Railroad Adjustment Board.'"[121]

The lenient "arguably justified" standard requires only that the employer set forth a nonfrivolous justification for its actions under the existing collective bargaining agreement.[122] Under this test, the Court reasoned that employers would be bound to act within the agreement, while still retaining flexibility in employee relations and workplace management.[123] Any test requiring a stronger showing of contractual rights would effectively prohibit employers from responding to changing circumstances during the course of the agreement.[124] Additionally, a stricter standard would constrain "the freedom of unions and employers to contract for discretion."[125] Since collective bargaining agreements set parameters for unilateral management activity, any heightened review of the terms of the agreement by the courts would effectively "freeze" the status quo whenever there was a dispute over working conditions.[126] Above all else, the Court feared that unnecessary judicial evaluation of the substantive provisions of collective bargaining agreements would jeopardize the parties' freedom to contract.[127]

Although the Court acknowledged the "arguably justified" standard could delay the settlement of bona fide major disputes pending the result of arbitration, the Court indicated that the standard's adherence to the core principles of the Railway Labor Act justified such a risk.[128] Specifically, the Court cited the policies favoring the creation of collective bargaining agree-

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120 *Id.*

121 *Id.* (quoting Local 1477 United Transp. Union v. Baker, 482 F.2d 228, 230 (6th Cir. 1973)).

122 *Conrail*, 491 U.S. at 307. The employer's claim that the disputed activity is permitted under the agreement may not be "obviously insubstantial or frivolous, nor made in bad faith." *Id.* at 310.

123 *Id.* at 310.

124 *Id.* at 309.

125 *Id.* at 308.

126 *Id.* at 308-09.

127 *Conrail*, 491 U.S. at 308-09.

128 *Id.* at 310.

ments, the uniform settlement of disputes, uninterrupted commerce activities, and stable labor relations.[129] The Court justified precluding carriers and unions from looking beyond the dispute resolution mechanisms of the collective bargaining agreement and the Railway Labor Act because waiting "until the [Adjustment] Board determines on the merits that the employer's interpretation of the agreement is incorrect will assure that the risks of self-help are not needlessly undertaken and will aid '[t]he peaceable settlement of labor controversies.'"[130]

B. SUPREME COURT MOVEMENT AWAY FROM PREEMPTION—*BUELL* AND *LINGLE*

1. Availability of Alternative Causes of Action

In *Atchison, Topeka and Santa Fe Railway v. Buell*,[131] the Court examined whether the Railway Labor Act provided the exclusive remedy for an injured employee, precluding all other causes of action.[132] Jim Buell, employed as a carman by the Atchison, Topeka and Santa Fe Railway Company (Atchison, Topeka), claimed his supervisor and co-workers physically and psychologically abused him. Buell further alleged this abuse led to an emotional breakdown, and that Atchison, Topeka knew of and condoned the harassment. Although a collective bargaining agreement, which included grievance procedures, governed the carmen and Atchison, Topeka, Buell did not utilize those procedures. Instead, he filed a complaint in United States district court under the Federal Employers' Liability Act (FELA).[133] Atchison, Topeka obtained summary judgment on the grounds that the district court did not have jurisdiction over a labor dispute involving an entity subject to the Railway Labor Act.[134] The Ninth Circuit Court of Appeals reversed and held that a FELA remedy was available to Buell because his "negligent failure to

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[129] *Id.*

[130] *Id.* at 311 (quoting Virginian Ry. v. Railway Employees, 300 U.S. 515, 552 (1937)). *Contra Railway Labor Disputes*, *supra* note 20.

[131] 480 U.S. 557 (1987).

[132] *Id.* at 559.

[133] *Id.* FELA provides:

> Every common carrier by railroad while engaging in commerce between any of the several States . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce . . . resulting in whole or in part from the negligence of any of the officers, or employees of such carrier . . . .

45 U.S.C. § 51 (1988).

[134] *Buell*, 480 U.S. at 560.

maintain a safe workplace" cause of action was not an arbitrable claim under the Railway Labor Act.[135] The Supreme Court affirmed and held that the Railway Labor Act did not preempt Buell's FELA claim.

First, the Court examined the nature and purpose of the FELA statute in relation to the role of the Railway Labor Act.[136] In furtherance of Congress' primary goal of removing employer tort liability defenses for injuries occurring in the workplace, FELA prohibits any attempt by an interstate carrier to limit its FELA liability.[137] The general focus of the Railway Labor Act, on the other hand, is the resolution of labor disputes through specific procedural mechanisms.[138] Specific questions of tort liability are not addressed.[139] Atchison, Topeka argued that Buell's claims constituted a minor dispute and were, therefore, exclusively subject to the mandatory procedures enumerated in the Railway Labor Act.[140]

Rejecting Atchison, Topeka's argument, the Court held that the fact that a claim under FELA may be arbitrated in another forum did not, by itself, void the FELA claim.[141] Although the challenged conduct in the FELA action may have been "cured or avoided by the timely invocation of the grievance machinery," that possibility alone would not bar a personal injury action under FELA.[142] The policy reasons favoring mandatory arbitration procedures cannot supersede a claim based upon a substantive statute designed to guarantee minimum protections to workers.[143] The Court reasoned that "[i]t is inconceivable that Congress intended that a worker who suffered a disabling injury would be denied recovery under the FELA simply because he might also be able to process a narrow labor grievance under the RLA to a successful conclusion."[144]

According to the Court, the Railway Labor Act is the exclusive remedy when the injured employee's complaint arises solely under the Railway Labor Act and can only be construed as a

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135 *Id.*
136 *Id.* at 561-63.
137 *Id.* at 562.
138 *Id.*
139 *Buell*, 480 U.S. at 562.
140 *Id.* at 563. *See* discussion *supra* Part IIA.
141 *Buell*, 480 U.S. at 563.
142 *Id.* at 564-65.
143 *Id.* at 565-66.
144 *Id.* at 565.

labor grievance.[145] The Court's emphasis that Railway Labor Act remedies are exclusive only when the dispute is "based squarely on an alleged breach of the collective-bargaining agreement" foreshadows the erosion of Railway Labor Act preemption.[146] Atchison, Topeka failed to persuade the Court that the resolution of "emotional injury" claims should be restricted to the Railway Labor Act, lest all disgruntled employees turn to emotional distress tort claims to avoid mandatory arbitration.[147] The Court refused to alter existing statutory schemes and relied upon the existing "outrageous conduct" standard for emotional distress to curb any such tendencies.[148] Accordingly, the Court held that, although some aspects of Buell's complaint could be addressed by Railway Labor Act procedures, the Act did not preclude a subsequent action under FELA.[149]

2. *State Law Exceptions to Labor Management Relations Act Preemption*

The Labor Management Relations Act grants federal jurisdiction over collective bargaining agreement disputes and contemplates a body of federal law for the interpretation and enforcement of contracts between labor and management.[150] Section 185(a) "mandate[s] resort to federal rules of law in order to ensure uniform interpretation of collective-bargaining agreements, and thus to promote the peaceable, consistent resolution of labor-management disputes."[151] Therefore, under the Labor Management Relations Act, if the state-law claim requires

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145 *Id.*

146 *Buell*, 480 U.S. at 566. *See* discussion *supra* Part III.B. and discussion *infra* Part IV.

147 *Buell*, 480 U.S. at 566.

148 *Id.* at 566-67.

149 *Id.* at 566; *see also* Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 23 (1987) (rejecting National Labor Relations Act preemption of state statute governing labor standards because statute did not impermissibly intrude upon the collective bargaining process); Bielicke v. Terminal Ry., 30 F.3d 877 (7th Cir. 1994) (dispute challenging railroad's FELA claim investigation practices arises under Railway Labor Act when railroad's investigatory powers determined by collective bargaining agreement). *But see* Grote v. Trans World Airlines, Inc., 905 F.2d 1307 (9th Cir.), *cert. denied*, 498 U.S. 958 (1990) (rejecting employee's attempt to bring independent FELA claim because FELA not extended to airline industry).

150 Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 403 (1988) (citing Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957)).

151 *Lingle*, 486 U.S. at 404.

interpretation of the collective bargaining agreement, then the claim is preempted and uniform federal labor laws govern.[152]

In *Lingle v. Norge Division of Magic Chef, Inc.*,[153] the Supreme Court refused to preclude state law remedies for a labor dispute arising under the Labor Management Relations Act when the resolution of the state law claim did not require interpretation of the collective bargaining agreement.[154] Jonna Lingle was discharged from her Norge manufacturing plant job for filing an allegedly false worker's compensation claim. Lingle initiated the grievance procedure outlined in her union's collective bargaining agreement with Norge and ultimately was awarded back pay and reinstatement.[155] In the interim, Lingle filed suit in Illinois state court for retaliatory discharge under state workers' compensation laws.[156] Norge removed the case to United States district court and prevailed in its motion to dismiss.[157] The district court characterized the dispute as dependent upon interpretation of the collective bargaining agreement for a determination of what constituted "wrongful" discharge, and was, therefore, subject to the mandatory arbitration required by the collective bargaining agreement.[158] The Seventh Circuit Court of Appeals affirmed.[159] The Supreme Court, determining that the elements of the state law claim required a "purely factual" inquiry into the conduct and motivations of employer and employee that did not require interpretation of the collective

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[152] *Id.* at 406. *See* Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985) (refusing to apply state bad-faith tort remedy for insurance claim handling when collective bargaining agreement addressed employee's right to timely processing of claim); Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962) (awarding damages to employer for union strike in violation of no-strike clause in collective bargaining agreement).

[153] 486 U.S. 399 (1988).

[154] *Id.* at 413.

[155] The collective bargaining agreement required that any employee discharge be for proper or just cause. *Id.* at 401.

[156] *Id.* at 402. Under Illinois law, a claim for retaliatory discharge must show that the employee was discharged (or that discharged was threatened) and that the employer's actions were motivated by a desire to interfere with the employee's rights. *Id.* at 407.

[157] *Id.*

[158] *Id.*; *see also* discussion *supra* Part II.B. Preemption extinguishes the state right and requires resolution of the dispute under the arbitration provision of the collective bargaining agreement. Adams, *supra* note 34, at 128. *See generally* Federal Arbitration Act, 9 U.S.C. §§ 1-307 (1994).

[159] *Lingle*, 486 U.S. at 402-03.

bargaining agreement, reversed and held that the Labor Management Relations Act did not preempt Lingle's claim.[160]

Preemption under the Labor Management Relations Act turns, therefore, on the application of the "purely factual" test to determine if the claim requires court interpretation of the collective bargaining agreement or if the state law remedy is independent of the terms of the agreement.[161] Although the factual inquiry on the substantive elements of a state law retaliatory discharge claim may be the same as the factual inquiry on the substantive elements of a contractual wrongful discharge claim, the Labor Management Relations Act only preempts those causes of action that require contract interpretation, not causes of action that rest on other, independent, substantive state rights.[162] So long as "the state-law claim can be resolved without interpreting the agreement itself, the claim is 'independent' of the agreement for [185(a)] pre-emption purposes."[163]

In *Lingle*, the Supreme Court acknowledged the need to balance the uniform resolution of labor disputes under collective bargaining agreements through arbitration against the protection of individual substantive rights.[164] In order to preserve the effectiveness of arbitration, the parties involved must participate in and be bound by the process.[165] Problems arise, however, when the goals of arbitration conflict with minimum protections guaranteed to workers under state laws.[166] The *Lingle* Court resolved this dilemma by determining that the uniform body of substantive federal labor law was not endangered if the employee's claim was distinct and independent from a wrongful termination question and did not require interpretation of the collective bargaining agreement, despite the shared factual inquiry.[167] The Court therefore held that there is no preemption under the Labor Management Relations Act when the state law

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160 *Id.*

161 *Id.* at 402.

162 *Id.* at 408-09. *See also* Livadas v. Bradshaw, 114 S. Ct. 2068 (1994).

163 *Lingle*, 486 U.S. at 410. Additionally, the Court left open the question whether union members could waive substantive law rights in a collective bargaining agreement. *Id.* at 410 n.9.

164 *Id.* at 410-11.

165 *Id.* at 411.

166 *Id.* at 411-12. *See also supra* notes 131-49 and accompanying text.

167 Lee Modjeska, *Federalism in Labor Relations—The Last Decade*, 50 OHIO ST. L.J. 487, 506 (1989).

claim only tangentially involves the collective bargaining agreement.[168]

IV. *HAWAIIAN AIRLINES V. NORRIS*[169]

The Supreme Court granted certiorari in two consolidated Hawaii Supreme Court cases to examine the scope of Railway Labor Act preemption in light of the *Conrail* and *Lingle* opinions.[170] Hawaiian Airlines' main contention was that Norris' wrongful discharge claim was a minor dispute and therefore subject to the mandatory and comprehensive grievance procedures outlined in the union's collective bargaining agreement and governed by the Railway Labor Act. The Supreme Court first focused on determining the parameters of a minor dispute.[171]

Section 151(a) of the Railway Labor Act sets forth its purpose "to provide for the prompt and orderly settlement of all disputes

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[168] *Lingle*, 486 U.S. at 413. *See* Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985). In *Lueck*, the Court reversed the Wisconsin Supreme Court's finding that the Labor Management Relations Act did not preempt a state law bad faith tort claim, but stated in dicta:

> Of course, not every dispute concerning employment or tangentially involving a provision of a collective-bargaining agreement, is pre-empted by [§ 185(a)] or other provisions of the federal labor law. [Section 185(a)] on its face says nothing about the substance of what private parties may agree to in a labor contract. Nor is there any suggestion that Congress, in adopting [§ 185(a)], wished to give the substantive provisions of private agreements the force of federal law, ousting any inconsistent state regulation. Such a rule of law would delegate to unions and unionized employers the power to exempt themselves from whatever state labor standards they disfavored.

Lueck, 471 U.S. at 211-12.

[169] 114 S. Ct. 2239 (1994).

[170] *Id.* at 2243, 2251 (state law claims of discharge in violation of public policy and the Whistleblower Act are not preempted by the RLA); Rakestraw v. United Airlines, Inc., 765 F. Supp. 474 (N.D. Ill. 1991), *rev'd in part, aff'd in part on other grounds*, 981 F.2d 1524 (7th Cir. 1992), *cert. denied*, 114 S. Ct. 175 (1994) (tortious interference claim preempted by RLA); O'Brien v. Consolidated Rail Corp., 972 F.2d 1 (1st Cir. 1992), *cert. denied*, 113 S. Ct. 980 (1993) (handicap discrimination claim preempted by RLA); Pennsylvania Fed'n of the Bhd. of Maintenance of Way Employees v. National R.R. Passenger Corp., 989 F.2d 112 (3d Cir.), *cert. denied*, 114 S. Ct. 85 (1993) (compensation scheme in violation of state minimum wage law preempted by RLA); Spears v. Northwest Airlines, 798 F. Supp. 436 (E.D. Mich. 1992) (state law race discrimination claim not preempted by RLA); Cooper v. Springfield Terminal Ry., 635 A.2d 952 (Me. 1993) (mandatory unpaid training in violation of state statute not preempted by RLA).

[171] *Norris*, 114 S. Ct. at 2244.

growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."[172] Relying upon this language, Hawaiian Airlines argued that "grievances" must be distinct from disputes based upon a collective bargaining agreement and should encompass all non-contractual employment related disputes. According to Hawaiian Airlines, any other interpretation of the statutory language would create an unworkable redundancy. The Court rejected this interpretation for two reasons. First, Hawaiian Airlines' expansive definition of "grievances" created overlap because everything following the "or" in the language quoted above would be redundant.[173] Second, the Court relied on the standard use of the word grievance in the labor law context to mean claims "'which develop from the interpretation and/or application of the contracts between the labor unions and the carriers.'"[174] The Court was unwilling to expand the definition because it could not find in the legislative history of the Railway Labor Act any Congressional intent that would justify a definition permitting such broad preemptive reach.[175]

The Court reaffirmed, therefore, its previous definition of minor disputes as those growing out of a collective bargaining agreement and dependent upon interpretation of the agreement for resolution.[176] Minor disputes are preempted by the Railway Labor Act as the exclusive remedy.[177] But, the Railway Labor Act does not preempt claims arising from rights which are independent of the collective bargaining agreement.[178] For example, claims arising under state laws designed to regulate the minimum number of workers for particular tasks were not preempted.[179] Despite the need for uniformity and predictability in labor law, the substantive protections guaranteed to workers by

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172 45 U.S.C. § 151(a) (1988). *See* discussion *supra* Part II.A.

173 *Norris*, 114 S. Ct. at 2244.

174 *Id.* (quoting H.R. REP. NO. 1944, 73d Cong., 2d Sess. 2-3 (1934)).

175 *Norris*, 114 S. Ct. at 2245. In determining whether state law should be preempted by federal law, "[t]he purpose of Congress is the ultimate touchstone." Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 208 (1985) (quoting Retail Clerks v. Schermerhorn, 375 U.S. 96, 103 (1963)).

176 *Norris*, 114 S. Ct. at 2245; *see also Conrail*, 491 U.S. 299, 303 (1989); *Buell*, 480 U.S. 557, 563 (1987).

177 *See* discussion *supra* Part II.A.

178 *Norris*, 114 S. Ct. at 2246.

179 *Id.* (citing Missouri Pac. Ry. v. Norwood, 283 U.S. 249, 258 (1931)).

state law cannot be usurped by the procedural mechanisms of the Railway Labor Act.[180]

Thus, the dispositive issue in *Norris* was the source of the right which Norris claimed Hawaiian Airlines violated.[181] Although a collective bargaining agreement may have addressed wrongful discharge, Norris' claim was based solely on Hawaii law prohibiting discharge in retaliation for whistleblowing.[182] Although the independent right asserted in *Buell* arose under federal law, the Court has applied the same preemption analysis with respect to state claims arising under state law.[183]

The Court acknowledged that the emerging standard in Railway Labor Act preemption cases parallels preemption standards under the Labor Management Relations Act.[184] "[A] state-law cause of action is not pre-empted by the RLA if it involves rights and obligations that exist independent of the collective-bargaining agreement."[185] Despite the possibility of overlap, however, an independent state law claim will survive preemption if analysis of the claim does not require interpretation of the collective bargaining agreement.[186] Under the Labor Management Relations Act, preemption turns on whether a claim is dependent or independent of the labor contract, whereas under the Railway Labor Act, preemption turns on the more problematic major/minor dispute distinction.[187]

Emphasizing the similarity between the standards and goals of the Railway Labor Act and the Labor Management Relations Act, the *Norris* Court applied the reasoning of *Lingle* to the Railway Labor Act preemption question.[188] Generally, courts faced with Railway Labor Act preemption issues have, without hesitation, applied by analogy Labor Management Relations Act pre-

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180 *Norris*, 114 S. Ct. at 2246; *see also* Modjeska, *supra* note 167, at 503 (considering "[n]onnegotiable state-law rights . . . independent of any right established by contract" in a Labor Management Relations Act context).

181 *Norris*, 114 S. Ct. at 2246. Here, the "right not to be discharged wrongfully." *Id.*

182 *Id.*

183 *Id.*; *see also supra* note 168 and accompanying text.

184 *Norris*, 114 S. Ct. at 2247. *See also supra* notes 150-68 and accompanying text.

185 *Norris*, 114 S. Ct. at 2247.

186 *Id.* at 2248-49.

187 *See Norris*, 114 S. Ct. at 2246-47. *Compare Conrail*, 491 U.S. 299 (1989) *with Lingle*, 486 U.S. 399 (1988) (*Lingle* held that a state law tort remedy was not preempted by the LMRA because interpretation of the collective bargaining agreement was unnecessary, while *Conrail* upheld preemption under the RLA because it was a minor dispute.).

188 *Norris*, 114 S. Ct. at 2249 n.9.

emption concepts.[189] Some courts, however, maintain that the preemption analysis differs under the two acts.[190] Specifically, section 151(a) of the Railway Labor Act provides a comprehensive grant of preemptive authority.[191] The language of section 185(a) of the Labor Management Relations Act, on the other hand, permits but does not require preemption by providing that disputes "between an employer and a labor organization . . . may be brought in any district court of the United States . . . ."[192] Some courts have therefore concluded that the Acts are distinguishable and that preemptive powers under the Railway Labor Act are broader than those under the Labor Management Relations Act.[193]

In *Norris*, the Supreme Court explicitly applied a Labor Management Relations Act preemption rationale to a dispute potentially preempted by the Railway Labor Act.[194] The test, as developed in *Lingle*, is whether resolution of the dispute relies on "purely factual questions" about the conduct of the parties and does not require interpretation of the collective bargaining agreement.[195] The *Norris* Court reconciled the preemption rationale followed in *Buell* and *Lingle* with the result in *Andrews*, a wrongful discharge claim preempted by the Railway Labor Act, on the grounds that Andrews relied not on a distinct substantive state law right but on a breach of contract theory requiring interpretation of the labor contract.[196]

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189 *See, e.g.*, Anderson v. American Airlines, Inc., 2 F.3d 590, 595 (5th Cir. 1993); Davies v. American Airlines, Inc., 971 F.2d 463, 466-67 (10th Cir. 1992), *cert. denied*, 113 S. Ct. 2439 (1993); Rodriguez v. United Airlines, Inc., 812 F. Supp. 1022, 1026 (N.D. Cal. 1992); McCann v. Alaska Airlines, Inc., 758 F. Supp. 559, 562 n.1 (N.D. Cal. 1991); Maher v. New Jersey Transit Rail Operations, 593 A.2d 750, 759 (N.J. 1991).

190 *E.g.*, Melanson v. United Air Lines, Inc., 931 F.2d 558, 562 (1st Cir.), *cert. denied*, 502 U.S. 865 (1991); Hubbard v. United Airlines, Inc., 927 F.2d 1094, 1097 (9th Cir. 1991); Grote v. Trans World Airlines, Inc., 905 F.2d 1307, 1309 (9th Cir.), *cert. denied*, 498 U.S. 958 (1990).

191 *Grote*, 905 F.2d at 1309; *see* discussion *supra* Part II.A.

192 29 U.S.C. § 185(a) (1988); *Grote*, 905 F.2d at 1309.

193 *Grote*, 905 F.2d at 1309-10. The *Grote* court explained: "Therefore, because the RLA's preemptive force appears on the face of the statute and [LMRA] preemption is judicially imposed, we conclude that preemption under the RLA is broader than under [the LMRA]." *Id. See also* Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 102-03 (1962) ("incompatible doctrines of local law must give way to principles of federal labor law").

194 *Norris*, 114 S. Ct. at 2249.

195 *Id.*; *Lingle*, 486 U.S. at 407.

196 *Norris*, 114 S. Ct. at 2249; *Andrews*, 406 U.S. at 323-24; *see also* Cox, *supra* note 28, at 1499 ("The line between interpreting a commercial contract and applying

Next, the Court turned to the seemingly inapposite holdings of *Burley* and *Conrail*.[197] The Court characterized *Burley* not as a preemption question but as a question of the scope of the union's authority to act on behalf of its members.[198] Consequently, all discussions in *Burley* concerning the scope of a minor dispute are dicta.[199] Specifically, the *Burley* Court included the so-called "omitted case" within the ambit of minor disputes.[200] An omitted case was one "founded upon some incident of the employment relation, or asserted one, independent of those covered by the collective agreement, e.g., claims on account of personal injuries."[201] The *Norris* Court dismissed the *Burley* dicta, in part, because the main dispute in *Burley* concerned the authority of the union; the parties agreed that the dispute was minor and within the mandatory scheme of the Railway Labor Act.[202] The *Norris* Court also explained that "even the 'omitted case' dictum logically can refer to a norm that the parties have created but have omitted from the collective-bargaining agreement's explicit language, rather than to a norm established by a legislature or a court."[203] Finally, the Court rejected any language in *Burley* supporting the contention that a minor dispute includes claims independent of the collective bargaining agreement.[204] Specifically, *Burley*'s omitted case doctrine classified claims founded upon any incident of the employment relationship as minor.[205] This theory of preemption effectively collapses the major/minor distinction and potentially would prohibit any court from having jurisdiction over claims completely unrelated to the terms of the collective bargaining agreement.[206]

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the principles of contract law is rarely significant . . . [t]hey blend almost imperceptibly in borderline cases.").

197 *Norris*, 114 S. Ct. at 2249.

198 *Id.*

199 *Id.* at 2250.

200 *Id.*; *see also supra* notes 67-73 and accompanying text.

201 *Burley*, 325 U.S. at 723.

202 *Norris*, 114 S. Ct. at 2250.

203 *Id.* "[The contract] covers only a small part of their joint concern. It is based upon a mass of unstated assumptions and practice as to which the understanding of the parties may actually differ, and which it is wholly impractical to list in the agreement." Cox, *supra* note 28, at 1492 (brackets in original).

204 *Norris*, 114 S. Ct. at 2250.

205 *Burley*, 325 U.S. at 723.

206 Davies v. American Airlines, 971 F.2d 463, 467-68 (10th Cir. 1992), *cert. denied*, 113 S. Ct. 2439 (1993).

After distinguishing *Burley*, the *Norris* Court also distinguished *Conrail* on the grounds that it did not involve a relevant preemption analysis.[207] The Court characterized the dispute in *Conrail* as whether or not the railroad's new drug testing policy was a new contract term and therefore the subject of a major dispute beyond the reach of the mandatory provisions of the Railway Labor Act.[208] Refusing to find that the modification of an existing practice constituted a new contract term, the *Conrail* Court properly characterized the dispute as minor because the question could only be "conclusively resolved" by interpreting the existing terms of the collective bargaining agreement.[209] Using this analysis, "to say that a minor dispute can be 'conclusively resolved' by interpreting the [collective bargaining agreement] is another way of saying that the dispute does not involve rights that exist independent of the [collective bargaining agreement]."[210] Therefore, such an analysis is consistent with the holdings of *Buell*, *Lingle* and *Norris*. Even before the *Norris* decision, this language in *Conrail* has been interpreted to overrule the *Burley* omitted case doctrine.[211]

In *Norris*, Hawaiian Airlines unsuccessfully applied *Conrail*'s "arguably justified" standard to characterize its dispute with Norris as minor.[212] Pointing to the collective bargaining agreement's sanction of discharge for "just cause," Hawaiian Airlines claimed that its dismissal of Norris was arguably justified under the terms of the agreement and was, therefore, a minor dispute governed by the Railway Labor Act.[213] The Court rejected this argument, finding that the arguably justified standard applied only when making the major/minor dispute distinction and not to an interpretation of the terms of the collective bargaining agreement.[214] Thus, the threshold question is whether a dispute is subject to the Railway Labor Act.[215] In other word a court must first determine whether the claim is subject to Railway Labor Act preemption before embarking on a major/minor analysis.

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207 *Norris*, 114 S. Ct. at 2250.

208 *Id.*

209 *Id.*

210 *Id.*

211 *Davies*, 971 F.2d at 467.

212 *Norris*, 114 S. Ct. at 2250-51. *See supra* notes 120-30 and accompanying text.

213 *Norris*, 114 S. Ct. at 2250-51.

214 *Id.*

215 *Id.*

The threshold question is decided against preemption if the employee's claim turns on a "purely factual question" concerning conduct that does not require a separate interpretation of the collective bargaining agreement, even if the question could also be resolved under the terms of the collective bargaining agreement.[216] In *Norris*, Norris' claim could potentially be resolved in one of two ways: (1) by interpreting the meaning of just cause under the collective bargaining agreement, or (2) by examining Hawaiian Airlines' motive in discharging Norris.[217] The first form of the claim is preempted by the Railway Labor Act because it requires interpretation of the collective bargaining agreement.[218] But the second form of the claim is not preempted because it is a purely factual question and is distinct from the collective bargaining agreement.[219] The greatest danger in this line of analysis is the emergence of the "artfully-crafted" pleading constructed to avoid preemption.[220]

V. CONCLUSION

Confusion surrounds the question of Railway Labor Act preemption, as reflected in the conflicting decisions among the circuits and within the Supreme Court's own opinions.[221] The cause of the confusion can be attributed to two types of problems with the courts' analyses. The first problem occurs when a court bases its preemption decision on a classification that is itself being challenged by the disputing parties.[222] The second problem occurs when courts collapse the major/minor dispute and dependent/independent claim tests into one standard, causing results that vary according to the order in which each prong of the test is addressed.[223]

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216 *Id.* at 2251.

217 *Id.*

218 *Norris*, 114 S. Ct. at 2251.

219 *Id.*

220 *See* Maher v. New Jersey Transit Rail Operations, 593 A.2d 750, 757 (N.J. 1991). *Cf.* Calvert v. Trans World Airlines, Inc., 959 F.2d 698 (8th Cir. 1992) (rejecting former pilot's claim that airline practice of medical testing permitted by collective bargaining agreement was actionable harassment under state tort law); Hubbard v. United Airlines, Inc., 927 F.2d 1094 (9th Cir. 1991) (preempting RICO claim as an attempt to disguise disability benefits dispute).

221 *See* discussion *supra* Part III.

222 *See* discussion *supra* Part III.A.

223 *See Calvert*, 959 F.2d at 699 (relying on classification of dispute); Grote v. Trans World Airlines, Inc., 905 F.2d 1307 (9th Cir.), *cert. denied*, 498 U.S. 958 (1990) (using arguably justified standard to support preemption).

In *Norris*, the Supreme Court clarified the tests and standards set forth in prior opinions. By focusing its analysis on the source of the allegedly violated right, instead of on the classification of the dispute, the Court separated the preemption question from procedural considerations under the Railway Labor Act.[224] When faced with a potentially preempted state law claim, post-*Norris* courts now have a two-part test. The first question is whether the claim may be preempted by the Railway Labor Act.[225] Preemption is improper when the claim is independent of the collective bargaining agreement.[226] A dispute is independent if it may be resolved through purely factual questions.[227] Only when a claim is dependent upon interpretation of the collective bargaining agreement, and therefore preempted under the Railway Labor Act, does classification of the dispute come into play.[228] After a court determines that a claim will be preempted by the Railway Labor Act, it must determine if the dispute is major or minor.[229] A dispute is minor, and therefore subject to mandatory and binding administrative procedures, if the challenged conduct is arguably justified by the terms of the collective bargaining agreement.[230] If the conduct is not arguably justified, the claim is major and may be pursued further if the dispute resolution mechanisms set forth in the Railway Labor Act fail.[231]

A comparison of the Fifth Circuit Court of Appeals pre- and post-*Norris* decisions in *Hirras v. National Railroad Passenger Corp.*[232] illustrates the impact of the Supreme Court's decision on Railway Labor Act preemption cases. Hirras brought a gender discrimination suit in federal court against her employer, the National Railroad Passenger Corporation (Amtrak). Hirras asserted claims under Title VII of the Civil Rights Act,[233] as well as state law claims for negligent and intentional infliction of

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224 *See supra* notes 183-200.

225 *See Norris*, 114 S. Ct. at 2248.

226 *Id. See supra* notes 162-70 and accompanying text.

227 *Norris*, 114 S. Ct. at 2248. For pre-*Norris* Railway Labor Act preemption analysis synthesizing the concepts subsequently set out by the Supreme Court, see *Anderson v. American Airlines, Inc.*, 2 F.3d 590 (5th Cir. 1993).

228 *See* discussion *supra* Part II.A.

229 *Id.*

230 *See supra* notes 115-28 and accompanying text.

231 *See* discussion *supra* Part II.A.

232 10 F.3d 1142 (5th Cir.), *cert. granted and jdg't vacated*, 114 S. Ct. 2732 (1994) [hereinafter *Hirras I*].

233 42 U.S.C. § 2000e (1988).

emotional distress. Hirras claimed constructive discharge based upon a hostile work environment consisting of verbal abuse by her co-workers, abusive telephone calls and notes from unknown sources, and offensive graffiti. The district court held that the intentional infliction of emotional distress claim was preempted by the Railway Labor Act, and the Title VII claim was subject to the Act's mandatory arbitration provisions.[234] In its decision released before the Supreme Court's *Norris* opinion, the Fifth Circuit affirmed the district court.[235] On appeal, the Supreme Court granted certiorari, vacated the appellate court's decision, and remanded for consideration in light of the *Norris* opinion.[236]

In originally affirming the district court's finding that the Railway Labor Act preempted Hirras' claims, the Fifth Circuit first characterized the dispute as minor,[237] and then focused on federal labor policies favoring arbitration.[238] The court rejected Hirras' claim that her Title VII claim was not subject to the arbitration procedures of the Railway Labor Act and determined that "there exist no federal or congressional policies prohibiting the submission of discrimination claims to arbitration."[239] The Civil Rights Act of 1991 encourages alternative methods of dispute resolution for Title VII claims.[240] Under the Railway Labor Act, arbitration is the only recourse for minor disputes arising out of the employment relationship.[241] Thus, federal policies favoring arbitration are applicable because the statutory duty to arbitrate labor disputes is extensive and because Title VII does not prohibit arbitration.[242]

The pre-*Norris* Fifth Circuit decision distinguished *Buell*[243] on the ground that Railway Labor Act preemption of disputes arising out of conduct actionable under FELA would defeat the pur-

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234 *Hirras I*, 10 F.3d at 1144. The district court also held that Texas does not recognize claims for negligent infliction of emotional distress and granted Amtrak's motion to dismiss on that claim. *Id.*

235 *Id.*

236 Hirras v. National R.R. Passenger Corp., 114 S. Ct. 2732 (1994).

237 *Hirras I*, 10 F.3d at 1145, 1147.

238 *Id.* at 1145-46.

239 *Id.* at 1146. The court relied on *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991), for the proposition that compulsory arbitration is both adequate and consistent with statutory anti-discrimination schemes. *See Hirras I*, 10 F.3d at 1146.

240 *Hirras I*, 10 F.3d at 1146.

241 *Id.* at 1146-47.

242 *Id.* at 1145-47.

243 *See supra* notes 131-49 and accompanying text.

pose behind FELA, which is to provide a federal remedy for injuries received by railroad employees due to the negligence of the railroad or co-workers.[244] Title VII, on the other hand, encourages alternative dispute resolution.[245] Finally, the court held that Hirras' state law claim for intentional infliction of emotional distress was a minor dispute because it "grew out of the employment relationship and therefore is inextricably intertwined with the terms and conditions of her employment."[246] As such, it required interpretation of the collective bargaining agreement to determine what Amtrak was required to do in response to Hirras' complaint of harassment and to determine an appropriate remedy.[247]

On remand following the Supreme Court's decision in *Norris*, the Fifth Circuit's preemption analysis changed drastically.[248] Significantly, no mention is made of federal policies favoring arbitration of labor disputes.[249] Instead, the court analyzed whether the resolution of Hirras' claims required interpretation of the collective bargaining agreement.[250] In so doing, the court focused its inquiry on the source of the violated right.[251] The court then rejected Amtrak's argument that a claim for intentional infliction of emotional distress arises out of the collective bargaining agreement because the agreement determines the standard by which Amtrak's conduct is judged.[252] Relying on Texas' "outrageous" conduct standard for claims of intentional infliction of emotional distress, the court held that the collective bargaining agreement did not contain provisions that related to, or allowed Amtrack to permit, sexual harassment.[253] Thus, the Railway Labor Act did not preempt Hirras' gender discrimination and intentional infliction of emotional distress claims be-

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244 *Hirras I*, 10 F.3d at 1148.

245 *Id.* (citing 42 U.S.C. § 2000e note (Supp. 1993)).

246 *Id.* at 1149.

247 *Id.*

248 Hirras v. National R.R. Passenger Corp., 44 F.3d 278 (5th Cir. 1995) [hereinafter *Hirras II*].

249 *See supra* notes 23-30, 40-44 and accompanying text. In a footnote, however, the court hinted that federal policies favoring arbitration must give way to state-based substantive rights. *Hirras II*, 44 F.3d at 284 n.15 (citing *Buell*, 480 U.S. at 565).

250 *Hirras II*, 44 F.3d at 282-83.

251 *Id.* at 282.

252 *Id.* at 282-83.

253 *Id.* at 284.

cause Hirras asserted rights independent of the collective bargaining agreement.[254]

Although the debate will continue over whether the Railway Labor Act preempts an aggrieved employee's claim, one thing is clear: *Norris* signals the rejection of long-standing policies favoring uniform federal labor law and arbitration. The individual states' substantive interest in enforcing employee rights and in regulating the workplace will now receive equal consideration in federal courts. A survey of post-*Norris* decisions indicates that courts will strictly construe the Railway Labor Act preemption and will intervene in employment disputes with increasing frequency.[255] The focus will now be on the claimant's complaint. For example, in determining whether the collective bargaining agreement is the only source of the claimant's right, courts will have to distinguish between a claim asserting the violation of a substantive state protection and a claim challenging the boundaries of just cause as defined by the collective bargaining agreement.[256] Given "the multitude of state laws addressing discharge issues[,]"[257] Railway Labor Act preemption will now turn on the claimant's ability to craft a pleading invoking independent rights and the defendant carrier's ability to limit the claimant's right to recovery to the express terms of the collective bargaining agreement. Arguably, *Norris* and its progeny will undermine

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[254] *Id.*

[255] Taggert v. Trans World Airlines, Inc., 40 F.3d 269 (8th Cir. 1994) (RLA does not preempt handicap discrimination claim); Westbrook v. Sky Chefs, Inc., 35 F.3d 316 (7th Cir. 1994) (RLA does not preempt claim for retaliatory discharge in violation of state statute); Hogan v. Northwest Airlines, Inc., 880 F. Supp. 685 (D. Minn. 1995) (RLA does not preempt a disability discrimination claim based on the employer's failure to hire employee for another position while on layoff); Arnold v. Air Midwest, Inc., 877 F. Supp. 1452 (D. Kan. 1995) (RLA does not preempt wrongful termination, defamation, and tortious interference claims); Cooper v. Norfolk & Western Ry., 870 F. Supp. 1410 (S.D. W. Va. 1994) (RLA does not preempt claim under state anti-discrimination statute); Pratt, Bradford & Tobin, P.C. v. Terminal R.R. Ass'n, 876 F. Supp. 1034 (S.D. Ill. 1994) (RLA does not preempt tortious interference claim challenging railroad's FELA investigation practices); Mumford v. CSX Transp., 878 F. Supp. 827 (M.D.N.C. 1994), (RLA does not preempt race discrimination and retaliatory discharge claims under Title VII, section 1981, and state wrongful discharge statute); United Transp. Union v. Metro-North Commuter R.R., 862 F. Supp. 55 (S.D.N.Y. 1994) (RLA does not preempt claim challenging railroad rule prohibiting employees from providing information during FELA investigations).

[256] *See* Underwood v. Trans World Airlines, Inc., 710 F. Supp. 78, 85 (S.D.N.Y. 1989).

[257] *Supreme Court Allows Fired Worker to Sue Airlines in State Court*, AVIATION DAILY, June 21, 1994, at 463 (Air Transport Association statement).

the continued development of uniform federal labor law. But state-law remedies never before available to unionized employees will offer additional workplace protections and safeguard employee rights. After *Norris*, the viability of federal labor policies and the effectiveness of state regulation will be tested as courts strike a new balance between the competing state and federal interests.

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