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enact similar legislation and thus afford adequate protection for the individual's right of privacy while at the same time permitting effective law enforcement within the bounds of the law.

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SECTION 301(a) AND PRE-EMPTION UNDER TAFT-HARTLEY

Due to the increased governmental regulation of labor relations at both the federal and state levels, troublesome problems of supremacy and accommodation between state and federal laws arise. In any broad field of action, unless the statutes are absolutely explicit, the question always arises as to whether Congress has pre-empted the field.

In section 301(a) of the Labor Management Relations Act,[1] Congress has authorized the federal courts to entertain "suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce."[2] Since there is no explicit indication that the federal courts are granted exclusive jurisdiction, the problem is presented as to whether section 301(a) pre-empts the states from asserting jurisdiction.

In the recent case of *Charles Dowd Box Co. v. Courtney*,[3] this problem was presented. The defendant, an employer engaged in an

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[1]"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 with regard to the citizenship or the parties." Labor Management Relations Act (Taft-Hartley Act), § 301(a), 61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1958).

[2]Section 2(6) of the Labor Management Relations Act declares: "When used in this subchapter—The term 'commerce' means trade, traffic, commerce, transportation or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or Territory or the District of Columbia or any foreign country." Labor Management Relations Act (Taft-Hartley Act), § 2(6), 61 Stat. 138 (1947), 29 U.S.C. § 152(6) (1958).

[3]368 U.S. 502 (1962).

industry affecting interstate commerce,[4] agreed to a new collective bargaining agreement through his representatives. This new agreement signed by both the defendant's representatives and the plaintiff-union's representative provided for wage increases and other changes in respect to vacations and holidays.[5] The employer first announced to his employees that he would put the new agreement into effect, but a few weeks later notified his employees of his intention not to go through with the arrangement and instead to rely on their prior agreement.

The defendant contended that his representatives had acted without authority and that the plaintiff-union had such knowledge. The union then brought an action in the Superior Court of Massachusetts asking for a judgment declaring that a valid collective bargaining agreement did exist and for an order enjoining the employer from terminating or violating it.

The defendant's answer stated that "by reason of section 301(a) of the Labor Management Relations Act, the state court had no jurisdiction over the controversy."[6] The Superior Court of Massachusetts rejected the attack upon its jurisdiction.[7] On appeal the Supreme Judicial Court of Massachusetts affirmed the lower court's holding, expressly ruling that section 301(a) had not made the federal courts the exclusive arbiters of suits for violation of contracts between an employer and a labor union.[8] The Supreme Court of the United States granted certiorari to consider the important question of federal law.[9] It affirmed the holding of the Supreme Judicial Court of Massachusetts that the courts of that state had jurisdiction in the case.[10]

The defendant relied principally on *Textile Workers Union v. Lincoln Mills*,[11] to bolster his contention that the state courts were preempted from asserting jurisdiction. In that case the Supreme Court,

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[4]The petitioner was an employer engaged in an industry affecting commerce as defined in § 2(2) of the Labor Management Relations Act. See note 2 supra.

[5]368 U.S. at 504.

[6]Ibid.

[7]The trial court rejected the attack upon its jurisdiction; determined on the merits that the collective bargaining agreement was valid and binding on the parties thereto, and entered a money judgment in conformity with the wage provisions of the agreement.

[8]"In the absence of a clear holding by the Supreme Court of the United States that Federal jurisdiction had been made exclusive, we shall not make what would be tantamount to an abdication of the hitherto undoubted jurisdiction of our own courts." 341 Mass. 337, 169 N.E.2d 885, 887 (1960).

[9]365 U.S. 809 (1961).

[10]368 U.S. at 506.

[11]353 U.S. 448 (1957).

seven justices concurring, one dissenting,[12] held that section 301 of the Labor Management Relations Act provided direct authority to grant petitioner-trade union's bill for specific performance of the arbitration provisions of a collective bargaining agreement with respondent-employer.[13] In the majority opinion five members of the Court went beyond the narrow holding[14] and stated that section 301 "authorizes federal courts to fashion a body of federal law for the enforcement of . . . collective bargaining agreements. . . ."[15]

The defendant contended that the *Lincoln Mills* decision holds that section 301 is more than jurisdictional. He argued that it requires federal courts to "fashion" a common law of collective bargaining from the policy of the national labor laws and therefore to allow state jurisdiction would be to frustrate the rationale of *Lincoln Mills.*

The Supreme Court of the United States found nothing to indicate that Congress adopted such a policy in enacting section 301, in spite of the merits of the defendant's contention.[16] Rather, the Court relied mainly on the legislative intent it could piece out of the 1947 congressional debates. It found that "the legislative history of the enactment nowhere suggests that, contrary to the clear import of the statutory language, Congress intended in enacting section 301(a) to deprive a party to a collective bargaining contract of the right to seek redress for its violation in an appropriate state tribunal."[17]

Though the Supreme Court's finding as to Congress's intent is unquestionable, the effect of section 301(a) will provide a considerable obstacle to effectuating the rationale of *Lincoln Mills.*

Although the Supreme Court has applied the *Dowd Box Co.* case in subsequent decisions,[18] it nevertheless, must strain traditional doc-

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[12]Mr. Justice Black did not participate.

[13]Specific performance had been granted in the original district court proceeding, but the decree had been reversed on appeal, 230 F.2d 81 (5th Cir. 1956), on the ground that although the district court had jurisdiction under § 301 of the Labor Management Relations Act, there was neither state nor federal substantive law on which to base the requested relief.

[14]Justices Burton and Harlan agreed only that § 301 provided authority for a grant of specific performance of the arbitration agreement. Since this was the only issue before the Court, it is possible that the holding of the case may be limited to this issue alone. This is doubtful, however, since five Justices, a majority of the Court, thought it necessary to the decision to say what they did about the nature of rights under § 301.

[15]353 U.S. at 451.

[16]"Whatever the merits of this argument as a matter of policy, we find nothing to indicate that Congress adopted such a policy in enacting § 301." 368 U.S. at 507.

[17]Ibid.

[18]Retail Clerks Int'l Ass'n v. Lion Dry Goods, Inc., 369 U.S. 17 (1962); Local 174, Teamsters Union v. Lucas Co., 369 U.S. 95 (1962).

trines in order to apply federal law. For example, in *Retail Clerks International Ass'n v. Lion Dry Goods, Inc.*,[19] the Court held that a union's action on a strike settlement agreement, even though it is not a collective bargaining agreement,[20] is a suit for a violation of a "contract" under section 301 (a). The manner in which the Court strained to include the strike settlement agreement within the scope of "contracts" of section 301(a) so as to allow federal jurisdiction seems to indicate the obstacle it will face in order to follow the rationale of *Dowd Box Co.* and *Lincoln Mills.*

As the *Lincoln Mills* case is still good law and since the federal judiciary has not pre-empted the field, both the state and lower federal courts have the difficult task of working with a law that has not yet been developed.[21] The inherent uncertainty of such a development was presented in the case of *McCarroll v. Carpenters Union.*[22] In that case suit was brought in a California state court to enjoin a strike in breach of a collective bargaining agreement. Judge Traynor realizing that he was bound to apply the federal law under *Lincoln Mills,* was unable to find any statement or exposition of what that law might be. As the *Norris-LaGuardia Act* prohibits a federal court from enjoining such a strike[23] and since the statute is only directed at removing jurisdicton from the federal courts, Judge Traynor declared that he would assume both the state and federal law to be the same and granted the injunction.[24]

The dilemma in which the California court was placed will certainly face other state courts in the future. Therefore, the rationale

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[19]369 U.S. 17 (1962).

[20]The District Court held that Congress limited the scope of § 301(a) jurisdiction to contracts that are "collective bargaining contracts." Only agreements concerning wages, hours and conditions of employment concluded in direct negotiations between employers and unions were within its scope. 179 F. Supp. 564 (N.D. Ohio 1960).

[21]Indicative of this problem is McCarroll v. Carpenters Union, 49 Cal. 2d 45, 315 P.2d 322 (1957), cert. denied, 355 U.S. 932 (1958).

[22]Ibid.

[23]This position was adopted by A. H. Bull S.S. Co. v. Seafarer's Union, 250 F.2d 326 (2d Cir. 1957), cert. denied, 355 U.S. 392 (1958). All of the opinions in United States v. U.M.W., 330 U.S. 258 (1947), decided prior to Taft-Hartley, assumed that Norris-La Guardia generally barred an injunction against the breach of a no-strike clause.

It is sometimes said that the conclusion may be open to question under the rationale of Lincoln Mills. See comments, 25 U. Chi. L. Rev. 496, 501 (1958); 71 Harv. L. Rev. 1172, 1175 (1958).

[24]"What that substantive federal law is we cannot know. Until it is elaborated by the federal courts we assume it does not differ significantly from our own law." 315 P.2d at 330.

of a uniform federal law under *Lincoln Mills,* will be frustrated as different results will be reached depending on whether a federal or state court, and perhaps which state court, handles the case. The uncertainty of such a development could be greatly diminished by congressional action limiting such suits to federal courts. With only eleven federal circuits formulating the law there would be less conflict than with the courts of an additional fifty states also doing so.

It may well be argued that the state and federal courts have exercised concurrent jurisdiction in a number of fields successfully. But in these areas there was in existence a great body of state law to which Congress could refer in formulating legsilation.[25] To pre-empt those fields would be to deprive state courts of asserting traditional jurisdiction in an area where they have developed a great body of law. But in the field of "labor relations the state law is of comparatively recent origin and has not developed to an extent comparable to the older common law doctrines."[26] Therefore, pre-emption in this field would not be depriving the states from asserting jurisdiction where they have developed a sizeable body of law.

It should also be noted that collective bargaining agreements often contain provisions which, if violated, constitute unfair labor practices as well as breaches of agreement. A contract may provide that the employer agrees not to discriminate against any employee because of union activity. Discrimination against an employee would then be both a violation of section 8(a)(3)[27] of the Labor Management Relations Act and a breach of contract. Where the underlying conduct which constitutes the breach is also an unfair labor practice the National Labor Relations Board will have exclusive jurisdiction.[28] This is a delicate distinction that the District Courts would be in a better position than the state courts to handle, as the District Courts

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[25]The Federal Employer's Liability Act, 53 Stat. 1404 (1939), 45 U.S.C. § 51 (1952), required application of the laws of negligence. See Mishkin, The Variousness of Federal Law: Competence and Discretion in the Choice of National and State Rules For Decision, 105 U. Pa. L. Rev. 797 (1957).

[26]57 Colum. L. Rev. 1123, 1137 (1957).

[27]The Labor Management Relations Act provides that an employer will be guilty of an unfair labor practice:

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." Labor Management Relations Act (Taft-Hartley Act), § 8(a)(3), 61 Stat. 140 (1947), 29 U.S.C. § 158(3) (1958).

[28]See Dunau, Contractual Problems of Unfair Labor Practices: Jurisdictional Problems, 57 Colum. L. Rev. 52 (1957).