

No. 91-1151

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

JOHN J. ADKINS, ET AL., PETITIONERS,

v.

GENERAL MOTORS CORPORATION, ET AL., RESPONDENTS.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit

BRIEF FOR
GENERAL MOTORS CORPORATION
IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should review the court of appeals' fact-bound determination that petitioners' state-law causes of action are inextricably intertwined with collective-bargaining agreements and preempted by Section 301 of the Labor Management Relations Act, where the court of appeals conscientiously and correctly applied the preemption test established in this Court's precedents and where its decision is consistent with the rulings of other courts of appeals.

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**BRIEF FOR
GENERAL MOTORS CORPORATION
IN OPPOSITION**

Respondent General Motors Corporation ("GM") submits this brief in opposition to the petition for a writ of certiorari.^{1/}

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1) is reported at 946 F.2d 1201. The district court's opinion sustaining in part GM's motion for summary judgment (App., *infra*, 1a) is unreported. The district court's opinion granting in part GM's motion for reconsideration of the court's decision on petitioners' motion to remand (App., *infra*, 7a) is reported at 713 F. Supp. 1043.

JURISDICTION

The judgment of the court of appeals was entered on October 15, 1991. The petition for a writ of certiorari was filed on January 13, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

The question in this case is whether the court of appeals properly applied *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985), and *Caterpillar Inc. v. Williams*, 482 U.S. 386 (1987), in holding that petitioners' state law claims were preempted by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185.

^{1/} The list of GM's non-wholly owned subsidiaries required by Rule 29.1 appears at Appendix, *infra*, 66a.

Petitioners originally asserted their claims in a Section 301 action, alleging that GM and their union had unfairly colluded to deny them certain special seniority rights. That action was dismissed as untimely. Petitioners then brought this action in state court, claiming fraud, tortious interference with contract rights, and intentional infliction of emotional distress. The court of appeals, after taking pains to decipher the "prolix and vague" allegations of petitioners' complaint (Pet. App. 7), unanimously held that these claims were preempted by Section 301. As this Court has recognized in denying certiorari petitions in several similar cases in recent years, there is no reason for the Court to review the court of appeals' application of settled law to the particular facts of cases such as this one.

A. The "Flow Arrangement" Under the Bridge Agreement

Until 1974, GM manufactured household appliances and automobile air conditioners at plants operated by its Frigidaire Division in Dayton, Ohio. Respondent International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC, and its Local 801 (hereinafter referred to together as the "Union") was the collective-bargaining agent for Frigidaire's hourly employees. Initially, all Frigidaire workers were paid at the automobile industry rate, even if they were engaged in making household appliances. But in 1971, GM and the Union agreed that Frigidaire workers engaged in appliance manufacture would be paid the lower appliance industry rates. In return, these appliance workers were

permitted to transfer -- "flow" -- to higher-paying automotive jobs within the Frigidaire Division as positions became available. In the event of layoff from an automotive job to which they had transferred, these workers were permitted to flow back to an appliance position, bumping less senior appliance workers if necessary. Pet. App. 4-5; *Adkins v. International Union of Elec., Radio, & Mach.*, 769 F.2d 330, 332 (6th Cir. 1985).

Frigidaire's automobile air conditioner facilities were split off in 1974 and became part of GM's Delco Air Conditioning Division, but the 1971 flow arrangement continued. Frigidaire's workers could transfer to higher-paying automotive air conditioning jobs at Delco, and if laid off by Delco could transfer back to appliance jobs at Frigidaire with their seniority intact. 769 F.2d at 332.

The flow arrangement was not included in any formal collective-bargaining agreements until 1976. The December 10, 1976 Frigidaire Local Agreement as well as the Delco Local Agreement of the same date included a "Bridge Agreement" (App., *infra*, 35a) setting out the flow arrangement. Frigidaire Local Agreement 46 (Dec. 10, 1976); Delco Local Agreement 45 (Dec. 10, 1976). Frigidaire and Delco employees hired before 1977 (who were designated "red-circled" employees) continued to enjoy the flow rights, but newer employees would not. App., *infra*, 35a, 37a.

B. The Sale of Frigidaire And The Termination Of The Bridge Agreement

In 1979, GM sold its Frigidaire Division and laid off the Frigidaire employees. Pet. App. 5. GM retained the Dayton Frigidaire plants, however, converting them to use for GM's Chevrolet Division. At the time, the Delco plant was experiencing full employment. *Ibid.* With the sale of the Frigidaire Division, former Frigidaire employees working at Delco could no longer transfer back to Frigidaire in the case of a Delco layoff.

GM and the Union negotiated about the Frigidaire layoffs in February 1979. They agreed that the Frigidaire workers who would be laid off as a result of the sale would be hired in the new Chevrolet plants with unbroken seniority when these plants opened in 1981, and that the Union would continue to represent them. See Special Memorandum of Understanding between GM, IUE and Local 801 ¶¶ IV-VI (Feb. 23, 1979), App., *infra*, 43a-44a. This Agreement was ratified on February 23, 1979, and it cancelled the special seniority rights that had been given to former Frigidaire workers under the 1976 Bridge Agreement. *Id.* at ¶ I, App., *infra*, 41a. See also Pet. App. 5. The February 23 agreement was subsequently incorporated into the Local Agreement between Chevrolet and Local 801. Chevrolet Local Agreement 43-45 (Oct. 1, 1979).

The February 23, 1979 agreement (and the October 1, 1979 Chevrolet Local Agreement) applied to the laid-off Frigidaire workers, and not to Delco workers. 769 F.2d at 333. GM and the Union renegotiated the Delco collective-bargaining agreement later

that year. Because GM no longer owned Frigidaire, the new Delco contract did not continue the right of former Frigidaire workers to transfer back to Frigidaire Division jobs if they were laid off by Delco. See Delco Local Agreement 14-19 (Sept. 19, 1979).^{2/}

Late in 1979, an economic slowdown hit the automobile industry and Delco was forced to lay off thousands of employees, including many of the previously red-circled former Frigidaire workers. When Chevrolet reopened the former Frigidaire plants in 1981 and began to recall former Frigidaire employees, pursuant to the collective-bargaining agreements then in place, it did not offer the jobs to the laid-off Delco workers. 769 F.2d at 333.

C. The First Round Of Litigation: The Federal Action

A group of laid-off Delco workers who no longer had any rights to jobs at Frigidaire -- including many of the petitioners -- brought suit in federal court alleging violations of both Section 301 and Section 101(a)(1) of the Labor-Management Reporting and Disclosure Act (LMRDA) (29 U.S.C. § 411(a)(1)). Pet. App. 2. This hybrid action alleged that the Union had breached its duty of fair representation and that GM and the Union "had colluded in negotiating a collective-bargaining agreement in order to abrogate the special seniority rights contained in" the Bridge Agreement.

^{2/} Petitioners imply that under the 1976 Bridge Agreement, they would have had the right to transfer to jobs at the former Frigidaire plants that reopened as Chevrolet plants in 1981. Pet. 10, 55-57. That is not correct; the Bridge Agreement gave such employees the right to transfer to jobs at the *Frigidaire Division* (App., *infra*, 37a), which ceased to exist as a GM division when it was sold in 1979.

Ibid. The complaint also included pendent state law claims for breach of contract, tortious interference with contract rights, intentional infliction of emotional distress, and loss of consortium. *Id.* at 2-3.

The district court dismissed plaintiffs' federal labor law claims because they had been filed outside the six-month statute of limitations. See *DelCostello v. Teamsters*, 462 U.S. 151 (1983). The court also dismissed (without prejudice) plaintiffs' pendent state law claims for want of a substantial federal question. *Adkins v. General Motors Corp.*, 573 F. Supp. 1188 (S.D. Ohio 1983). The court of appeals affirmed. 769 F.2d 330 (6th Cir. 1985).

D. This Litigation: Petitioners' State Complaint

In 1983, while the appeal of the dismissal of the federal complaint was pending, petitioners initiated this suit against GM and the Union in Ohio state court. Pet. App. 3. In a complaint which the court of appeals described as "prolix," "vague," and "very difficult to understand," petitioners alleged fraud, tortious interference with contract rights, and tortious infliction of emotional distress. *Id.* at 7. As the court of appeals noted, it is "not easy work" to "sift through the complaint in order to detect the factual allegations." *Ibid.* Insofar as GM can discern, the factual basis for all petitioners' claims appears to be as follows:

Petitioners contend that the Union excluded red-circled Delco employees from notification and ratification of the February 23, 1979 agreement (which directly related not to Delco employees but to the laid-off employees of the sold Frigidaire Division). Pet. 8-9; Pet. App. 5-6; Compl. ¶¶ 29-34, App., *infra*, 49a-54a. They also allege that during the notification and ratification process for the September 19, 1979 Delco Local Agreement, the Union "concealed" the fact that the new Agreement "omitted" and thereby "abandon[ed]" the Bridge Agreement. Pet. 9; Pet. App. 5-6. These allegations form part of the basis for petitioners' emotional distress claims. Pet. 9 (citing Compl. ¶¶ 30-37, App., *infra*, 50a-55a). Petitioners also claim that "the president of Local 801 had fraudulently induced them to ratify the 1979 collective-bargaining agreement that abrogated the 'bridge agreement.'" Pet. App. 16. See also Pet. 8-9, 52.

Petitioners further allege that between February 1980 and January 1981 "respondents continued to try to keep secret the abrogation of the Bridge Agreement," made "representations and innuendos" to petitioners that "jobs would be forthcoming," "reminded" petitioners "of the old custom of 'flowing,'" and made "[p]romises of employment * * * individually and in groups." Pet. 10. When the Chevrolet plants began work and only Frigidaire workers were recalled to them, petitioners who objected were "called * * * cry-babies and ridiculed." *Id.* at 11. These allegations are the basis for petitioners' fraud, tortious

interference with contract, and emotional distress claims. Pet. 11-12 (citing Compl. ¶¶ 73-79, 83, App., *infra*, 61a-64a).

Finally, petitioners contend that these actions all arose out of a conspiracy between GM and the Union to maintain the Union as the Chevrolet Division bargaining agent, to divide labor, and to replace petitioners with lower paid workers. Pet. 7-8 (citing Compl. ¶¶ 15, 16, 25-27 and 43-48, App., *infra*, 46a-49a, 58a-61a).

In their demand for relief, petitioners made clear that they were really asserting rights under the various collective-bargaining agreements. In addition to seeking compensatory and punitive damages, declaratory relief, and other equitable remedies, petitioners asked for "injunctive relief * * * with respect to each of the collective bargaining agreements heretofore described in the complaint, declaring * * * the express and implied obligations, as well as the intendment, spirit and purpose of each of said collective bargaining agreements in each of the respects hereinabove alleged in this complaint" (Demand For Relief ¶ 1, App., *infra*, 64a), and also asked "[t]hat GM be adjudged to have breached each of the collective bargaining agreements." *Id.* at ¶ 4, App., *infra*, 65a.

Respondents removed this case to federal court pursuant to 28 U.S.C. § 1441, on the ground that petitioners' state law claims are preempted by federal labor law. Pet. App. 3. The district court ultimately held that petitioners' fraud and tortious interference with contract claims were preempted in their entirety by federal

law. App., *infra*, 17a-26a. The court also held that petitioners' emotional distress claims were preempted insofar as they claimed that GM and the Union caused them distress by such actions as proposing the elimination of the flow rights under the Bridge Agreement, withholding information from the workers, failing to consider the interests of those workers, and not permitting them fully to participate in the ratification process. But, in the district court's view, petitioners' emotional distress claims were not preempted insofar as they complained of the respondents' *conduct* in taking those actions. *Id.* at 26a-33a.

The court of appeals held that all of petitioners' claims were preempted and remanded with instructions to dismiss the entire complaint. Pet. App. 4. The court of appeals began its analysis with a careful review of this Court's Section 301 preemption decisions. *Id.* at 6-7, 11-14. The court recognized that "Section 301 preemption governs claims either founded directly on rights created by collective bargaining agreements or `substantially dependent on analysis of a collective-bargaining agreement.'" *Id.* at 13, quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 394 (1987). If analysis of petitioners' tort claims is "inextricably intertwined with consideration of the terms of" the collective-bargaining agreements (*Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 213 (1985)), those claims are preempted by Section 301. Pet. App. 6-7, 17, 21-22. The court of appeals then considered each of petitioners' claims in turn and conducted the

essentially fact-bound analysis of whether those claims were "substantially dependent on" or "inextricably intertwined with" the terms of the collective-bargaining agreements between GM and the Union.

Turning first to petitioners' fraud claims, the court of appeals noted that those allegations were "not very clear." Pet. App. 16. The court identified two separate contentions that petitioners appeared to be making: that Local 801's president had fraudulently induced petitioners to ratify the 1979 Delco Local Agreement by concealing or misrepresenting its effect on their transfer rights, and that following ratification the president had made fraudulent misrepresentations regarding their transfer rights. The court of appeals held that both of those fraud claims were preempted. Pet. App. 14-19. The court held that the first claim was preempted because it would require analysis of the Bridge Agreement and the subsequent agreements to determine what rights they conferred and what rights they eliminated. *Id.* at 14-15. In addition, because the rights at issue in that claim were "'created by collective-bargaining agreements,'" the claim was completely preempted. *Id.* at 15 (quoting *Caterpillar* at 394).

As to petitioners' second fraud claim, the court of appeals could not tell whether petitioners were alleging that after the ratification the Union president affirmatively misrepresented the terms of the 1979 agreement and told them that it did not affect their rights under the Bridge Agreement, or alternatively that he told them that "their purported entitlement to jobs at the

Chevrolet plant would be respected, despite the 1979 collective-bargaining agreement." Pet. App. 16. The court held that in either event the claims were preempted. The former contention was preempted because it would require the court to ascertain petitioners' rights under the Bridge Agreement and the 1979 Delco contract, and to determine the accuracy of the Union president's alleged representations about the content of those agreements. *Id.* at 17. This fraud claim was "so intertwined with the terms of the collective-bargaining agreements * * * that they may not be separated." *Ibid.*, citing *Lueck*, 471 U.S. at 213.

Under the alternative interpretation of petitioners' claim (that they were told that the flow arrangement would remain in effect despite the 1979 agreement), the court of appeals held that the claim was preempted because the alleged job-entitlements were created and defined by the Bridge Agreement. Pet. App. 17-18. Adjudication of this claim once again would require "extensive" interpretation to determine "what plaintiffs' 'bridge agreement' rights were and whether they are being violated by the new arrangements." *Id.* at 18.

The court of appeals concluded that in their fraud claims, petitioners were asking the court to find that Bridge Agreement rights terminated in the 1979 Local Agreements were "reborn under state law." Pet. App. 18. That would "create a situation in which rights extinguished under federal labor law were vital under state law. The purpose of the doctrine of complete preemption is to

prevent one set of rights and obligations from issuing from a collective-bargaining agreement under federal law while contradictory rights and obligations flowed from state law. * * * Plaintiffs cannot be permitted to revive rights deemed extinguished under federal labor law by relying on state common law." *Id.* at 17-18.

The court of appeals next examined petitioners' tortious interference with contract claims, and held them to be likewise fully preempted. Pet. App. at 19-20. The court rejected petitioners' argument that their claims were like those raised by the plaintiffs in *Caterpillar*. In *Caterpillar*, the court noted, "the alleged contract between the plaintiffs and the employe[r] was independent of any collective-agreement." *Id.* at 19. But in this case, the rights claimed by the petitioners were the "seniority rights" under the Bridge Agreement. *Id.* at 20. Petitioners' claims would therefore necessarily involve analysis of the terms of the Bridge Agreement. *Ibid.*

The court of appeals considered petitioners' emotional distress claims last. Pet. App. 21-26. Analogizing to this Court's decision in *Farmer v. Carpenters*, 430 U.S. 290 (1977), the court acknowledged that it is "theoretically possible" that the conduct of union leaders in a case like this one might be so outrageous that state tort actions would be permitted. Pet. App. 25. But "no outrageous conduct has been alleged in this case"; rather, petitioners alleged only that "material information * * *

was withheld from them." Such a claim "goes to the quality of their union representation and the fairness of their employer's labor practices, issues central to the concerns of federal labor law." *Ibid.* In these circumstances, absent "specific allegations" that the union or GM engaged in "outrageous conduct," "the state interest in adjudicating plaintiffs' emotional distress claims [is] too insubstantial to defeat complete preemption." *Ibid.*

REASONS FOR DENYING THE PETITION

Having failed to file their complaint alleging violations of the federal labor laws within the prescribed statute of limitations period, petitioners now seek to recast claims that arise out of and require interpretation of collective-bargaining agreements as state law violations. The Demand for Relief in petitioners' complaint makes it crystal clear that what they are seeking is relief from alleged violations of several collective-bargaining agreements. This Court, however, has repeatedly protected the comprehensive federal regulatory scheme constructed by the Labor Management Relations Act from undue interference by private actions under state law that seek to enforce claims under collective-bargaining agreements. In doing so, it has established workable preemption standards which require the courts to undertake just the kind of fact-intensive, "case-by-case" analysis carried out by the court of appeals. *Lueck*, 471 U.S. at 220. The courts below conscientiously applied those standards and reached the correct result.

Relying primarily on a case (*Wells v. General Motors Corp.*) they did not even cite in their court of appeals briefs, petitioners contend that there is a conflict among the circuits touching the issues in this case. But even a cursory review of *Wells* makes it clear that the Fifth Circuit applied the same legal standard to very different facts and therefore reached a different result. There is absolutely no reason to believe that the Fifth Circuit would disagree with the Sixth Circuit if presented with the facts of this case.

Moreover, even were this Court inclined to elaborate further on the standards for Section 301 preemption, this case would provide an unsuitable vehicle. Petitioners' state law complaint is "prolix," "vague," and "very difficult to understand" (Pet. App. 7), and it is the incoherence of that complaint and petitioners' formless and shifting characterizations of their claims that have fueled nearly a decade of litigation. It is a struggle to penetrate the morass petitioners' have created to ascertain a coherent set of claims. Once that is done, it becomes clear that this is an easy case, squarely preempted because it lies at the very heart of federal labor law concerns.

I. THE COURTS OF APPEALS HAVE CONSISTENTLY AND CORRECTLY APPLIED THE SECTION 301 PREEMPTION ANALYSIS MANDATED BY THIS COURT'S DECISIONS TO STATE LAW FRAUD AND TORTIOUS INTERFERENCE CLAIMS.

This Court's jurisprudence on the interpretation and application of Section 301 of the Labor Management Relations Act,

29 U.S.C. § 185, is well developed. Section 301(a) creates federal jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce." This statute is not merely jurisdictional, but also "expresses a federal policy that federal courts should enforce [collective-bargaining] agreements" and that "the substantive law to apply in suits under § 301 (a) is federal law, which the courts must fashion from the policy of our national labor laws." *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 455, 456 (1957).

This Court has emphasized the necessity that "substantive principles of federal labor law * * * be paramount in the area covered by the statute." *Teamsters Local v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962). Disputes about the interpretation of collective-bargaining agreements cannot be left to state law because "the subject matter of § 301(a) 'is peculiarly one that calls for uniform law.'" *Ibid.* The Court has explained that "[t]he possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." *Ibid.* Indeed, the "pre-emptive force of § 301 is so powerful as to displace entirely any state cause of action" that explicitly or implicitly contends that an employer or bargaining agent breached its obligations under

a labor contract. *Franchise Tax Bd. v. Laborers Vacation Trust*, 463 U.S. 1, 23 (1983).

This Court has elaborated on these principles no fewer than five times in recent years, beginning in *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985). In *Lueck* an employee subject to a labor contract filed a state law tort suit contending that his employer in bad faith failed to make disability insurance payments under a union-negotiated disability plan. The Court held this action preempted, observing that "[i]f the policies that animate § 301 are to be given their proper range, * * * the pre-emptive effect of § 301 must extend beyond suits alleging contract violations." *Id.* at 210. The court instructed (*id.* at 211) that

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.

Otherwise, "[t]he parties would be uncertain as to what they were binding themselves to" when they entered into a collective-bargaining agreement. *Ibid.* That would make it "more difficult to reach agreement, and disputes as to the nature of the agreement would proliferate." *Ibid.*

The Court in *Lueck* enunciated a test for Section 301 preemption to deal with these concerns: a state law claim is

preempted whenever it "is inextricably intertwined with consideration of the terms of the labor contract" (471 U.S. at 213), such that "any attempt to assess liability * * * inevitably will involve contract interpretation." *Id.* at 218. In other words, whenever "resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim or dismissed as pre-empted by federal labor-contract law." *Id.* at 220 (citation omitted).

This Court has reiterated the same concerns - - and applied the same preemption test - - in each of its subsequent rulings in this area. In *Electrical Workers v. Hechler*, 481 U.S. 851, 853 (1987), the Court held Section 301 preempted "a state-law tort claim that a union has breached its duty of care to provide a union member with a safe workplace." A court deciding that claim "would have to ascertain, first, whether the collective-bargaining agreement * * * placed an implied duty of care on the Union to ensure that [the employee] was provided a safe workplace, and, second, the nature and scope of that duty." *Id.* at 862. Since "'questions of contract interpretation [underlay] any finding of tort liability'" the employee was "precluded from evading the preemptive force of § 301 by casting her claim as a state-law tort action." *Ibid.*

In *Caterpillar Inc. v. Williams*, 482 U.S. 386 (1987), certain breach of contract claims escaped preemption where they were based

on allegations that an employer had entered into individual employment contracts with the plaintiff employees at a time when they were not members of a bargaining unit or covered by any collective-bargaining agreement. The employees claimed that Caterpillar had agreed that it "would provide employment opportunities for [them] at other facilities" if their work place were closed. *Id.* at 389. The claim that the employer had entered into and breached these individual employment contracts was "not substantially dependent upon interpretation" of a labor contract, because the claim neither "rel[ied] upon" a contract nor "address[ed] the relationship between the individual contracts and the collective agreement." *Id.* at 395.

Similarly, in *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988), the issue was whether Section 301 preempted an employee's state law allegation that she had been discharged in retaliation for filing a worker's compensation claim. Although the employee was covered by a collective-bargaining agreement that required "just cause" for discharge, the Court held that her state retaliatory discharge claim was not preempted. The state law claim depended on a purely factual inquiry whether the plaintiff was discharged and whether the employer's motive for the discharge was retaliatory. Such an inquiry would "not turn on the meaning of any provision of a collective-bargaining agreement." *Id.* at 407. *Lingle* reiterated, however, that "judges can determine questions of state law involving labor-management relations only if such

questions do not require construing collective-bargaining agreements." *Id.* at 411. Most recently, in *United Steelworkers v. Rawson*, 110 S. Ct. 1904, 1909 (1990), this Court reaffirmed that a state tort suit is preempted when it is based on rights or duties "without existence independent of the collective-bargaining agreement."

Application of these Section 301 preemption standards requires close scrutiny of the plaintiff's allegations in each case. Over the last four years, this Court has denied petitions for certiorari in at least eleven cases involving the application of these standards to various state-law claims.^{3/} That the courts of appeals in these cases reached different results does not mean there is a conflict among the circuits that this Court has ignored. It simply reflects the fact that courts applying the proper preemption standards will reach different results when faced with

^{3/} *White v. National Steel Corp.*, 938 F.2d 474 (4th Cir.), cert. denied, 112 S. Ct. 454 (1991); *McCormick v. AT&T Technologies*, 934 F.2d 531 (4th Cir. 1991), cert. denied, 112 S. Ct. 912 (1992); *Sluder v. UMW*, 892 F.2d 549 (7th Cir. 1989), cert. denied, 111 S. Ct. 45 (1990); *Wells v. General Motors Corp.*, 881 F.2d 166 (5th Cir. 1989), cert. denied, 495 U.S. 923 (1990); *Terwilliger v. Greyhound Lines*, 882 F.2d 1033 (6th Cir. 1989), cert. denied, 495 U.S. 946 (1990); *Berda v. CBS, Inc.*, 881 F.2d 20 (3d Cir. 1989), cert. denied, 493 U.S. 1062 (1990); *Smolarek v. Chrysler Corp.*, 879 F.2d 1326 (6th Cir.), cert. denied, 493 U.S. 992 (1989); *Richardson v. Steelworkers*, 864 F.2d 1162 (5th Cir.), cert. denied, 493 U.S. 803 (1989); *Utility Workers v. Southern California Edison Co.*, 852 F.2d 1083 (9th Cir. 1988), cert. denied, 489 U.S. 1078 (1989); *Local No. 57 v. Bechtel Power Corp.*, 834 F.2d 884 (10th Cir. 1987), cert. denied, 486 U.S. 1055 (1988); *Paige v. Henry J. Kaiser Co.*, 826 F.2d 857 (9th Cir. 1987), cert. denied, 486 U.S. 1054 (1988).

different facts. There is certainly no reason for the Court to single out this case and to review the Sixth Circuit's conscientious analysis of petitioners' nearly unintelligible complaint.

It is particularly disingenuous for petitioners to pretend that this case is something other than a complaint bottomed on collective-bargaining agreements, when their original suit -- which raised factual allegations substantially identical to those in the present suit -- was expressly predicated on breach of collective-bargaining agreements within the meaning of Section 301. Petitioners' original suit was dismissed for untimeliness; but dilatoriness is surely not a justification for recycling a Section 301 claim as a state law claim and demanding application of divergent state law standards to construe and enforce the underlying collective-bargaining agreements.

A. The Court Of Appeals Faithfully And Correctly Applied The Section 301 Preemption Standards Enunciated In This Court's Decisions To Petitioners' Fraud And Tortious Interference Claims

The certiorari petition is premised on a series of misstatements about the decisions below. The linchpin of the petition is the repeated assertion that the court of appeals held that petitioners' state law fraud and tortious interference claims were preempted because they "merely '*relat[e]* to various collective bargaining agreements,'" and thereby applied a standard that this Court expressly rejected in *Lueck*, 471 U.S. at 220. Pet. 23. See

also *id.* at 17, 48. This characterization of the test applied below is disingenuous.^{4/} Both the court of appeals and the district court were meticulous in their adherence to the Section 301 preemption standards enunciated by this Court.

The court of appeals, after examining *Caterpillar* and this Court's other recent Section 301 preemption cases in great detail (Pet. App. 6-7, 11-14), held that petitioners' fraud claims were preempted because they were "substantially dependent on analysis" of the Bridge Agreement and the 1979 Delco contract (*id.* at 15) and "so intertwined with the terms of the collective-bargaining agreements present in the case that they may not be separated." *Id.* at 17. The court held that petitioners' tortious interference claims were preempted because they "necessaril[y] involv[e] an analysis of" the collective-bargaining agreements between GM and the Union. *Id.* at 20. These same, well settled preemption principles guided the district court (see App., *infra*, 13a-17a),

^{4/} Petitioners support each assertion that the court of appeals asked whether their claims were "related to" some labor contract with a citation to the court's opinion at Pet. App. 9. That citation is to part of a long quotation from the district court's decision, intended to "exemplif[y] the approach the [district] court took" to the problematic task of defining the claims contained in petitioners' "prolix and vague" complaint. *Id.* at 8. The cited quotation plays no operative role in the court of appeals' decision. Moreover, the district court was *not* applying a mere relationship standard at all, for the district court continued by saying that "[i]t would be impossible to determine whether the information provided to Plaintiffs by Defendants was false (or insufficient) without analyzing the terms of the various collective bargaining agreements." *Id.* at 9, quoting App., *infra*, 21a.

which properly asked as to each of petitioners' claims the question required by *Lueck* and *Caterpillar*: whether the claim was "substantially dependent" upon and "inextricably intertwined" with the construction of the terms of the various collective-bargaining agreements. See *id.* at 17a-32a.

A similar misrepresentation about the preemption standard applied below is implicit in petitioners' repeated but incomplete quotation of the court of appeals' statement that it "is immaterial" that the Union's alleged misrepresentations "took place outside the context of collective bargaining." Pet. 26, 46, quoting Pet. App. 17. The court of appeals recognized that state claims wholly independent of any collective-bargaining agreement are not preempted (see, e.g., Pet. App. 13), and emphasized in the very next sentence of its opinion that "[t]he critical inquiry is whether a court adjudicating [petitioners' fraud] claim must determine rights arising under a collective bargaining agreement." *Id.* at 17.

Another equally baseless assertion is that the courts below held that petitioners' state law claims were preempted because respondents could have raised a defense grounded in federal labor law. Pet. 18-19, 58-59. The court of appeals gave this argument short shrift, pointing out that "the district court relied solely on the allegations on the face of the complaint" in holding petitioners' suit to be preempted. Pet. App. 14. The court of appeals' opinion likewise contains no suggestion that it looked to

the nature of respondents' defenses. On the contrary, the court was well aware of the rule in *Caterpillar* that federal defenses do not by themselves result in preemption of a state-law claim (see *ibid.*), and its preemption analysis proceeded solely in terms of the elements of the claims presented on the face of the complaint. See, e.g., *id.* at 17 (analyzing elements of fraud under Ohio law), 20 (contract claim), 25 (emotional distress claim).

Once the petition is stripped of these sorts of misrepresentations, it appears that petitioners' real complaint is simply that the court below erred in applying the standards set forth in *Lueck*, *Caterpillar* and this Court's other Section 301 preemption cases to the particular factual allegations underlying their tort claims. That argument is wholly without merit and would not warrant review by this Court in any event.

1. *Petitioners' Fraud Claims.* Petitioners apparently assert two categories of fraud claims. The first is based upon allegations that prior to the ratification of the 1979 Delco contract, the Local 801 president concealed and misrepresented the fact that the Bridge Agreement was not a part of the new Delco contract. Pet. 52. The second is based upon representations allegedly made by the Union president after the 1979 Delco contract had been ratified that petitioners retained flow rights under that contract and would be eligible for Chevrolet jobs based on the seniority accumulated under the Bridge Agreement. Pet. 50; Compl. ¶¶ 39-40. To make out these fraud claims under Ohio law,

petitioners would have to show that respondents concealed or misrepresented a material fact, that they knew of or were indifferent to the concealment or misrepresentation and acted intending that the petitioners rely on it to their detriment, and that petitioners suffered damage as a consequence. See Pet. App. 14, 17 & Pet. 49-50, citing *Cohen v. Lamko, Inc.*, 462 N.E.2d 407 (Ohio 1984).

The claims that the Union concealed or misrepresented the effect of the 1979 Delco contract during the ratification process would embroil a court in a series of "questions relating to what the parties to a labor agreement agreed, [which] must be resolved by reference to uniform federal law." *Lueck*, 471 U.S. at 211. To determine if the Union concealed or misrepresented the impact of the 1979 Delco contract on existing flow rights, a court would initially have to determine what petitioners' existing rights were. To do that, the court would first have to analyze the terms of the 1976 Delco agreement, including the Bridge Agreement. Among other things, the court would have to consider whether petitioners retained any rights under the Bridge Agreement after GM sold the Frigidaire Division; the Bridge Agreement only gave petitioners the right to transfer to jobs within the Frigidaire Division. App., *infra*, 37a. The court would then have to consider whether the termination of the Bridge Agreement by the Frigidaire contract of February 23, 1979 had an impact on any flow rights the Delco workers might have retained. After interpreting the 1976 Delco and

1979 Frigidaire contracts to see what rights Delco workers had at the time of the alleged misrepresentations, the court would then have to interpret the 1979 Delco contract in order to see what changes it worked. Only then could the truth or falsity of the representations alleged by petitioners be judged.

Finally, the Ohio law requirement that petitioners show damages would necessitate inquiry into what rights petitioners had lost in consequence of the alleged fraud. As the court of appeals noted (Pet. App. 14-15), that would require a court to compare petitioners' rights before and after ratification of the 1979 Delco contract.^{5/} In short, an inquiry into the terms of the 1979 Delco contract and Bridge Agreement, the 1979 Frigidaire agreement cancelling the Bridge Agreement, and the 1979 Delco contract would be at the very heart of adjudication of this fraud claim.

A court adjudicating petitioners' second fraud claim would also have to engage in close analysis of collective-bargaining agreements. Although the petition describes in only vague terms the misrepresentations allegedly made by the Union after the ratification of the 1979 Delco contract (see Pet. 10), it is clear

^{5/} This is not the sort of peripheral use of a labor contract "to determine the proper damages" for a state law violation that was sanctioned in *Lingle*. 486 U.S. at 413 n.12. This Court had in mind in *Lingle* that a "collective-bargaining agreement may * * * contain information such as rate of pay and other economic benefits that might be helpful" in fixing the amount of damages that should be awarded. *Ibid*. Here, a comparison of different labor contracts is necessary to determine whether the petitioners suffered any damage at all as a consequence of the Union's alleged fraud, an essential element of a fraud claim under Ohio law.

that each misrepresentation or concealment alleged in the complaint directly concerns the effect of the 1979 Delco contract on petitioners' seniority-based transfer rights. The Union allegedly "tr[ie]d to keep secret the abrogation of the Bridge Agreement" by the 1979 contract. *Ibid.* Its president allegedly represented that rights acquired under the Bridge Agreement were "being fully recognized, preserved and perpetuated equitably and equally as to each [red-circled Delco worker] based on his order of Frigidaire seniority," and that petitioners "had nothing to worry about as they * * * would * * * participate fully in the Chevrolet jobs" in accordance with "the seniority acquired and accumulated at Frigidaire" -- *i.e.*, under the Bridge Agreement. Compl. ¶ 40, App., *infra*, 56a-57a.

In order to determine if these alleged representations were false, or if the Union concealed some material fact, a court would have to interpret the 1979 Delco contract to see what rights it gave petitioners. In addition, a court would have to interpret various labor contracts simply in order to understand what was allegedly misrepresented by the Union. The content of the rights petitioners say they were told they retained under the 1979 contract are not to be found in the very general representations the Union is supposed to have made, but in the Bridge Agreement and the other collective-bargaining agreements that established and specified the flow rights to which those general representations referred. See Compl. ¶¶ 39-40. Then, because petitioners' claim

they were told they would have rights to transfer to *Chevrolet* jobs based on their *Frigidaire* seniority (*ibid.*), the court would have to interpret the 1979 *Frigidaire* and *Chevrolet* agreements that gave *Frigidaire* workers rights to recall to *Chevrolet*. As if that were not enough, the requirement under Ohio law that a fraud plaintiff prove damages would also require the court to determine petitioners' rights under the agreement in effect before the 1979 *Delco* contract, as a baseline against which to measure the claims that the alleged misrepresentations and concealments harmed petitioners.

2. *Petitioners' Tortious Interference Claims.* Much of the same close analysis of collective-bargaining agreements would be essential to a resolution of petitioners' tortious interference with contract claims. These claims are based on the notion that the Union's alleged representations created a contract and that respondents tortiously interfered with petitioners' enjoyment of rights under that contract. Pet. 10-12, 55; Compl. ¶¶ 39-40, 74-80. Petitioners blithely assert that the Bridge Agreement is irrelevant to a determination whether a contract was created under Ohio law by the Union's alleged promises. Pet. 56-57. It is clear, however, as the court of appeals recognized (Pet. App. 20), that the terms of the alleged contract must derive from the Bridge Agreement and the other labor agreements that created and specified the flow rights that *Frigidaire* and *Delco* workers previously enjoyed. The promises the Union allegedly made were that

petitioners would be entitled to jobs at the new Chevrolet plant in accordance with flow rights originally established by, and with the seniority accumulated under the terms of, the Bridge Agreement. Compl. ¶¶ 39-40. A court adjudicating petitioners' tortious interference claims would thus have to analyze the Bridge Agreement to give content to the contract said to have been created by the Union's representations. Then, since the entitlement of those with Frigidaire seniority to jobs at Chevrolet was dependent on the 1979 Frigidaire and Chevrolet agreements, the court would necessarily have to interpret those agreements as well.

Petitioners' reliance on *Caterpillar* is misplaced. See Pet. 16, 54-55. The state breach of contract claims at issue in *Caterpillar* were founded on an employer's promises of permanent job security, made entirely separate from any collective agreements at a time when the plaintiffs were not even members of any bargaining unit. The terms of the alleged contracts were clear and wholly independent of any collective-bargaining agreements, so the state law claims did not "rely upon the collective agreement indirectly, nor * * * address the relationship between the individual contracts and the collective agreement." 482 U.S. at 395.

Here, petitioners assert that the Union represented that the "seniority acquired and accumulated at Frigidaire" under the Bridge Agreement continued to govern and that "accordingly" petitioners would "participate fully in the Chevrolet jobs." Compl. ¶ 40, App., *infra*, 56a-57a. Petitioners' claims thus "rely upon" the

Bridge Agreement -- and the 1979 Frigidaire and Chevrolet collective-bargaining agreements as well -- to provide the terms of the contract they allege was created, and a court deciding petitioners' tortious interference claims would have to "address the relationship between the [alleged] individual contracts" and these three labor agreements. 482 U.S. at 395.

In sum, this is not a case in which it can plausibly be argued that state claims are in any sense independent of collective-bargaining agreements. Interpretation of a multiplicity of labor contracts would be essential to adjudication of petitioners' fraud and tortious interference claims, and would give rise to exactly that disruption of the federal regulatory scheme that this court decried in *Lucas Flour*.

B. The Court Of Appeals' Decision That Petitioners' Fraud And Tortious Interference Claims Are Preempted Is Not In Conflict With Decisions Of Other Courts of Appeals

Petitioners argue that the decision below is in conflict with *Wells v. General Motors Corp.*, 881 F.2d 166 (5th Cir. 1989), cert. denied, 495 U.S. 923 (1990) -- a case they did not even cite in their court of appeals briefs. But the Sixth Circuit here and the Fifth Circuit in *Wells* both applied the preemption standards set out in this Court's precedents. Compare *supra*, at ___-___, with 881 F.2d at 172-173. They reached different results only because they faced very different factual circumstances.

In *Wells*, a collective-bargaining agreement known as the Voluntary Termination of Employment Plan (VTEP) provided that employees of GM's Packard Electric plant who agreed to resign their jobs would receive severance pay. 881 F.2d at 168. The VTEP was totally silent as to the future employment eligibility of workers who elected to resign under this plan. *Id.* at 174. Some employees who took advantage of the VTEP later reapplied for work at Packard but were allegedly told that they were ineligible for rehire. *Id.* at 168. These employees filed suit claiming state law fraud and misrepresentation, alleging that a GM representative had told them prior to their election of VTEP benefits that they could subsequently be rehired if new jobs were created, "although they would have to apply like everyone else." *Ibid.* The Fifth Circuit held that "[u]nder these narrow circumstances" the employees' state claims were not preempted (*id.* at 175), because the purported promise of eligibility for rehire was wholly independent of the VTEP. *Id.* at 173-175.

The difference between *Wells* and this case is striking. In *Wells*, the court of appeals held the rehire rights claimed by plaintiffs were not even remotely connected to a collective-bargaining agreement. On the contrary, they were merely rights to apply for a job in the future "like everyone else" (881 F.2d at 168) -- that is, on the same basis as any new applicant approaching GM for a job without benefit of any collectively bargained

seniority or other advantages. Indeed, the Fifth Circuit held that rehire rights are not even mandatory subjects of collective bargaining. *Id.* at 169-170. In consequence, the Fifth Circuit held that plaintiffs' state law fraud claim was "a highly fact-bound one concerning what was said, or promised," by GM's representative (*id.* at 173), and that no term of the VTEP was relevant to the court's inquiry. *Id.* at 173-174.

In the present case, in contrast, a court adjudicating petitioners' fraud and tortious interference claims could not avoid interpreting various collective-bargaining agreements, as we have shown above. In particular, the flow rights at issue in this case were solely a creature of collective bargaining -- and were mandatory subjects of bargaining. See *Master Slack Corp.*, 230 NLRB 1054, 1055 (1977), enforced, 618 F.2d 6 (6th Cir. 1980); *United States Gypsum Co.*, 94 NLRB 112, 114-115 (1951), modified in other respects, 206 F.2d 410 (5th Cir. 1953), cert. denied, 347 U.S. 912 (1954). Red-circled Frigidaire and Delco workers enjoyed seniority, transfer and bumping rights only because these were provided for in the Bridge Agreement, which created those rights and gave them precise content. Frigidaire seniority became a basis for recall rights to the Chevrolet Division solely by virtue of the 1979 Frigidaire and Chevrolet agreements. Petitioners must rely on the collectively-bargained rights created by these agreements to provide the operative terms of the seniority and flow rights they allege they were promised by the Union president. See Compl.

¶¶ 39-40. In contrast to *Wells*, interpretation of collective-bargaining agreements is inescapable in adjudicating petitioners' claims.

Petitioners' fleeting assertion of other conflicts is equally insubstantial. Pet. 26-28. Upon closer inspection, each allegedly conflicting decision can be seen to have rested on the precise role that the collective-bargaining agreement would play in reaching a decision on the state law claims, given the specific facts in issue. In *Anderson v. Ford Motor Company Co.*, 803 F.2d 953 (8th Cir. 1986), cert. denied, 483 U.S. 1011 (1987), for example, Ford allegedly told plaintiffs before they were hired that they would be permanent employees and would not be bumped by employees who had preferential hiring rights pursuant to a collective-bargaining agreement. *Id.* at 955. Applying the *Lueck* test, the court of appeals held that state law fraud and breach of contract claims filed by the plaintiffs after they were displaced by preferential hirees were not preempted: the state claims were totally independent of any collective-bargaining agreement. *Id.* at 956-957. The right not to be bumped did not at all depend on a collective-bargaining agreement. Indeed, the representations alleged to have created that right were "made before the time [plaintiffs] became employees of [Ford], that is, before the time they were even covered by the collective bargaining agreement." *Id.* at 958. See also *Berda*, 881 F.2d 20 (no § 301 preemption of state claims based on pre-employment representation that plaintiff

would not be laid off, where no labor contract would have to be interpreted to decide the claim); *Fox v. Parker Hannifin Corp.*, 914 F.2d 795, 801 n.5 (6th Cir. 1990) (individual contract rights predating or created after the expiration of a labor contract may give rise to viable state law claims).

In the present case, the seniority and flow rights allegedly represented by the Union to have survived the 1979 Delco agreement were those "acquired and accumulated at Frigidaire" under the Bridge Agreement, and which had been translated into an entitlement to Chevrolet jobs by virtue of the 1979 Frigidaire and Chevrolet agreements. Compl. ¶¶ 39-40. In other words, the very source of the rights represented to exist by Local 801's president was a series of collective-bargaining agreements.^{6/}

Contrary to petitioners' assertion (Pet. 26-27) the court of appeals' decision does not conflict with *Karetnikova v. Trustees of*

^{6/} Petitioners also cite *Hanks v. General Motors Corp.*, 906 F.2d 341 (8th Cir. 1990), *Anderson v. United Auto Workers*, 738 F. Supp. 441 (D. Kan. 1990), and a dissenting opinion in *McCormick*, 934 F.2d 531, as evidencing a conflict among the lower courts in the application of Section 301 preemption standards. Pet. 26-28. These cases do not involve fraud or tortious interference, but are primarily concerned with state law emotional distress claims. See pp. ___-___, *infra*. In *Milne Employees Ass'n v. Sun Carriers, Inc.*, 1991 U.S. App. LEXIS 27786 (9th Cir. 1991), also referred to by petitioners in passing (Pet. 48-49), the court of appeals held that state tortious interference claims were preempted, but that certain fraud claims were not. The decision was based on a careful analysis of plaintiffs' allegations and the elements of the state causes of action in light of the *Lueck* test. Unlike the flow rights at issue here, the fraud claims held not to be preempted in *Milne* did "not originate in or refer to rights and duties derived from the collective bargaining agreement" (*Milne* at *17).

Emerson College, 725 F. Supp. 73 (D. Mass. 1989), or *Paradis v. United Technologies*, 672 F. Supp. 67 (D. Conn. 1987). In *Karetnikova*, the district court permitted a state law civil rights claim to proceed where a college had allegedly failed to grant plaintiff tenure because of her political views. As in *Lingle*, plaintiff's claim raised purely factual questions about whether the board's tenure decision was motivated by plaintiff's exercise of First Amendment rights and did not involve rights under any collective-bargaining agreement. 725 F. Supp. at 79-80. Moreover, the court held that those rights were "at least in part" beyond the scope of collective bargaining, like the rights in question in *Lingle* -- but unlike the seniority and flow rights at issue in this case. *Id.* at 81-82.

Similarly, in *Paradis* the district court applied the *Lueck* standard to a state law fraud claim premised on an allegation that an employer fired the plaintiff for prior drug use after representing that it would not do so. The court held that this fraud claim required no interpretation of a labor contract provision authorizing termination for just cause, because to succeed on the state claim the plaintiff "need only show that [his] termination was contrary to what defendant promised, not that it was unjust." 672 F. Supp. at 71. In the instant case, what the Union allegedly promised petitioners is the continuation of rights created by the Bridge Agreement, and the availability to red-circled Delco workers of jobs at the Chevrolet plant on the

same terms enjoyed by red-circled Frigidaire workers under the 1979 Frigidaire and Chevrolet labor contracts. Moreover, the Union's alleged representations directly concerned the effect of yet another collective-bargaining agreement, the 1979 Delco contract. In this case, unlike *Paradis*, interpretation of collective-bargaining agreements would thus be central to any decision on petitioners' state law claims.

II. THE COURT OF APPEALS' HOLDING THAT PETITIONERS' EMOTIONAL DISTRESS CLAIMS ARE PREEMPTED WAS CORRECT AND CONSISTENT WITH DECISIONS OF OTHER COURTS.

The fourth count of petitioners' complaint alleged that GM and the Union tortiously caused them emotional distress. Compl. ¶¶ 81-83, 89, App., *infra*, 63a-64a. Petitioners agree (Pet. 60-62) that to succeed on this cause of action under Ohio law they would have to prove that respondents engaged in "extreme and outrageous" conduct which caused them emotional distress. Pet. App. 21, quoting *Yeager v. Local Union 20*, 453 N.E.2d 666, 671 (Ohio 1983).

The factual allegations upon which this count is grounded are particularly murky. The district court, believing it had considered "each of the possible [emotional distress] claims" stated in the complaint (App., *infra*, 27a), thought petitioners were alleging that GM and the Union acted outrageously in proposing, presenting, and urging adoption of the February 23, 1979 Frigidaire contract and the September 18, 1979 Memorandum of Agreement that reaffirmed that contract. *Id.* at 27a-32a. In the

court of appeals, and again here, petitioners suggest in addition that the Union acted outrageously in concealing the fact that the 1979 Delco agreement "omitted" and "abandon[ed]" the Bridge Agreement. Pet. 9. Finally, to confuse matters further, petitioners relied below (Br. 33-34) and in their Petition (Pet. 60) on *Farmer v. Carpenters*, 430 U.S. 290 (1977) -- a *Garmon* preemption case concerning the preemptive effect on state emotional distress claims of the NLRB's primary jurisdiction over unfair labor practice complaints. Section 301 preemption was not even an issue in *Farmer*. *Id.* at 295 & n.5.

Under *Lueck*, petitioners' emotional distress claims are plainly preempted insofar as they are based on alleged concealment or misrepresentations about the effect of the collective-bargaining agreements. Compl. ¶¶ 25, 27-28, 31, 35; Pet. 9. As the district court noted, the outrageousness of that alleged conduct "simply cannot be judged in a vacuum," but would require the court to "analyz[e] how the terms of the collective bargaining agreements were changed." App., *infra*, 28a. As we have shown, that would mean interpreting the Bridge Agreement and the 1979 Frigidaire, Delco and Chevrolet contracts. Insofar as petitioners were alleging that the Union failed to notify them and to allow them to participate in the ratification of the 1979 *Frigidaire* agreement, that would not only require careful examination of the various collective-bargaining agreements, but also interpretation of the Union constitution and by-laws and application of the LMRDA to

determine which employees were entitled to participate in the ratification.

The court of appeals -- at petitioners' invitation (see Br. 33-34; Pet. App. 22) -- took a different approach to determining whether petitioners' emotional distress claims are preempted, analogizing the Section 301 inquiry to that set out in *Farmer*. *Farmer* held that because the states have a substantial interest in protecting their citizens from tortious infliction of emotional distress (430 U.S. at 304), only claims that pose "a realistic threat of interference with the federal regulatory scheme" are preempted by reason of the NLRB's primary jurisdiction over union discrimination complaints. *Id.* at 305. By analogy to *Farmer*, the court of appeals acknowledged that a properly-pleaded claim of outrageous conduct in a case similar to this one might escape preemption. Pet. App. 25. But because petitioners made no "specific allegations of outrageous conduct," and instead merely alleged that GM and the Union concealed information about the 1979 collective-bargaining agreements -- "issues central to the concerns of federal labor law" -- petitioners' claims were preempted. Pet. App. 25.

Whatever the merits of the court of appeals' analogy to *Farmer*, it is clear that the decision below does not warrant this Court's review. The court of appeals determined that petitioners' claims are preempted because they failed specifically to allege any outrageous conduct. That is essentially a factual determination,

and one as to which petitioners cite no conflicts among the circuits or other grounds that would warrant a grant of certiorari. The court of appeals' insistence that a plaintiff asserting an emotional distress claim allege some outrageous conduct is a reasonable way to ensure that state claims that would interfere with the federal regulatory scheme are not permitted to proceed. Moreover, the court's analysis led to precisely the result demanded by *Lueck*, and for the same ultimate reason -- that in substance petitioners' claims are about the terms of collective-bargaining agreements.^{7/}

^{7/} As the court of appeals noted (Pet. App. 21), under the law of Ohio a claim of tortious infliction of emotional distress requires allegations of conduct that is "extreme and outrageous." *Yeager*, 453 N.E.2d at 671. Here the court of appeals, crediting all of the well-pleaded facts in the complaint, found no "specific allegations of outrageous conduct." Pet. App. Before attempting to reconcile federal labor law with state common law governing claims of outrageous conduct, this Court should await a case in which the elements of the state law cause of action are actually pleaded.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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