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Abstract: Federal labor laws generally preempt state laws that conflict with or frustrate the federal labor scheme. In Air Line Pilots Association, International v. UAL Corp., the Seventh Circuit held that federal law did not preempt an anti-takeover statute that invalidated anti-takeover provisions in a collective bargaining agreement. This Note analyzes the court's holding and suggests that the court misapplied judicial precedent. Because state anti-takeover laws as applied to labor agreements conflict with and frustrate the federal labor scheme, this Note concludes that these state laws should be preempted.

Corporate takeovers, while not a new phenomenon, have taken on a new character in recent years. Takeover attempts often result in reorganization, restructuring, or dismemberment of target corporations. These changes, whether made by successful bidders or management, can jeopardize employee job security.1 To assure job security, labor organizations representing corporate employees may desire to negotiate with management to establish protective devices to make tender offers less likely or to maintain job security if tender offers succeed.2 Federal labor law governs such negotiations.3 After labor organizations or management initiate these negotiations, however, the potential for conflict with state law arises. While Congress has federalized most labor law, it has left the regulation of corporate management to the states.4


3. See infra text accompanying notes 10–22.

4. See CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69, 91 (1987). State law applies the business judgment rule in defining the duties of corporate directors. See, e.g., Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 954 (Del. 1985). In the face of takeover attempts, directors must prove they acted in good faith and with reasonable investigation. Id. at 954–55. In addition, corporate management must prove that any defensive actions taken in the face of a
Federal courts first addressed the conflict between federal labor law and state corporate anti-takeover law in *Air Line Pilots Association, International v. UAL Corp.* In this case, UAL's management reached a collective bargaining agreement with the machinists' union that included provisions aimed at discouraging a pending tender offer by the pilots' association. The pilots' association brought suit against UAL and the machinists to invalidate these provisions. Resolution of this case required the courts to consider whether federal labor law preempted the application of state anti-takeover law. The district court held that federal labor law preempted state law. On appeal, the Seventh Circuit reversed, holding that state law was not preempted. This Note analyzes the Seventh Circuit's holding and concludes that Supreme Court precedent dictates that collective bargaining agreements made in accordance with federal labor law preempt state anti-takeover law.

I. THE SCOPE OF FEDERAL REGULATION IN THE LABOR FIELD

A. Labor Negotiations and Agreements Under Federal Law

The federal government has exercised its authority over labor negotiations in two major statutes, the Railway Labor Act (RLA) and the National Labor Relations Act (NLRA). These statutes regulate the process of negotiations and define certain areas over which parties
must negotiate; they do not, however, regulate the substance of the agreements that parties reach.\textsuperscript{12}

Once company employees have voted for a union representative, courts characterize RLA disputes either as minor or major.\textsuperscript{13} Major disputes concern the formation or alteration of collective bargaining agreements and arise when either management or labor wishes to change the collective bargaining agreement.\textsuperscript{14} Parties to a major dispute must follow the mandatory procedures set out in RLA section 156 which requires carriers and representatives of the employees to give at least thirty days notice of an intended change in agreements affecting rates of pay, rules, or working conditions.\textsuperscript{15} While section 156 is limited to matters of pay, rules, and working conditions, courts have interpreted these mandatory bargaining areas to include a broad range of topics.\textsuperscript{16}

Interpreting the collective bargaining duties imposed by the NLRA,\textsuperscript{17} the Supreme Court has characterized the topics for bargaining as illegal,\textsuperscript{18} permissive,\textsuperscript{19} and mandatory. Mandatory topics of bargaining define and control the relationship between the employer and the union\textsuperscript{20} and include the broadly defined areas of wages, hours, and other terms and conditions of employment.\textsuperscript{21} The NLRA also

\begin{itemize}
  \item \textsuperscript{12} NLRB v. Insurance Agents' Int'l Union, 361 U.S. 477, 490 (1960).
  \item \textsuperscript{14} 45 U.S.C. § 156 (1982).
  \item \textsuperscript{15} Id.
  \item \textsuperscript{17} 29 U.S.C. § 158(a)(5), (b)(3) (1982).
  \item \textsuperscript{20} R. Gorman, supra note 19, at 497.
mandates that management and labor negotiate over “other mutual aid or protection.”

B. Federal Labor Law Preemption

Federal labor law preempts state law that conflicts with or frustrates the purposes of the RLA or NLRA. Within this broad scope of pre-emption, bargaining agreement preemption displaces state law that limits the content of labor agreements.

1. The Scope of Preemption Under the RLA and NLRA

Article VI of the United States Constitution states that the federal Constitution and federal laws are “the supreme Law of the Land.” Under the Supremacy Clause, federal laws may preempt state laws that create duties contrary to federal duties, that undermine federal purposes, or that operate in fields occupied exclusively by federal law. In the area of labor, Congress has never entirely occupied the field nor stated explicitly to what extent federal law preempts state law. Consequently, courts will uphold a local regulation “unless it conflicts with federal law or would frustrate the federal scheme.”

Applying these general standards, courts have developed complex preemption doctrines for both the RLA and NLRA. RLA and NLRA preemption decisions fall into four areas: bargaining agree-
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ment preemption,28 bargaining process preemption,29 primary jurisdiction preemption,30 and contract interpretation preemption.31

2. Bargaining Agreement Preemption Under the RLA and NLRA

Courts apply bargaining agreement preemption to displace state laws that limit the content of labor agreements. Congress has never clearly defined the appropriate scope of bargaining; therefore, federal labor laws give limited guidance for the application of bargaining agreement preemption. Although parties are free to bargain about any legal subject, Congress created basic areas of mandatory bargaining.32 Even within these mandatory areas, Congress chose to leave the specific terms of collective bargaining agreements to the parties.33 Consequently, courts hold as preempted state laws that attempt to dictate what terms parties may include in collective bargaining agreements.

Bargaining agreements preempt state law for two reasons. First, states interfere with the bargaining process by dictating what parties may include in a contract.34 The Supreme Court has held that states may not render bargaining meaningless by controlling what subjects the parties may include in the final contract.35 Second, state laws con-

28. This Note focuses on this type of preemption.
30. Primary jurisdiction preemption occurs when state law arguably infringes on a federal agency's specific jurisdiction. See Andrews v. Louisville & N. R.R., 406 U.S. 320, 322-24 (1972) (the primary jurisdiction of the National Railroad Adjustment Board preempts state law); Garmon, 359 U.S. at 246 (the exclusive jurisdiction of the National Labor Relations Board preempts state law).
31. State law claims that depend on interpretation of terms in labor contracts can destroy the uniformity of labor-related federal common law; therefore, courts apply contract interpretation preemption to hold these state laws claims preempted. See Leu v. Norfolk, 820 F.2d 825, 829 (7th Cir. 1987) (applying the RLA to preempt state law); Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 220 (1985) (applying the NLRA to preempt state law).
32. First Nat'l Maintenance Corp. v. NLRB, 452 U.S. 666, 674 (1981); see supra notes 10-22 and accompanying text.
33. Id. at 675-76 & n.14.
lict with federally sanctioned collective bargaining agreements by deeming the provisions of such agreements illegal. The Supreme Court has held that congressional authorization of the bargaining process endows collective agreements with the authority of federal law. Thus, federal law preempts state laws that obstruct bargaining or conflict with federally authorized agreements.

Courts have applied bargaining agreement preemption under the RLA. In the leading case of California v. Taylor, the Supreme Court held that a collective bargaining agreement preempted the application of conflicting California civil service laws. Other courts have preempted state statutes of limitations and state industrial commission orders when the state laws have conflicted with labor agreements.

The Supreme Court also has considered bargaining agreement preemption under the NLRA. First, in Local 24, International Brotherhood of Teamsters v. Oliver, the Court held that a federally sanctioned collective bargaining agreement providing minimal rental fees for independent truck owner-operators preempted an Ohio antitrust law prohibiting price-fixing. The Court concluded that there was no room in the labor scheme for the application of state policies that limited bargaining solutions. Later, in Malone v. White Motor Corp., the Court held that a bargaining agreement did not preempt a Minnesota law that established minimum pension standards, because Congress envisioned such state regulation. In dictum, however, the Court explained that it had not departed from its holding in Oliver. Taken together, Oliver and Malone establish a general rule for bargaining agreement preemption.

36. Railway Employes' Dep't v. Hanson, 351 U.S 225, 232 (1956); see infra note 93.
37. Id.
38. Oliver, 358 U.S. at 296.
40. Id. at 561.
44. Id. at 296.
45. Id.
47. Id. at 514. Three dissenting justices in Malone felt that the Oliver standard justified preemption of the Minnesota law. See id. at 515 (Stewart, J., dissenting); id. at 516 (Powell, J., dissenting).
48. Id. at 514.
In applying bargaining agreement preemption, the Supreme Court has established three limited exceptions under which courts will not hold state law preempted. The Court recognizes exceptions for those areas that Congress intended to leave open for state regulation, for laws that regulate local health and safety, and for state legislation that imposes minimal substantive requirements on contract terms.

II. AIR LINE PILOTS ASSOCIATION, INTERNATIONAL V. UAL CORP.

In Air Line Pilots Association, International v. UAL Corp., the association representing the pilots of UAL Corporation (UAL) planned a tender offer for all of UAL's common stock. UAL's machinists, fearing that the pilots would reduce machinist wages, benefits, and employment levels if the takeover succeeded, proposed anti-takeover provisions during labor negotiations with UAL's management. The machinists and management agreed to include two provisions in the machinists' collective bargaining agreement. First, section B(1)(b) provided that if a takeover succeeded the union could unilaterally serve a notice to initiate negotiations; if these negotiations proved unsuccessful, the machinists could strike. Second, section C required UAL to offer all unionized employees an employee stock option plan (ESOP) under prescribed conditions if a takeover succeeded. This provision would have significantly diluted the pilots' ownership and control upon takeover.

The pilots' association sued UAL and the machinists to enjoin the anti-takeover sections. The pilots alleged that section C violated the RLA, and sections B(1)(b) and C violated Delaware anti-takeover law.

50. Malone, 435 U.S. at 514; see infra text accompanying notes 100-03.
51. Local 24, Int'l Bhd. of Teamsters v. Oliver, 358 U.S. 283, 297 (1959); see infra text accompanying note 104.
53. 874 F.2d 439 (7th Cir. 1989). For the procedural history of this case, see supra note 5.
54. UAL Corporation, formerly known as Allegis Corporation, is the parent company of United Air Lines.
56. Id. at 1316–26.
57. Id. at 1326. This provision reiterates the statutory rights of the union under section 156 of the RLA, 45 U.S.C. § 156 (1982).
59. This Note does not address either of these substantive issues. See supra note 7.
over law to invalidate provisions of the collective bargaining agreement.

The district court held that the RLA preempted Delaware anti-takeover law. First, the court invoked bargaining agreement preemption, holding that the state law would frustrate the purposes of the RLA. Second, the court applied contract interpretation preemption, holding that any violation of state law depended on the interpretation of a labor agreement.

On appeal, the Seventh Circuit reversed, holding that this case did not justify federal preemption. The court held that the theoretical possibility of conflict between the federal and state laws was not enough to justify preemption. The court further held that the purposes of federal labor laws would not be frustrated by state anti-takeover laws. It reasoned that Congress did not intend federal labor laws to prevent states from determining the legality of activities through laws of general applicability. The court also held that the state's interest in controlling anti-takeover provisions outweighed the federal interest in avoiding the interference of state laws.

III. BARGAINING AGREEMENT PREEMPTION OF STATE ANTI-TAKEOVER LAW

Due to conflicts between labor agreements and state law, UAL Corp. raises a question of bargaining agreement preemption. Under bargaining agreement preemption, federal labor law should preempt state anti-takeover law for two reasons: first, state anti-takeover laws directly conflict with federal labor law; and second, anti-takeover laws frustrate the purposes of federal labor law.

A. The Conflict of State Anti-Takeover Law with Federal Labor Law

State anti-takeover laws conflict directly with federal labor law in two vital ways. First, state laws may conflict with the federal mandate

60. UAL Corp. I, 699 F. Supp. at 1334.
61. Id. at 1333.
62. Id. at 1332. Here, contract interpretation preemption seems misplaced. While this analysis would be appropriate if the pilots' association had sued for damages, the analysis does not apply to a direct challenge to the validity of a labor agreement. See supra note 31.
63. Air Line Pilots Ass'n, Int'l v. UAL Corp., 874 F.2d 439, 447 (7th Cir. 1989) (UAL Corp. II).
64. Id. at 446.
65. Id.
66. Id.; see infra text accompanying notes 130-33.
67. UAL Corp. II, 874 F.2d at 447; see infra text accompanying notes 134-40.
that employers and employees bargain over anti-takeover provisions such as ESOP and contract expiration clauses. Second, anti-takeover laws may attempt to invalidate federally sanctioned collective bargaining agreements. Whereas bargaining agreement preemption normally requires state laws that conflict with federal labor law to yield, the Supreme Court has recognized three exceptions to this general preemption rule; anti-takeover laws, however, do not fall within these exceptions.

I. State Anti-Takeover Law Conflicts with the Federally Mandated Duty to Bargain

State anti-takeover law directly conflicts with federal labor law that mandates bargaining over anti-takeover provisions. UAL Corporation's management had a mandatory duty to bargain with the machinists over the two anti-takeover provisions. Similar anti-takeover provisions such as job security agreements, severance pay agreements, and successorship clauses also create mandatory duties to bargain.

In conflict with these mandatory duties, state anti-takeover laws, in effect, may prohibit inclusion of anti-takeover provisions in labor

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68. The duty to bargain over decisions to sell or close part or all of a business is beyond the scope of this Note. The Supreme Court has, however, indicated that employers need not negotiate over such core management decisions. First Nat'l Maintenance Corp. v. NLRB, 452 U.S. 666, 686 (1981). Anti-takeover provisions can take many forms other than provisions addressing a decision to sell or abandon a corporation. See infra notes 70–73 and accompanying text.

69. Because bargaining over anti-takeover provisions has not been litigated prior to UAL Corp., no holding states precisely this point; nevertheless, well developed case law concerning the duty to bargain leaves little doubt that parties must negotiate over the anti-takeover provisions discussed in this Note. See supra notes 16, 21.

70. The first protective provision preserved the machinists' statutory right under section 156 of the RLA. 45 U.S.C. § 156 (1982); UAL Corp. II, 874 F.2d at 442. Though unions customarily waived this right in negotiations, Air Line Pilots Ass'n, Int'l v. UAL Corp., 717 F. Supp. 575, 580 (N.D. Ill. 1989) (UAL Corp. II), the parties still had an obligation to negotiate over the waiver. Cf supra notes 16, 21.

The second protective provision dealt with an ESOP. The Seventh Circuit recognized this provision as a wage substitute and a mandatory subject of bargaining. UAL Corp. II, 874 F.2d at 445. Similarly, other courts have found stock purchase and profit sharing plans to be mandatory subjects of bargaining. See supra note 21.


72. Severance pay agreements fall within the Court's rule that employers must negotiate over the effects of abandonment or sale. See First Nat'l Maintenance Corp. v. NLRB, 452 U.S. 666, 677–78 n.15 (1981).

73. Lone Star Steel Co. v. NLRB, 639 F.2d 545, 556 (10th Cir. 1980), cert. denied, 450 U.S. 911 (1981).
agreements. In *UAL Corp. III*, for example, the district court concluded that, when applying the rule that management actions must be reasonable in relation to the threat posed by a hostile bid, any labor agreement's anti-takeover provisions will necessarily violate Delaware law because the irredeemable nature of such provisions makes them unreasonable. Federal and state laws therefore conflict, because state law prohibits the inclusion of a federally mandated bargaining subject in an agreement.

The Seventh Circuit failed adequately to consider this irreconcilable conflict between state and federal laws. The court granted that "the even-handed application of Delaware corporation law might forbid an anti-takeover measure contained in a labor contract," but found no justification for protecting such measures. The court held that such contract provisions did not warrant the protection of labor laws since the provisions were not necessary to reduce the number of transportation strikes and were not commonly included in labor agreements. These conclusions by the Seventh Circuit, however, ignore the weight of judicial authority.

First, the Seventh Circuit ignored the fact that labor law mandates bargaining over the subjects of sections B(1)(b) and C. While federal law does not dictate inclusion of these particular provisions, interference with the right to negotiate over them would frustrate the goals of federal labor law. As Justice Harlan noted: "The right to bargain

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74. In *UAL Corp. III*, the district court suggested that it did not intend that every anti-takeover provision in a collective bargaining agreement receive heightened review under state law. 717 F. Supp. at 586. Despite this disclaimer, the court stated: "A board of directors, however, cannot under the guise of labor relations accomplish what state law prohibits." *Id.* This statement implies that all labor provisions must conform to state law. In the case of anti-takeover provisions, if the irredeemable nature of these provisions makes them unreasonable and unfair, then such provisions must violate state law.


76. 717 F. Supp. at 588; see supra note 7.

77. Air Line Pilots Ass'n, Int'l v. *UAL Corp.*, 874 F.2d 439, 446 (7th Cir. 1989) (*UAL Corp. II*).

78. *Id.*

79. See 45 U.S.C. § 156 (1982); 29 U.S.C. § 158(a)(5), (b)(3) (1982); see also supra notes 16, 21-22, 70. The Seventh Circuit never addressed the mandatory nature of these sections in its preemption discussion. Earlier in its decision, however, the court held section C to involve a mandatory subject of bargaining. *UAL Corp. II*, 874 F.2d at 445.

80. "The application [of state law] would frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving, and in the solution of which it imposed no limitations relevant here." Local 24, Int'l Bhd. of Teamsters v. Oliver, 358 U.S. 283, 295-96 (1959); cf. Texas & N. O. R. Co. v. Brotherhood of Ry. & S.S. Clerks, 281 U.S. 548, 570 (1930) ("Such collective action would be a mockery if representation were made futile by interferences with freedom of choice.").
becomes illusory if one is not free to press a proposal in good faith to the point of insistence." 81

Second, the Seventh Circuit erroneously decided that anti-takeover provisions do not serve the purposes of the RLA because they do not reduce the number or severity of transportation strikes. 82 In this analysis, the court failed to mention that another purpose of the RLA is "to provide for the prompt and orderly settlement of all disputes" 83 concerning such mandatory subjects. Sections B(1)(b) and C fulfilled this latter purpose. Moreover, these anti-takeover provisions may have prevented a transportation strike. After UAL and the machinists had reached a stalemate in negotiations, the machinists resurrected their anti-takeover proposals. 84 The parties then reached an agreement because the machinists granted major concessions in exchange for these provisions. 85

Finally, even if the anti-takeover provisions did not prevent a strike in this case, by applying state law to void legitimate labor agreement provisions, the court's approach could increase the chance of future strikes. 86 The Supreme Court has recognized that such theoretical possibilities justify labor preemption. 87 In short, because sections B(1)(b) and C fulfill both the settlement and strike avoidance purposes of the RLA, federal law should preempt any state attempt to regulate these labor agreement provisions.

Third, the Seventh Circuit mistakenly assumed that a lack of litigation over anti-takeover provisions eliminated the necessity for protecting these provisions under federal labor law. 88 While courts consider industry bargaining patterns when defining the proper scope of mandatory bargaining, past practice is only one indication of this

82. UAL Corp. II, 874 F.2d at 446.
83. H. Lustgarten, supra note 16, at 243-44. In all, the RLA listed five purposes for the Act. Id.
85. Id. at 1326. For a discussion of these concessions, see infra note 115.
86. "By encumbering carriers with additional duties arising out of state law, the collective bargaining process will be impaired. Forcing carriers to comply with state law duties in addition to those imposed by the RLA may make the difference between striking an agreement and just plain striking." UAL Corp. I, 699 F. Supp. at 1333.
88. Air Line Pilots Ass'n, Int'l v. UAL Corp., 874 F.2d 439, 446-47 (7th Cir. 1989) (UAL Corp. II).
Any absolute rule limiting mandatory bargaining to past practice could stifle the expansion of collective bargaining into new areas and prevent the adaptation of labor law to changing conditions. Regardless, sections B(1)(b) and C were not innovative and untested provisions. ESOP and contract expiration clauses have been recognized as mandatory subjects of bargaining for the past thirty years. Because sections B(1)(b) and C concern mandatory subjects of bargaining, federal law should protect them through bargaining agreement preemption.

2. State Anti-Takeover Law Conflicts with Federally Sanctioned Labor Agreements

Aside from the direct conflict between federal and state laws, state anti-takeover laws should be preempted because they attempt to invalidate federally sanctioned labor agreements. Such collective bargaining agreements carry the authority of federal law. As noted by the Supreme Court, “the paramount force of the federal law remains even though it is expressed in the details of a contract federal law empowers the parties to make, rather than in terms in an enactment of Congress.” Because such agreements are equivalent to congressionally approved legislation, they preempt conflicting state laws.

The Seventh Circuit failed to address this issue. Even if Delaware’s anti-takeover law does not directly conflict with a federal statute, the state’s law does conflict with a federally sanctioned collective bargaining agreement. Yet, the court applied state law to strike down the

89. See First Nat’l Maintenance Corp. v. NLRB, 452 U.S. 666, 675–76 n.14 (1981); California v. Taylor, 353 U.S. 553, 560 (1957) (parties have the right to bargain about the exceptional as well as the routine).

90. Current corporate practices have raised issues which Congress could not foresee when it passed the RLA and NLRA. See First Nat’l Maintenance Corp., 452 U.S. at 679. Likewise, future changes in corporate practices could cause a continued metamorphosis of bargaining subjects.

91. Ironically, anti-takeover provisions are common enough that the pilots’ association, plaintiffs in this case, had sought them in negotiations with other airlines. Air Line Pilots Ass’n, Int’l v. UAL Corp., 699 F. Supp. 1309, 1312 (N.D. Ill. 1988) (UAL Corp. I).

92. See supra note 70.

93. “A union agreement made pursuant to the Railway Labor Act has, therefore, the imprimatur of the federal law upon it and, by force of the Supremacy Clause of Article VI of the Constitution, could not be made illegal nor vitiated by any provision of the laws of a State.” Railway Employes’ Dep’t v. Hanson, 351 U.S. 225, 232 (1956).


96. Oliver, 358 U.S. at 296–97.
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parties' federally sanctioned agreement. This holding places state law above federal law and contravenes Supreme Court precedent.

The preemption of state law in this case would comport with judicial precedent. The Supreme Court has held state antitrust laws and state civil service laws preempted when they have conflicted with the terms of collective bargaining agreements. Similarly, lower courts have held state industrial commission orders and state statutes of limitations preempted. These precedents justify the preemption of state anti-takeover laws that conflict with federal labor law. In this case, Delaware anti-takeover law conflicts with the mandatory duty of the parties to bargain over sections B(1)(b) and C, and their concomitant freedom to agree to these terms. Accordingly, Delaware anti-takeover law should be preempted.

3. State Anti-Takeover Law Does Not Fall Within Exceptions to Federal Preemption

While state laws normally must yield to conflicting federal labor laws, the Supreme Court has recognized three limited exceptions to this general preemption rule. However, state anti-takeover laws as applied to labor provisions discussed in this Note do not fall within these exceptions. The first exception applies to areas that Congress intended to leave open for state regulation. The Seventh Circuit found that Congress left corporate regulation to the states, but never discussed whether Congress intended state corporate law to control matters also covered by federal labor law. While the legislative history provides no evidence that Congress specifically considered state anti-takeover laws when it enacted the RLA and NLRA, Congress apparently did intend to avoid legislative interference with collective bargaining agreements. By deciding to leave corporate law to the states, Congress did not decide that state corporate laws would be immune from federal labor law preemption.

The Court has recognized a second exception for state laws that regulate local health and safety. The two provisions in UAL Corp.,

97. Air Line Pilots Ass'n, Int'l v. UAL Corp., 874 F.2d 439, 447 (7th Cir. 1989) (UAL Corp. II).
98. See supra text accompanying notes 39-45.
99. See supra notes 41-42.
101. See UAL Corp. II, 874 F.2d at 447.
102. Indeed, as late as 1968, only one state had an anti-takeover statute. See Edgar v. MITE Corp., 457 U.S. 624, 631 n.6 (1982).
103. H.R. REP. No. 245, supra note 34.
and the other possible anti-takeover provisions discussed in this Note, deal with wage substitutes and contract duration, not local health and safety regulations. The provisions, therefore, fall outside this exception.

A third exception applies to state legislation, such as minimum wage laws, that imposes minimal substantive requirements on labor contracts. The Court justifies this exception as an added protection for workers, and extends it only to requirements placed on employers. In this case, state anti-takeover laws impose no minimum substantive labor requirements and so fall outside the third exception.

The Seventh Circuit did not attempt to fit its decision into one of these three recognized exceptions. Instead, the court mistakenly considered the importance of state corporate law. When state and federal laws conflict, however, the Supremacy Clause requires state laws to yield regardless of their importance.

B. The Frustration of Federal Labor Law Purposes by State Anti-Takeover Laws

The Supreme Court has held that state laws that frustrate the purposes of federal labor law generally must be preempted. However, legislation that only peripherally touches federal labor law and concerns a deeply rooted state interest need not be preempted.

In UAL Corp. II, the Seventh Circuit disregarded Supreme Court precedent, holding that "a judgment about preemption requires a weighing of federal and state interests." The court then discussed two state concerns, but never fully addressed the frustration of federal law.

106. Air Line Pilots Ass’n, Int’l v. UAL Corp., 874 F.2d 439, 447 (7th Cir. 1989) (UAL Corp. II). The Seventh Circuit rested upon the importance of state law despite contrary precedent: in its only consideration of the conflict between state corporate law and federal labor law, the Supreme Court held that state antitrust law was not exempt from bargaining agreement preemption. Oliver, 358 U.S. at 297.
107. See supra text accompanying notes 23–26. For a further discussion of state law considerations, see infra text accompanying notes 134–40.
110. UAL Corp. II. 874 F.2d at 447.
111. Id. at 446–47. For a discussion of the two state concerns, see infra text accompanying notes 129–40.
I. State Anti-Takeover Laws Frustrate Purposes of Federal Labor Law

A full consideration of federal interests reveals that state anti-takeover laws frustrate three of the basic purposes of federal labor law, thereby justifying bargaining agreement preemption. First, anti-takeover laws impinge upon the bargaining process mandated by federal labor law. Congress created a bargaining process based on economic strength and left the outcome of this process to be determined by the parties. State anti-takeover laws may interfere with this process. By voiding certain aspects of the labor agreement in *UAL Corp. II*, the Seventh Circuit retroactively restructured the parties’ bargain, undermining the process of compromise which led to the agreement. The threat of such retroactive restructuring could dangerously decrease the likelihood of innovative labor-management compromises and increase the incentive for management fraud in negotiations.

Second, anti-takeover laws destroy the uniformity of federal labor law. To the extent that states may limit the subjects of bargaining through local legislation, negotiators must adjust bargaining agreements based on local dictate. If some states allowed a particular agreement provision, while others proscribed it, concluding national-

112. See supra note 29.
115. The bargaining process encourages both labor and management to compromise. If labor desires anti-takeover protections, "[n]o doubt it will be impelled, in seeking these ends, to offer concessions, information, and alternatives that might be helpful to management." First Nat'l Maintenance Corp. v. NLRB, 452 U.S. 666, 681 (1981). Assuming that labor agrees to forego other benefits to secure anti-takeover protections, a judicial invalidation of these protections would change the parties' bargain and result in unrewarded concessions by employees. In the present case, IAM agreed to seven-day per week coverage without overtime pay at the San Francisco maintenance base, a concession that United had sought for nearly forty years. *UAL Corp. I*, 699 F. Supp. at 1326. By invalidating the anti-takeover provisions, the court awarded UAL management key concessions at no cost.
116. If courts apply state law to void aspects of labor-management agreements, a party who accepts an untested provision risks losing the provision based on later adjudications of state law. This disincentive to innovation could increase stalemated negotiations and labor unrest.
117. By evaluating anti-takeover provisions in labor contracts based on the actions or intentions of management, courts allow management to negotiate with labor freely. Labor, when it accepts an anti-takeover provision as a trade-off for concessions, gambles that management has acted with proper authority. But misrepresentations of authority would not harm management; instead, such misrepresentations could result in court-restructured contracts favoring management.
wide labor agreements could become impossible. Such an impossibility would have a major impact on bargaining because many labor organizations have nationwide memberships and national or multi-carrier bargaining has become commonplace. Further, if the Seventh Circuit's dictum that Delaware law would not prohibit anti-takeover provisions at all times is to be believed, then the acceptability of an anti-takeover provision could turn on the timing of the proposal within the particular state. This would result in inconsistent labor law even within a particular state. Congress intended to avoid this type of nonuniformity when it created the RLA and the NLRA.

Third, as applied in UAL Corp. II, state anti-takeover laws prevent employees from protecting their collective interests. Federal labor laws guarantee employees the right to bargain for protection of their collective interests. Within this guarantee, ESOP and contract expiration clauses are mandatory subjects of bargaining, and bargaining for anti-takeover provisions could easily fall within the scope of the NLRA's "other mutual aid and protection" clause. Yet, the Seventh Circuit's decision precludes this protection. Moreover, because anti-takeover laws guarantee only consideration of shareholder wealth, not employee interests, these state laws offer employees no means to protect themselves. By placing shareholder

119. Air Line Pilots Ass'n, Int'l v. UAL Corp., 874 F.2d 439, 447 (7th Cir. 1989) (UAL Corp. II); see supra note 74 (discussing the district court's dicta on this issue).
120. Approval of a provision based on its timing might influence the parties' choice of bargaining times, and could create a disincentive to settlement until a provision was legally acceptable.
123. For a discussion of these clauses, see supra note 70.
124. See 29 U.S.C. § 151 (1982). Congress was motivated by a concern for the collective interests of employees when it passed the NLRA; therefore, this clause probably protects against anticipated, but unforeseeable threats to the collective interests of employees. Anti-takeover provisions may provide precisely this type of protection. Because employees have no means to protect their collective interests outside of bargaining, anti-takeover provisions provide the type of fundamental protection against an unforeseen threat which Congress must have intended. See also supra note 22.
125. See supra notes 7, 74.
126. See Dynamics Corp. of America v. CTS Corp., 794 F.2d 250, 256 (7th Cir. 1986) (director action must advance "the goal of stockholder wealth maximization"), rev'd on other grounds, 481 U.S. 69 (1987); Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173, 182 (Del. 1986) (once target's board decides to sell the corporation, it is restricted to conducting a fair and open auction for the exclusive benefit of the shareholders).
127. "The traditional and still dominant view is that managers represent the shareholders... [E]mployees create and protect their interests through contracts with the corporation." Oesterle,
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interests over employee interests, interests the corporation need not consider, the Seventh Circuit leaves employees with no protection from takeovers. 128

2. The Seventh Circuit Erroneously Considered State Interests

State anti-takeover laws frustrate basic purposes of federal labor law and, therefore, should be preempted. Because these state laws do more than peripherally touch labor law, the importance of the state interests behind these laws has no bearing on determination of preemption. 129 Rather than consider the basic federal purposes favoring protection of negotiated anti-takeover provisions, however, the Seventh Circuit considered two state concerns: the validity of state laws of general applicability, and the importance of state corporate law.

First, the court erroneously held that federal labor statutes do not exempt parties to collective bargaining agreements from state laws of general applicability. 130 The Supreme Court, however, has repeatedly rejected any exception to preemption for laws of general applicability. 131 Even if the Supreme Court had not rejected this exemption, state anti-takeover statutes are not laws of general applicability. Anti-takeover laws do not apply to the general public, but narrowly focus on precisely the same business combinations to which labor law applies. 132 Even within this narrow scope, Delaware law allows management to protect itself with golden parachute provisions in executive contracts 133 while denying organized employees the same opportunity for protection. Such discriminatory state laws cannot be described as generally applicable; they are ripe for preemption.

128. Even an anti-takeover agreement achieved through a strike could be invalidated under the Seventh Circuit’s analysis. If management did not properly consider shareholder interests, then a court could void the agreement. See Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 954–55 (Del. 1985). Even if management did consider shareholder interests, in the face of a profitable tender offer a court could still void the agreement as unreasonable in relation to the threat posed since it is non-redeemable. See also supra notes 4, 7.

129. See supra text accompanying notes 108–09.

130. Air Line Pilots Ass’n, Int’l v. UAL Corp., 874 F.2d 439, 446 (7th Cir. 1989) (UAL Corp. II).


Second, the Seventh Circuit recognized corporate law as a matter of primary state responsibility. The court refused "to deal the body blow to state regulation of corporations[,]" reasoning that federal preemption would allow any corporation to "adopt anti-takeover measures with complete impunity, simply by writing them into the collective bargaining agreement." Despite the court's emphatic language, it never identified a deeply rooted state interest in the enforcement of anti-takeover laws and never justified placing this state interest over the basic purposes of federal labor law.

State interests in anti-takeover laws deserve little deference and do not require that these laws be applied to invalidate terms of labor agreements. The only identifiable justification for state anti-takeover laws is to protect corporate shareholders; bargaining agreement preemption, however, would not injure shareholders. Shareholders can hold corporate directors accountable whether or not labor law preempts state law as it applies to labor agreements. If directors agree to self-serving anti-takeover provisions in labor contracts, shareholders may bring suit against the directors for violation of their fiduciary duties as expressed in the business judgment rule. The shareholders may also remove the offending directors, or replace them in the next board election. Federal preemption would not, therefore, deal a "body blow" to state control over corporations; adequate shareholder remedies remain. Moreover, to the extent that the corporation receives important labor concessions in exchange for anti-takeover provisions, shareholder interests may actually be advanced by allowing them.

Even if the state interest in its anti-takeover law is significant, this interest does not justify frustration of the federal labor scheme. None of the Supreme Court cases cited by the Seventh Circuit to establish the importance of state corporate law placed the state interest above

134. UAL Corp. II, 874 F.2d at 447.
135. Id.
136. The Supreme Court has not generally deferred to state anti-takeover laws. See Edgar v. MITE Corp., 457 U.S. 624, 643 (1982) (applying the dormant commerce clause to strike down an Illinois anti-takeover law). In addition, at least one commentator has attacked the motives behind Delaware's corporate laws. See Cary, Federalism and Corporate Law: Reflections Upon Delaware, 83 YALE L.J. 663, 701 (1974) ("a pygmy among the 50 states prescribes, interprets, and indeed denigrates national corporate policy as an incentive to encourage incorporation within its borders, thereby increasing its revenue").
138. See REVISED MODEL BUSINESS CORP. ACT §§ 8.03–8.08 (1985); Auer v. Dressel, 306 N.Y. 427, 118 N.E.2d 590, 593 (1954). While shareholders have the right to challenge present directors, however, such proxy campaigns are rarely successful.
139. This occurred in UAL Corp. See supra note 115.
the federal interest in uniform labor law. Significantly, when the federal labor scheme has conflicted with other important state areas, courts have held state antitrust laws and statutes of limitations preempted.140

IV. CONCLUSION

U AL Corp., a case of first impression, presented a conflict between state anti-takeover law and federal labor law and posed the question whether a state could apply its anti-takeover law to invalidate provisions in a collective bargaining agreement. The Seventh Circuit held that federal labor law did not preempt the application of state anti-takeover law. Despite the court's erroneous holding, the weight of judicial authority indicates that federal labor law required bargaining agreement preemption in this case. Delaware's anti-takeover law directly conflicted with the parties' duty to bargain over mandatory subjects, struck down provisions of a federally sanctioned collective bargaining agreement, and frustrated basic purposes of federal labor law. In particular, application of the Delaware law denied these employees their only opportunity for protection against the harmful effects of a takeover—the right to bargain.

The court should have remedied both the conflict with and the frustration of federal labor law by preempting the Delaware law. Preemption would have preserved the integrity of federal labor law without endangering the rights of corporate shareholders. Shareholders could still challenge self-serving actions by directors through suits for breaches of fiduciary duties and through proxy campaigns.

Future courts that encounter cases where state anti-takeover laws apply to collective bargaining agreements should decline to follow the Seventh Circuit's U AL Corp. decision. These courts instead should apply bargaining agreement preemption to displace state laws.

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140. See supra notes 41–45 and accompanying text.