

The “Labor Peace” Agreement Surge Could Be Cut Short by a Federal Labor Law—But Not the One You’re Thinking Of

by Alex MacDonald

You might think it would be hard to argue with labor peace. But in practice, the concept has been remarkably controversial. Across the country, states and cities have increasingly required businesses to sign [“labor peace” agreements](#), or LPAs, to get certain licenses or permits. Some businesses have objected to the agreements, arguing that they run afoul of the National Labor Relations Act (NLRA). And some have even [sued](#) to strike them down as preempted. But oddly, none of those lawsuits has yet cited [section 301](#) of the Labor-Management Relations Act. Section 301 preempts all state and local laws that require officials to interpret a labor contract. And when applied to LPA requirements, it could bring a quick end to these local experiments.

LPAs and Local Policy

In broad terms, an LPA is an agreement between a union and an employer about how the parties will run an organizing campaign. The union may agree not to picket, protest, or otherwise disrupt the employer’s business. In exchange, the employer may agree not to oppose the union’s efforts. It may also agree to let the union come onto its property to talk with its employees. It may even agree to recognize the union based on signed authorization cards rather than a secret-ballot election.

Traditionally, LPAs were strictly private arrangements. But that started to [change](#) in the late 1990s, when [San Francisco](#) started requiring them for certain hospitality projects. From there, the requirements spread to other cities and industries. [Washington, DC](#) started requiring them for hotel-development projects, and [Milwaukee](#) mandated them for all city contractors. Similar requirements were then picked up in [Maryland](#), where they covered video-lottery terminals, and [New York State](#), where they covered hotels and convention centers. Multiple cities also adopted them for businesses operating in local [airports](#).

This trend accelerated with the arrival of legal cannabis. Illegal everywhere as recently as 2012, cannabis is now lawful in some form or another in [24 states](#). These states have not, however, been content to merely legalize the product: they have also leveraged the new cannabis market to accomplish ancillary [social goals](#). One of those goals has been to boost the [flagging](#) labor movement by encouraging unionization—chiefly through requiring LPAs. At least half-a-dozen states now [require](#) or [encourage](#) LPAs in the cannabis industry, and many make them an [express condition](#) of a cannabis license.

That requirement has been challenged in a few states—to somewhat mixed results. One district court has [agreed](#) with the challengers, but another [rejected](#) a challenge on procedural grounds. Still other challenges are [pending](#). But uniformly, all these challenges have been brought under NLRA, which regulates union organizing and collective bargaining. None has stated a claim under section 301.

The Federal Law of Labor Contracts

That gap is a puzzle, in part because of the role section 301 has played in regulating labor contracts. Historically, those kinds of contracts weren't contracts at all, in part because unions had no formal legal status. Under the [common law](#), unions were considered unincorporated associations. They couldn't enter contracts in their own name, which left labor agreements in a twilight zone: the agreements were something between a real contract and a gentleman's agreement. That uncertain status made them hard to enforce, even when they were flatly ignored.

So in the late 1940s, Congress tried to normalize the situation by passing section 301. Section 301 took two important steps. First, it gave unions formal legal capacity: going forward, they could sue and be sued in their own names. Second, it gave federal courts jurisdiction over labor contracts. From then on, federal courts could enforce labor contracts just like any other agreement.

Now, section 301 said nothing about what substantive law these courts would apply. But they quickly concluded that the relevant law was federal. In [Textile Workers v. Lincoln Mills](#), the U.S. Supreme Court held that section 301 authorized federal courts to create a new common law. Created through case-by-case adjudication, that common law would determine the meaning of labor contracts under section 301. And because the meaning of these contracts would be determined exclusively by federal law, there was no room for state-law claims. Any state-law claim that depended on the meaning of a labor contract was [preempted](#).

Interpretation and Preemption

That background raises questions for the LPA requirements. On their face, LPAs are labor contracts: they govern the relationship between employers and unions with respect to union organizing. And courts have repeatedly applied section 301 to similar contracts, including [strike settlements](#), [neutrality agreements](#), and [area-standards frameworks](#). So there's little question that an LPA is a labor contract subject to section 301.

Likewise, LPA requirements depend on the meaning of a labor contract. They typically require a business to [maintain](#) a valid LPA for the life of a license, permit, or government contract. But to determine whether an LPA is valid, state or local officials must consider the LPA's terms. Those terms are what make it valid or not. Indeed, they're what make the agreement an LPA in the first place. So almost by definition, an LPA requirement depends on interpreting the agreement's terms.

But the caselaw tells us that kind of local interpretation is verboten. The Supreme Court has said [again](#) and [again](#) that state laws cannot depend on the meaning of a labor contract. For better or worse, section 301 makes that meaning a question wholly of federal law. If a state law turns on a labor contract's interpretation, the law is [preempted](#).

That conclusion suggests that LPA requirements are on shaky ground. The requirements have already come under attack, both for [policy](#) and legal reasons. Eventually, someone will challenge them under section 301. And when that challenge comes, it will be hard to turn away. LPAs may have had a moment, but that moment may prove to be a short one.