University of Baltimore Law Review

Volume 18
Issue 3 *Spring 1989*

Article 4

1989

Maryland's Outdated Statute Restricting Labor Injunctions

Jeffrey P. Ayres
Venable LLP

Kathleen O. Gavin
U.S. Attorney's Office, District of Maryland

MARYLAND'S OUTDATED STATUTE RESTRICTING LABOR INJUNCTIONS

Jeffrey P. Ayres†
Kathleen O. Gavin††

I. INTRODUCTION

Picture this scene. Hundreds of anti-abortionists picket a Maryland hospital's emergency room entrance. The picketers link arms to block ingress and egress. They impede ambulances, threaten patients and visitors, throw objects, and jostle physicians and nurses. Can a court enjoin such conduct, immediately and without notice to adverse parties? Certainly.[1]

Change one fact in this hypothetical. Instead of anti-abortionists, the picketers are striking hospital workers. Does the result change? Yes, the result changes dramatically because of the Maryland Anti-Injunction Act (the Act).[2] Owing to this statute, an *ex parte* injunction is not permitted, and a temporary restraining order cannot effectively become enforceable until forty-eight hours after its issuance "no matter how loudly the other facts seem to cry out" for immediate relief.[3]

The Maryland Anti-Injunction Act or "Yellow Dog Act" consists of thirteen sections of the Maryland Annotated Code, article 100, sections 63 through 75, and was approved by the General Assembly more than fifty years ago.[4] Modeled after the federal anti-labor injunction stat-

---

† B.A., 1974, Harvard College; J.D., *with high honors*, 1977, George Washington University; Partner, Venable, Baetjer and Howard, Baltimore, Maryland; Member, District of Columbia and Maryland Bars.

†† B.A., 1983, University of Virginia; J.D., *with honors*, 1986, University of Maryland School of Law; Associate, Venable, Baetjer and Howard, Baltimore, Maryland; Member, Maryland Bar.

1. *See, e.g.*, Carroll v. President and Comm'rs of Princess Anne, 393 U.S. 175, 180 (1968) (relying upon Milk Drivers Union v. Meadowmoor Dairies, 312 U.S. 287, 294 (1941) and Hospital Workers, District 1199E v. Johns Hopkins Hosp., 293 Md. 343, 349 n.1, 444 A.2d 448, 451 n.1 (1982)); MD. RULE BB72 (*ex parte* injunction); Note, *The Enforcement of the Right of Access in Mass Picketing Situations*, 113 U. PA. L. REV. 111, 116-17 (1964).
2. *See, e.g., Johns Hopkins*, 293 Md. 343, 444 A.2d 448, *discussed in* Sykes, *A Modest Proposal for a Change in Maryland's Statutes Quo*, 43 MD. L. REV. 647, 652 (1984). Mr. Sykes argues that the court of appeals reasonably could have held in *Johns Hopkins* that nonprofit hospitals are not covered by this Maryland statute and can obtain immediate *ex parte* injunctions. *Id.*
3. Hospital Workers, District 1199E v. Lafayette Square Nursing Center, Inc., 34 Md. App. 619, 631, 368 A.2d 1099, 1107 (1977); *see also* MD. ANN. CODE art. 100, § 68(7)-(8) (1985). The general procedural rules applicable to injunctions do not apply in labor disputes covered by this Maryland statute. *See* MD. RULE BB71(b).
4. Act of April 13, 1935, ch. 574, §§ 65-77, 1935 Md. Laws 1194. The "Yellow Dog Act" title refers specifically to section 64 of article 100. A yellow dog contract is an agreement "by which [the] employer requires [the] employee to sign an instrument promising as [a] condition that he will not join a union during its continuance, and will be discharged if he does join." BLACK'S LAW DICTIONARY 1449 (5th ed. 1979)(citing International Brotherhood of Teamsters v. Perry Truck Lines, 106 Colo. 25, 38, 101 P.2d 436, 443 (1940)). Such contracts were a popular anti-union

ute[5] (the Norris-La Guardia Act of 1932),[6] the Maryland Anti-Injunction Act is referred to colloquially as Maryland's "Little Norris-La Guardia Act."[7]

In general, the Little Norris-La Guardia Act removes from equity jurisdiction in Maryland most labor-related controversies.[8] It also imposes severe procedural strictures in those few labor disputes — principally involving violence and threats of violence — where injunctions are permitted.[9] The harshest procedural stricture of the Act is its requirement that forty-eight hours elapse after the issuance of a temporary restraining order before it becomes effective, a stricture which is not contained in the federal Norris-La Guardia Act.[10]

The time has come to overhaul Maryland's Little Norris-La Guardia Act. Labor relations have changed dramatically since 1935. Unions are now as institutionalized as banks and insurance companies. Detailed federal statutory schemes now protect the rights of workers and their unions. The "at will" employment rule which, under the common law permitted workers to be fired for any or no reason, has been eviscerated in Maryland.[11] Likewise, constitutional protections for picketing and other union activities, while still in their embryonic stages in the mid-1930s, are now well entrenched.[12]

The labor protection needs that prompted enactment of the Little Norris-La Guardia Act in 1935 have since diminished substantially. The need remains, however, for judicial flexibility in violent labor disputes,

---

organizing device through the 1920s and early 1930s. F. FRANKFURTER & N. GREENE, THE LABOR INJUNCTION 37, 148-49 (1930). Federal law, 29 U.S.C. § 103 (1982), as well as section 64 of article 100 of the Annotated Code of Maryland, prohibits such contracts.

5. *Johns Hopkins*, 293 Md. at 345, 444 A.2d at 449.
6. *See* 29 U.S.C. §§ 101-115 (1982 & Supp. V. 1987).
7. *See Lafayette Square*, 34 Md. App. at 628, 368 A.2d at 1105; Harford County Educ. Ass'n v. Board of Educ. of Harford Co., 281 Md. 574, 588, 380 A.2d 1041, 1050 (1977).
8. There are some exceptions to the Maryland Act. For example, public school teacher strikes can be enjoined in Maryland without regard to the Little Norris-La Guardia Act. *See* MD. EDUC. CODE ANN. §§ 6-411(b), 6-514 (1989); *Harford County Educ. Ass'n*, 281 Md. at 588-89, 380 A.2d at 1049-50. Likewise, the Act probably does not apply to public sector labor disputes generally in Maryland. *See* Mugford v. Mayor of Baltimore, 14 L.R.R.M. (BNA) 732, (Baltimore City Cir. Ct. No. 2, 1944) *reprinted in* The Daily Record, April 14, 1944, at 3, col. 1; Cohen, *The Maryland Law of Strikes, Boycotts, and Picketing*, 20 MD. L. REV. 230, 255-58 (1960). *But cf.* United States v. United Mine Workers, 330 U.S. 258 (1947) (federal Norris-La Guardia Act does not apply to public employees); Joint School Dist. No. 1, City of Wisconsin Rapids v. Wisconsin Rapids Educ. Ass'n, 70 Wis. 2d 292, 234 N.W.2d 289 (1975) (Wisconsin Little Norris-La Guardia Act does not apply to public sector).
9. *See Lafayette Square*, 34 Md. App. at 628, 368 A.2d at 1105.
10. *See* 29 U.S.C. § 107 (1982) (where permitted, a temporary restraining order may "be issued without notice").
11. *See infra* notes 84-88 and accompanying text.
12. *See infra* text accompanying notes 89-92.

with which the public and private sectors are frequented all too often.[13] When faced with such violence, Maryland employers and the public are entitled to the protections of an injunction remedy that is unencumbered by the procedural strictures of the Little Norris-La Guardia Act. The Maryland legislature should amend the Little Norris-La Guardia Act to reflect these changed needs.

II. THE STATUTE AND CASES CONSTRUING IT

A. The History, Purpose and Content of Maryland's Little Norris-La Guardia Act

Maryland's Little Norris-La Guardia Act was passed in 1935 as part of the same nationwide lobbying efforts, undertaken in large part by the American Civil Liberties Union, that resulted in the federal Norris-La Guardia Act.[14] No evidence had ever been produced, however, to show that Maryland courts were abusing the labor injunction.[15] Furthermore, the Maryland legislature seemingly made little or no independent analysis of the factual underpinnings of the statute.[16] Nonetheless, like its federal counterpart, the Maryland statute "reflect[ed] the feeling [prevalent] in this country during the 1930s that courts of equity were unduly hampering the labor movement by enjoining necessary and proper union activities, especially by means of *ex parte* injunctions."[17]

In a similar vein, the federal statute has been characterized as "the culmination of a bitter political, social and economic controversy extending over half a century."[18] The drastic curtailment of equity jurisdiction embodied in the federal statute reflected the view "that law served no useful purpose in labor disputes, save possibly to protect tangible property and preserve public order."[19]

Only one relatively minor section in the Maryland Act — the provi-

13. A 540 page study of labor violence was published several years ago. *See* A. THIEBLOT & T. HAGGARD, UNION VIOLENCE: THE RECORD AND THE RESPONSE BY COURTS, LEGISLATURES, AND THE NLRB (U. of Pa., The Wharton School Industrial Research Unit 1983). The study concludes that "the law as applied has been ineffective in curtailing the actuality or the impact of labor violence . . . and that it will continue to be ineffective until legislative and judicial attitudes change or are forced to change. . . ." *Id.* at 17.

14. *See* Note, *Labor Law—State Anti-Injunction Statutes*, 16 N.C.L. REV. 38 (1938).

15. Indeed, the proposition that American courts *in general* were abusing labor injunctions has been the subject of serious scholarly criticism. *See* Petro, *Injunctions and Labor-Disputes: 1880-1932*, 14 WAKE FOREST L. REV. 341 (1978).

16. Presumably, since no legislative reports accompany the Maryland statute and the Maryland law is patterned so closely after the federal Norris-La Guardia Act and other state counterparts, little or no independent factual analysis was undertaken.

17. Hospital Workers, District 1199E v. Johns Hopkins Hosp., 293 Md. 343, 345, 444 A.2d 448, 449 (1982) (quoting Cohen, *supra* note 8, at 239).

18. Milk Wagon Drivers, Local 753 v. Lake Valley Farm Prod., Inc., 311 U.S. 91, 102 (1940).

19. A. COX, LAW AND THE NATIONAL POLICY 5 (1960).

sion dealing with appellate review[20] — has ever been amended in any substantive way. In 1957, the following language was deleted from that section: "The appeal shall be heard with the greatest possible expedition, giving the proceeding precedence over all other matters except other matters of the same character."[21] That section was again amended in 1976 to substitute "Court of Special Appeals" as the appellate court of initial review.[22] The remainder of the Little Norris-La Guardia Act, however, is substantively identical to the version enacted in 1935.[23]

The first section of the Maryland Little Norris-La Guardia Act, section 63,[24] provides that the public policy of the state is to insure that negotiations of terms and conditions in the employment context result from a voluntary agreement between the employer and its employees. To achieve this goal, the section provides that the individual worker must have the rights of freedom of association and self-organization in order to negotiate the terms and conditions of his employment.

The various types of employment agreements or arrangements that violate public policy are enumerated in section 64 of the Act.[25] First, promises between an employer and an employee to join or remain a member of a specific employer or labor organization are prohibited. Second, neither an employer nor an employee may promise not to join or not to remain a member of some specific employer or labor organization. Finally, neither an employer nor an employee may promise that he will withdraw from the employment relationship in the event that the other party joins or remains a member of a specific employer or labor organization.

Section 65 of the Act[26] limits the power of the courts to issue labor injunctions against persons who engage in various protected activities. Those protected activities include: (1) refusing to work; (2) becoming or remaining a member of a labor organization; (3) paying or withholding strike or unemployment benefits or insurance; (4) lawfully aiding persons who are being prosecuted or sued in court; (5) publicly communicating the facts or circumstances of the labor dispute by advertising or appearing in public; (6) seeking to patronize or employ any person; (7) assembling peacefully to organize any protected activities; (8) informing people

20. MD. ANN. CODE art. 100, § 71 (1985).
21. Act of March 28, 1957, ch. 399, § 42, 1957 Md. Laws 518, 574.
22. Act of July 1, 1976, ch. 472, § 26, 1976 Md. Laws 1234, 1260.
23. Section 65 was amended, effective July 1, 1981, to clarify a typographical error. The phrase "other monies *of* things of value" was changed to "other monies *or* things of value" (emphasis added). Act of July 1, 1981, ch. 2, § 3, 1981 Md. Laws 6, 32. Similarly, in 1986, two colons were changed to semicolons at the end of section 65(1) and (2). Act of July 1, 1986, ch. 5, § 1, 1986 Md. Laws 15, 82. Finally, in 1986, a typographical error was corrected in section 66(1). The phrase, "officer, members or agents," was changed to "officers, members, or agents." *Id.* (emphasis added).
24. MD. ANN. CODE art. 100, § 63 (1985).
25. *Id.* § 64.
26. *Id.* § 65.

of the intent to engage in such activities; (9) agreeing with others to engage or not to engage in such activities; (10) advising others to do the acts described; and (11) doing any of the acts described in concert with any other person.

Section 66 of the Act[27] protects officers and their labor organizations from liability for the wrongful actions of their individual members. Officers and their organizations can be held liable, however, if the person committing the wrongful act is an officer, member or agent of the organization, and the organization, after actual notice of the activity, expressly authorizes or ratifies such acts.

Section 67 of the Act[28] prohibits generally the issuance of *ex parte* injunctions in labor disputes. The rationale for this rule is that the status quo will necessarily be altered by an injunction. In addition, the determination of facts through affidavits, according to this section, is not as trustworthy as facts developed through oral examination of witnesses at a hearing. Moreover, section 67 provides that an error in the issuance of injunctive relief can create irreparable harm, and that the usual delay in appealing the granting of such relief typically is so long that the correction of an error often is rendered moot.

Section 68[29] is the heart of Maryland's Little Norris-La Guardia Act. This section describes when a court may issue injunctive relief in a labor dispute and provides specific procedures for issuing that relief. First, in many cases, there must be notice, a hearing, and findings of fact prior to the issuance of a labor injunction.[30] Second, the moving party also must plead and establish all of the following facts: (1) that the unlawful acts will continue unless restrained; (2) that substantial and irreparable injuries will be incurred by the moving party unless the relief is granted; (3) that the relief requested will be less harmful to the responding party than the harm that the moving party will suffer if the relief is denied; (4) that the court has jurisdiction to enjoin the activity complained of; (5) that the moving party has no adequate remedy at law; (6) that the public officers charged with the duty to protect the moving party's property have been unable to do so; and (7) that the responding party and the police were given due notice of the hearing on the matter.[31] Third, the moving party must post a bond to compensate the enjoined party for damages resulting from an improper injunction.[32]

Section 68 also contains the forty-eight hour waiting period described previously.[33] In essence, that provision mandates that a temporary restraining order not be enforced, prior to an evidentiary hearing,

27. *Id.* § 66.
28. *Id.* § 67.
29. *Id.* § 68.
30. *Id.*
31. *Id.* § 68(1)-(7).
32. *Id.* § 68(10).
33. *Id.* § 68(8); *see also* text accompanying notes 1-3, 9-10 *supra*.

until forty-eight hours have elapsed since its issuance by a court. After forty-eight hours, however, section 68 permits the enforcement of a temporary restraining order if the moving party pleads and establishes that substantial and irreparable injury is unavoidable. This temporary restraining order is effective for a maximum of five days; it is not subject to renewal or extension, but in the court's discretion it may be continued until a decision is reached if the required evidentiary hearings have commenced prior to the expiration of the five-day period.[34]

Section 69[35] of the Act requires the moving party to plead and establish that it has satisfied every obligation imposed on it by law. Moreover, the moving party must make every reasonable effort to settle the dispute by negotiation or with the aid of any available arbitration or mediation mechanisms. The court, however, is not required to wait for the decision of an arbitrator or any other tribunal prior to granting injunctive relief where irreparable injury may occur in the interim.

Section 70[36] of the Act provides that the injunctive relief must be specific. Only the parties named in the petition will be bound by any injunctive relief issued by the court. Moreover, only those acts cited in the petition may be enjoined.

Section 71[37] of the Act provides that any appeal regarding the issuance of injunctive relief must be made to the court of special appeals. Sections 72[38] and 73[39] of the Act delineate the rights of persons who violate an existing injunctive order. Specifically, such persons may be guilty of indirect criminal contempt; they are afforded the usual rights of bail, notice, and jury trial. In some cases, the violators may request that the judge sitting in the injunction proceeding be replaced "if the contempt arises from an attack upon the character or conduct of such judge."[40] Section 73 imposes a maximum penalty of $100.00 or imprisonment not to exceed fifteen days for the contempt.

Section 74[41] sets out definitions. In particular, section 74 defines broadly "labor disputes," what cases grow out of labor disputes, and who is participating in or has an interest in a labor dispute. Finally, section 75[42] of the Act is a severability provision which, if any section of the Act is deemed invalid, purports to save the remainder of the Act.

Particularly in recent years, efforts have been mounted in the General Assembly to amend Maryland's Little Norris-La Guardia Act. All of these efforts to date, however, have failed. In 1980, for example, bills

34. MD. ANN. CODE art. 100, § 68(9) (1985).
35. *Id.* § 69.
36. *Id.* § 70.
37. *Id.* § 71.
38. *Id.* § 72.
39. *Id.* § 73.
40. *Id.* § 72(4).
41. *Id.* § 74.
42. *Id.* § 75.

were introduced in both the Senate and the House of Delegates.[43] Neither bill, however, was referred out of committee. In 1981, a senate bill was introduced to amend the statute.[44] That bill received an unfavorable report from the Economic Affairs Committee. In 1983, a senate bill was introduced to repeal and reenact with amendments sections 68, 69, and 70 of the Act.[45] That bill also was not referred out of committee. Bills were introduced in both the Senate and the House of Delegates in 1984,[46] however, the 1984 measures did not receive favorable committee review.

Finally, during the 1988 session, the Schaefer Administration considered introducing legislation aimed specifically at the forty-eight hour waiting period.[47] The proposed legislation would have permitted immediate temporary restraining orders, without notice, if the court found a threat of death, serious bodily harm, or substantial property damage. Eventually, however, the Schaefer Administration decided not to introduce this legislation during the 1988 session, and no legislation was proposed on the subject during the 1989 or 1990 sessions.

B. Cases Construing the Act

Only a handful of reported cases have construed Maryland's Little Norris-La Guardia Act.[48] Indeed, more than forty years after the act was enacted, the court of special appeals noted "the paucity of Maryland cases interpreting the Maryland Act," thus requiring an examination of "federal decisions for guidance."[49] To date, only four Maryland appellate decisions have construed the Act in detail.

---

43. S. 914, 1980 Sess. of Maryland Legislature; H.R. 1916, 1980 Sess. of Maryland Legislature.
44. S. 739, 1981 Sess. of Maryland Legislature (vote six to one against enactment).
45. S. 500, 1983 Sess. of Maryland Legislature.
46. S. 573, 1984 Sess. of Maryland Legislature; H.R. 785, 1984 Sess. of Maryland Legislature.
47. One of the authors of this article had discussions with Schaefer Administration officials (and reviewed draft legislation) concerning the forty-eight hour waiting period. No legislation, however, was ever introduced during the 1988 session by the Admistration.
48. In two companion Supreme Court cases, Justice Frankfurter construed current section 64 to be a "right-to-work" statute. *See* American Fed'n of Labor v. American Sash & Door Co., 335 U.S. 538, 554 n.12 (1949) (Frankfurter, J., concurring); Lincoln Fed. Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525 (1949) (Frankfurter, J., concurring). Section 64(a) outlaws contracts under which an employee "promises to join or — to remain a member of some specific labor organization or organizations. . . ." If Justice Frankfurter was correct that section 64(a) is a "right-to-work" statute, then Maryland (like states such as Virginia) *prohibits* compulsory union membership. Such state law prohibitions are expressly permitted by federal law. *See* 29 U.S.C. § 164(b) (1982) (construed in Retail Clerks, Local 1625 v. Schermerhorn, 373 U.S. 746 (1963)). *But see* Beck v. Communications Workers, 776 F.2d 1187, 1202 (4th Cir. 1985), *aff'd en banc*, 800 F.2d 1280 (4th Cir. 1986) ("Maryland . . . has no right-to-work law"), *aff'd*, 487 U.S. 735 (1988).
49. Hospital Workers, District 1199E v. Lafayette Square Nursing Center, Inc., 34 Md. App. 619, 629, 368 A.2d 1099, 1105 (1977).

The first decision, *Dolan v. Motion Picture & Television Operators Union*,[50] held that "where there is a bona fide claim that the Act is inapplicable, and the power to grant the ancillary relief depends in great part upon the resolution of the jurisdictional question, the trial court 'unquestionably' has 'the power to issue a restraining order for the purpose of preserving existing conditions pending a decision upon its own jurisdiction.' "[51]

The jurisdictional question at issue in *Dolan* centered upon whether a labor-related controversy constituted a "labor dispute," thereby triggering application of the Act. The controversy involved a "dual unionism" problem, where workers wanted to simultaneously belong to two different unions. When one union tried to expel these workers, the workers sought an injunction, claiming that any expulsion would contravene that union's constitution and bylaws. A Maryland court today might well abstain from deciding this dual unionism issue, deferring instead to the exclusive jurisdiction of the National Labor Relations Board.[52] Hence, a Maryland court today might refuse to issue an interim restraining order under the facts of *Dolan* due to a lack of jurisdiction. Nevertheless, the holding of *Dolan* on the propriety of issuing an injunction pending a ruling on a trial court's jurisdiction retains vitality.

The second appellate decision construing the Maryland Act is *Tidewater Express Lines, Inc. v. Freight Drivers & Helpers, Local 557*.[53] In that case, an employer sought to enjoin a work stoppage that constituted a breach of the no-strike clause contained in a collective bargaining agreement. In deciding whether the work stoppage could be enjoined, the court of appeals focused upon section 65(1) of the Act, which prohibits injunctions against anyone "*[c]easing or refusing to perform any work* or to remain in any relation of employment regardless of any promise, undertaking, contract or agreement to do such work or to remain in such employment. . . ."[54]

In holding that section 65(1) precludes injunctions against a work stoppage in breach of a no-strike clause, the *Tidewater Express* court observed:

> The language of the statute is clear and unambiguous and in terms prohibits the enjoining of the doing of the things the Union and its members are charged with doing. There is no claim that fraud or violence or threat of either has raised its ugly head. There would seem to be no room for any finding other than that the Maryland Legislature had taken away the

50. 206 Md. 256, 111 A.2d 462 (1955).
51. *Id.* at 259, 111 A.2d at 463 (quoting United States v. United Mine Workers, 330 U.S. 258, 290, 310 (1947)).
52. *Compare* Local 926, Int'l Union of Operating Eng'rs v. Jones, 460 U.S. 669 (1983) *with* Vane v. Nocella, 303 Md. 362, 494 A.2d 181 (1985).
53. 230 Md. 450, 187 A.2d 685 (1963).
54. MD. ANN. CODE art. 100, § 65 (1985 & Supp. 1989) (emphasis added).

power of the court to issue the injunction sought.[55]

The third appellate decision construing the Little Norris-La Guardia Act is *Hospital Workers, District 1199E v. Lafayette Square Nursing Center, Inc.*[56] In that case, striking employees engaged in violence, threats, and other illegal activity on the picket line. The trial court granted the employer's request for injunctive relief after the employer established this unlawful conduct.[57]

The court of special appeals held that the Little Norris-La Guardia Act did not strip the courts of the equitable power to issue injunctive relief. Nevertheless, the court noted that such relief could be issued only after a finding that every factor listed in section 68 was met. "If *all* of those facts are found, the injunction may issue. Conversely, if any or more is not so found, no injunction may be issued."[58] According to the court of special appeals, the evidence supported the trial court's finding that those specific facts were indeed present. Still, the court vacated the injunction because compliance with section 69 of the Act was not proven by the employer.[59]

Section 69 requires the moving party to show that it has complied with all obligations imposed by law and has made every reasonable effort to settle the dispute by negotiation or other arbitration or mediation procedures. The court of special appeals in *Lafayette Square* held that compliance with section 69 *must* be established by the moving party, regardless of the occurrence of violence by strikers, before any injunctive relief may issue. As the court noted, "strict compliance with [the Act's] terms is mandatory," and "section 69 sets forth a condition precedent to equitable relief, that chancellors may not ignore, no matter how loudly the other facts seem to cry out for such relief."[60]

The final and most recent Maryland appellate decision construing the Little Norris-La Guardia Act is *Hospital Workers, District 1199E v. Johns Hopkins Hospital.*[61] In that case, the Court of Appeals of Maryland held that private, nonprofit hospitals are subject to the provisions of the Little Norris-La Guardia Act.[62]

As in *Lafayette Square*, the court of appeals emphasized in *Johns Hopkins* that the Little Norris-La Guardia Act was designed to protect the rights of individual employees in labor disputes. Therefore, the court adopted a very narrow interpretation of the Act — an interpretation

55. *Tidewater Express*, 230 Md. at 453, 187 A.2d at 687. *But see* Boys Markets, Inc. v. Retail Clerks, Local 770, 398 U.S. 235 (1970) (federal Norris-La Guardia Act permits federal injunctions against strikes in breach of a no-strike clause).
56. 34 Md. App. 619, 368 A.2d 1099 (1977).
57. *Id.* at 622, 368 A.2d at 1101.
58. *Id.* at 628, 368 A.2d at 1105 (emphasis in original).
59. *Id.* at 631, 368 A.2d at 1106-07.
60. *Id.*
61. 293 Md. 343, 444 A.2d 448 (1982).
62. *Id.* at 360, 444 A.2d at 456.

which had been rejected by courts construing similar Little Norris-La Guardia acts in such states as New York[63] and Pennsylvania.[64] Because the language of the Act did not indicate any legislative intent to exclude nonprofit hospitals from coverage, the court held that such organizations are covered by the Act, regardless of the public interest in keeping hospitals open and free from violence during labor disputes.

In addition to the four appellate decisions discussed above, lower courts have construed the Maryland Anti-Injunction Act on several occasions in unofficially reported decisions, and have deemed the Act inapplicable to cases involving recognitional picketing,[65] secondary boycotts,[66] and "retaliatory strikes."[67] The federal preemption doctrine, however, places significant restraints upon the continued usefulness of these unreported cases.[68]

Moreover, in *Pikesville Electric Co. v. International Brotherhood of Electrical Workers, Local 24*,[69] the trial court issued an injunction under circumstances very similar to the more recently decided *Lafayette Square* case, with one important exception. Before issuing an injunction in *Pikesville Electric*, the trial court, as in *Lafayette Square*, found that the seven facts specified in section 68 were present. Unlike *Lafayette Square*, however, the court also found specifically that "the company has not failed to make every reasonable effort to settle the labor dispute in question by negotiations, that these negotiations have been in good faith and that the provisions of . . . section 69 are no bar to the granting of the permanent injunction above mentioned."[70]

Finally, *Cox Distributing Co. v. Highway Truck Drivers & Helpers, Local 107*,[71] is a good example of how strictly the requirements of the Little Norris-La Guardia Act have been construed. In *Cox*, a union engaged in violent recognitional picketing. The employer argued that, because recognitional picketing is not a labor dispute per se, the Act does not apply. After originally granting a temporary restraining order limiting the number of pickets, however, the trial court later held that recognitional picketing is a labor dispute.[72] The court then ruled that the

63. Jewish Hosp. of Brooklyn v. Doe, 252 A.D. 581, 584-85, 300 N.Y.S. 1111, 1117-18 (1937).
64. Western Penn. Hosp. v. Lichliter, 340 Pa. 382, 390, 17 A.2d 206, 210 (1941).
65. Goldstein v. Bartenders Union, Local 36, 40 L.R.R.M. (BNA) 2706 (Baltimore City Cir. Ct. 1957).
66. Wischhusen v. Griffin, 32 L.R.R.M. (BNA) 2426, 2432 (Baltimore City Cir. Ct. 1953).
67. Matson Navigation Co. v. Atlantic & Gulf Dist. Seafarers Int'l Union, 29 L.R.R.M. (BNA) 2031 (Baltimore City Cir. Ct. 1951).
68. *See infra* note 83 and accompanying text.
69. 58 L.R.R.M. (BNA) 2224 (Baltimore City Cir. Ct. 1965).
70. *Id.* at 2230-31. Hence, even in light of the later *Lafayette Square* holding, the injunction issued in *Pikesville Electric* was proper. *See also* Empire Constr. Co. v. Carpenters Dist. Council (Baltimore City Cir. Ct. 1979) (reported in The Daily Record, April 6, 1979, at 4, col. 1.).
71. 42 L.R.R.M. (BNA) 2215 (Talbot County Cir. Ct. 1958).
72. *Id.* at 2218.

employer had not satisfied the requirements of the Act, and held that the temporary restraining order had to be dissolved.[73]

III. ANACHRONISMS IN THE STATUTE AND THE NEED FOR REFORM

A. The Dramatic Changes in Labor Relations Since 1935

Labor relations were vastly different in 1935 than they are today. Congress had already enacted the Norris-La Guardia Act in 1932, but that statute only regulated the issuance of federal injunctions in labor disputes. It did not provide substantive protection for the right of employees to unionize.[74]

The right of railroad employees to unionize was firmly protected under federal law by 1926.[75] The first real effort at providing a statutory mechanism to protect employees outside the railroad industry, the National Industrial Recovery Act of 1933,[76] however, failed miserably.[77]

The cornerstone of modern labor-management relations, the Wagner Act,[78] was not enacted until 1935. Moreover, particularly after the National Industrial Recovery Act failed, the constitutionality of the Wagner Act was very much in doubt until 1937, when the Supreme Court upheld the statute.[79]

The Wagner Act protects union organizing activities and provides a comprehensive administrative mechanism, through the National Labor Relations Board, for rectifying employer infringement upon those activities.[80] Since the enactment of the Wagner Act, unions have proliferated

---

73. In reaching this conclusion the court stated:
> For these reasons, this court is compelled to rule that the mandatory conditions required by section 68 of Article 100 have not been complied with and therefore that it is without authority to issue an injunction to permanently restrain the outrageous and reprehensible violence, threats of violence, intimidation and other unlawful conduct. . . .

Id. at 2220.

74. Similar to section 63, the federal Anti-Injunction Act's policy statement affirmed the right of employees to choose freely their bargaining representatives. *See* 29 U.S.C. § 102 (1982). Neither the Maryland nor the federal statute, however, provided any *governmental mechanisms* for protecting those rights. F. DULLES, LABOR IN AMERICA 276 (2d rev. ed. 1960).

75. *See* Railway Labor Act of 1926 (codified as amended, 45 U.S.C. §§ 151-163, 181-188 (1982)). The act was declared constitutional in Texas & N.O. R.R. v. Brotherhood of Ry. & Steamship Clerks, 281 U.S. 548, 570 (1930).

76. Act of June 16, 1933, ch. 90, 48 Stat. 195.

77. I. BERNSTEIN, THE TURBULENT YEARS 172-85 (1970). A significant portion of this statute was later declared unconstitutional in the infamous "sick chicken cases." *See* A. L. A. Schechter Poultry Corp. v. United States, 295 U.S. 495, 542, 550 (1935). This was one of the decisions which led President Roosevelt to unveil his infamous "Court Packing" plan in reaction to the Supreme Court's rulings against the constitutionality of several economic and social programs. *See* J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW 144-48 (3d ed. 1986).

78. 29 U.S.C. §§ 151-169 (1982).

79. NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937).

80. *See generally* I. MORRIS, THE DEVELOPING LABOR LAW 27-30 (2d ed. 1983).

and their institutional powers (and coffers) have burgeoned. This protective mantle of federal law has more than compensated for the fact that Maryland law does not generally protect the right of employees to unionize.[81]

The United States Constitution also has been an important source of protection for peaceful concerted activities, especially since the 1930s. This consideration takes on added import given that Maryland's Little Norris-La Guardia Act was passed years before the Supreme Court first accorded constitutional protection to peaceful picketing.[82] Similarly, federal labor laws enacted since the 1930s often have preempted, through the supremacy clause of the United States Constitution, state court injunctions against peaceful employee activities.[83]

Since 1935, the common law also has made stunning strides in protecting employee rights.[84] Unless an employment contract provided otherwise, Maryland workers in 1935 could be fired "at will," for any or no reason. That is no longer the case. In 1980, the Court of Appeals of Maryland recognized a new cause of action for abusive discharge. When a termination violates a "clear mandate of public policy," a civil remedy is now available in Maryland.[85] Since 1980, even more inroads have been made upon the employment-at-will doctrine in Maryland.[86] Juries have rendered multi-million dollar verdicts under such theories,[87] which Maryland unionized employees are free (in appropriate cases) to

81. Some states, excluding Maryland, have enacted so-called "Little Wagner Acts." *See, e.g.*, CONN. GEN. STAT. §§ 31-101 to -111 (1989). A few Maryland employee groups, such as public school employees, are protected by state collective bargaining statutes. *See* MD. EDUC. CODE ANN. §§ 6-409, 6-512 (1989). Such coverage in Maryland, however, is the exception rather than the rule.

82. *See, e.g.*, American Fed'n of Labor v. Swing, 312 U.S. 321, 325 (1941); Thornhill v. Alabama, 310 U.S. 88, 101-02 (1940).

83. *See, e.g.*, Sears, Roebuck & Co. v. San Diego Co. Dist. Council of Carpenters, 436 U.S. 180 (1978) (state court injunction action against peaceful trespassory picketing can, in some cases, be preempted by federal labor laws); Baltimore Bldg. & Constr. Trades Council v. Maryland Port Auth., 238 Md. 232, 208 A.2d 564 (1965) (federal preemption doctrine prevented a court from enjoining peaceful labor picketing, even assuming that the picketing was for an unlawful purpose). *See generally* Cox, *Labor Law Preemption Revisited*, 85 HARV. L. REV. 1337 (1972).

84. These common law theories, of course, supplement the wealth of civil rights statutes which have been enacted since the passage of Maryland's Little Norris-La Guardia Act. *See, e.g.*, Title VII of the 1964 Civil Rights Act, *as amended*, 42 U.S.C. § 2000e (1982); MD. ANN. CODE art. 49B (1986 & Supp. 1989).

85. Adler v. American Standard Corp., 291 Md. 31, 47, 432 A.2d 464, 473 (1981); *see* Abramson & Silvestri, *Recognition of a Cause of Action for Abusive Discharge in Maryland*, 10 U. BALT. L. REV. 257, 258 (1981).

86. For example, an employee handbook or disciplinary policy statements can now give rise to a breach of contract claim. *Compare* Staggs v. Blue Cross of Md., Inc., 61 Md. App. 381, 486 A.2d 798, *cert. denied*, 303 Md. 295, 493 A.2d 349 (1985) *with* Castiglione v. Johns Hopkins Hosp., 69 Md. App. 325, 517 A.2d 786 (1986), *cert. denied*, 309 Md. 325, 523 A.2d 1013 (1987). *See generally* Ayres & Gavin, *The Workplace Tort Explosion*, MD. B.J. (Jan. 1989).

87. *See, e.g.*, Moniodis v. Cook, 64 Md. App. 1, 494 A.2d 212 (1985).

invoke.[88]

These developments in the field of labor relations provide adequate protection to the legitimate interests of unions and employees. Correspondingly, though, illegal labor activities such as picket line violence should be governed by the same injunction standards as other types of violence. The Maryland Little Norris-La Guardia Act is a dinosaur with specific anachronisms in today's world of labor relations.

B. Specific Shortcomings of the Statute

In today's climate of intense competition among states to attract new business, the mere existence of a Little Norris-La Guardia Act in Maryland has important negative repercussions. Twenty-five states have Little Norris-La Guardia Acts.[89] From Maryland to Texas, however, the only other seaboard state with such a statute is Louisiana. As for Maryland's neighboring states, only Pennsylvania has such a statute, but it is far less stringent than Maryland's.[90]

Even more telling is the number of jurisdictions which, like Maryland, effectively prohibit a temporary restraining order from being enforceable until at least forty-eight hours after its issuance. The federal Norris-La Guardia Act has no such provision,[91] and only five states other than Maryland—Idaho, Louisiana, Maine, Utah and Wisconsin—do.[92]

---

88. Ewing v. Koppers Co., 312 Md. 45, 49, 537 A.2d 1173, 1175 (1988).
89. In addition to Maryland, the following states have anti-injunction statutes: Arizona (ARIZ. REV. STAT. ANN. § 12-1808 (1982)); California (CAL. CIV. PROC. CODE § 527.3 (West 1979)); Colorado (COLO. REV. STAT. § 8-3-118 (1986)); Connecticut (CONN. GEN. STAT. § 31-112 (1958)); Hawaii (HAW. REV. STAT. § 380-1 (1985)); Idaho (IDAHO CODE § 44-701 (1977)); Illinois (ILL. REV. STAT. ANN. ch. 48, ¶ 2A, § 1 (1986)); Indiana (IND. CODE ANN. § 22-6-1-1 (Burns 1986)); Kansas (KAN. STAT. ANN. § 60-904 (1983)); Louisiana (LA. REV. STAT. ANN. 23:841, 844 (West 1985)); Maine (ME. REV. STAT. ANN. tit. 26, § 5 (1988)); Massachusetts (MASS. GEN. LAWS ANN. ch. 214, § 6 (West 1989)); Minnesota (MINN. STAT. ANN. § 185.01 (West 1966)); New Jersey (N.J. REV. STAT. § 2A:15-51 (1987)); New Mexico (N.M. STAT. ANN. § 50-3-1 (1978)); New York (N.Y. LAB. LAW § 807 (McKinney 1978)); North Dakota (N.D. CENT. CODE § 34-08-07 (1987)); Oregon (OR. REV. STAT. § 662.040 (1987)); Pennsylvania (PA. STAT. ANN. tit. 43, § 206a (Purdon 1964)); Rhode Island (R.I. GEN. LAWS § 28-10-2 (1986)); Utah (UTAH CODE ANN. § 34-19-1 (1988)); Washington (WASH. REV. CODE § 49.32.010) (1962)); Wisconsin (WIS. STAT. ANN. § 103.56 (West 1988)); and Wyoming (WYO. STAT. § 27-7-101 (1987)). Additionally, Puerto Rico has such a statute and District of Columbia local courts are bound by the federal Norris-La Guardia Act. *See* P.R. LAWS ANN. tit. 29, § 101 (1985); Sheriff v. Medel Elec. Co., 412 A.2d 38 (D.C. App. 1980).
90. Pennsylvania removed mass picketing and violence from the scope of its Little Norris-La Guardia Act in 1937. *See* PA. STAT. ANN. tit. 43, § 206(d) (Purdon 1964). Moreover, the Pennsylvania statute has no forty-eight hour waiting period like Maryland's section 68(8).
91. *See supra* note 10 and accompanying text.
92. *See* IDAHO CODE § 44-706(f) (1977); LA. REV. STAT. ANN. § 23:844(6) (West 1985); ME. REV. STAT. ANN. tit. 26, § 5 (1988); UTAH CODE ANN. § 34-19-5(6) (1953); WIS. STAT. ANN. § 103.56 subd. 2 (1988).

The forty-eight hour waiting period is potentially the most deleterious feature of Maryland's Little Norris-La Guardia Act. No matter how violent a labor dispute becomes, and no matter how seriously the public is harmed by the labor violence, a temporary restraining order is not enforceable during this forty-eight hour period. This feature is harmful to businesses, harmful to the public, and unnecessary given the realities of labor relations today. Moreover, the fact that *none* of the neighboring states with which Maryland competes for new business has such a provision only serves to exacerbate the deleterious effect of the forty-eight hour waiting period.

Another objectionable feature in Maryland's Little Norris-La Guardia Act is section 68(6). This section requires that a court find, as a precondition to injunctive relief, "[t]hat the public officers charged with the duty to protect complainant's property have failed or are unable to furnish adequate protection."

Early critics of the federal Norris-La Guardia Act recognized that the requirement of section 68(6) "may in some instances, and no doubt will, be impossible to sustain."[93] Essentially, section 68(6) requires that a police official testify in open court that the local police department cannot do its job. For that reason, practically speaking, the police must swallow their pride and admit that an injunction is badly needed before this provision can be satisfied by an employer.

In the alternative, to satisfy this requirement, the employer must adopt an adversarial stance with the police. The employer must prove that the police cannot do their job even though the police are testifying in open court that they can. Since these are the same officers who will be "protecting" the employer after the injunction hearing is over (and who typically will be enforcing any injunctions), employers face a real dilemma because of section 68(6).

The ill effects of this dilemma are exacerbated by the fact that elected officials have an incentive to put pressure on the police in labor injunction cases. "A public official sees many votes on the picket line; few in the office."[94] Even in cases where this pressure from public officials does not materialize, police generally are "less willing to curtail illegal conduct on the picket line before an injunction is issued than afterward."[95] Even Professor Witte, a chief proponent of anti-injunction legislation in this country, has acknowledged this fact of legal life.[96]

This reluctance on the part of police to enforce the law in labor

93. *See* MINORITY REPORT ON NORRIS-LA GUARDIA ACT, S. REP. NO. 163, 72d Cong., 1st Sess., pt. 2, at 11-12 (1932).

94. Stewart & Townsend, *Strike Violence: The Need for Federal Injunctions*, 114 U. PA. L. REV. 459, 465 (1966).

95. Aaron & Levin, *Labor Injunctions in Action: A Five-Year Survey in Los Angeles County*, 39 CALIF. L. REV. 42, 60 (1951).

96. *See* SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, STATE COURT INJUNCTIONS, S. DOC. NO. 7, 82d Cong., 1st Sess. 9 (1951). In this report, Professor Witte concedes police

disputes is enhanced by an "its not a foul unless the referee blows his whistle" attitude on the part of union officials. Unions and their members generally believe that picket line misconduct "is not illegal until a court issues an injunction based on the facts of the particular case."[97] Correspondingly, denial of an injunction request is generally taken by picketers as a judicial imprimatur upon the legality of everything which has happened previously on the picket line. Such a reaction is especially ironic when the injunction is denied because the police have testified that they are furnishing the employer with adequate protection.

A third feature of Maryland's Little Norris-La Guardia Act that is objectionable is section 69. As construed by the court of special appeals, section 69 requires employers, as a pre-condition to obtaining injunctive relief, "to comply with any obligation imposed by law which is involved in the labor dispute in question. . . ." This provision also requires employers "to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available machinery or governmental mediation or voluntary arbitration. . . ."

Essentially, this section requires the victim to negotiate with the mugger as a precondition to injunctive relief against future muggings. In a violent labor dispute, when an employer's very ability to stay in business is under attack, the inadequacy of this provision is obvious. Moreover, because federal labor laws closely regulate the negotiating conduct of employers toward unions, this section of the Maryland statute is redundant and limits the right of employers and the public to an injunction against labor violence.[98] Section 69 is particularly difficult to comply with when there is no collective bargaining relationship in existence between the picketed employer and the picketing union—which frequently is the case.[99]

IV. CONCLUSION

As these shortcomings in the application and effect of the Act make painfully clear, Maryland's Little Norris-La Guardia Act is in need of reform. Provisions such as the forty-eight hour waiting period are impractical and unrealistic in today's world of labor relations. Moreover, unions are powerful entities that do not need such heavy-handed statutory protections. Finally, such a statute does little to entice prospective

---

protection against lawlessness "is often not provided in labor disputes until injunctions are issued." *Id.*

97. Note, *The Enforcement of the Right of Access, supra* note 1, at 116.

98. Section 69 also may be preempted by federal labor laws. *Compare* Oil, Chem. & Atomic Workers Int'l v. Arkansas La. Gas Co., 332 F.2d 64 (10th Cir. 1964) *with* General Elec. Co. v. Callahan, 294 F.2d 60 (1st Cir. 1961), *cert. dismissed*, 369 U.S. 832 (1962).

99. Stewart & Townsend, *supra* note 94, at 485. The inequities inherent in section 69 have been cogently chronicled in an article discussing the Massachusetts Little Norris-La Guardia Act. *See* Kearns, *Injunctions Against Mass Picketing — A Gap In the Pre-emption Doctrine*, 3 B.C. IND. & COM. L. REV. 157 (1962).

employers to relocate their businesses in Maryland. For these reasons and under all the circumstances, the General Assembly should overhaul this anachronistic statute.