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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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HELIX ELECTRIC, INC.,
Plaintiff,

NO. CIV. 05-2303 FCD KJM

v.

MEMORANDUM AND ORDER

DIVISION OF LABOR STANDARDS
ENFORCEMENT, an agency of the
State of California;
DEPARTMENT OF INDUSTRIAL
RELATIONS, an agency of the
State of California; DONNA
DELL, an individual in her
capacity as Labor Commissioner
of the State of California;
JOHN REA, an individual in his
capacity as Acting Director of
the Department of Industrial
Relations of the State of
California; COUNTY OF
SACRAMENTO, PUBLIC WORKS
COMPLIANCE PROGRAM,

Defendants.

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This matter is before the court on plaintiff Helix Electric,
Inc.'s ("Helix") motion for a preliminary injunction enjoining
defendants from releasing the home addresses of Helix's employees
to defendant Public Works Compliance Program ("PWCP") pursuant to

1 Labor Code Section 1776(e). The court heard oral argument on the
2 motion on January 27, 2006. For the reasons set forth below,
3 plaintiff's motion is DENIED.

4 **BACKGROUND**

5 Helix is a non-union electrical contractor that performs
6 both public and private work projects throughout the state of
7 California. (Decl. of Arthur Geller in Supp. of Pl.'s Mot. for a
8 T.R.O. & Prelim. Inj. ("Geller Decl."), executed Nov. 22, 2005, ¶
9 2). Helix is currently performing work as a subcontractor on a
10 public works project within the County of Sacramento known as the
11 Juvenile Hall Expansion and Modifications Project. (Id. ¶ 3).

12 PWCP represents itself as a joint labor-management committee
13 ("LMC") established pursuant to 29 U.S.C. § 175a. (Decl. Of
14 Kevin Abram in Opp'n to Pl.'s Mot. for Prelim. Inj. ("Abram
15 Decl."), executed Jan. 5, 2006, ¶ 1). PWCP is funded by the
16 Sacramento Electrical Construction Industry Labor-Management
17 Cooperation Committee (the "LMCC"), which was established by the
18 National Electrical Contractors Association ("NECA") and the
19 International Brotherhood of Workers ("IBEW"). (Id. ¶ 7).
20 However, neither NECA nor IBEW instructs PWCP as to its job
21 duties or directs the work that PWCP performs. (Id.) PWCP
22 reports on a monthly basis to the LMCC. (Deposition of A.C.
23 Steelman attached as Exh. 2 to Declaration of Roberta D. Perkins
24 in Supp. of PWCP's Rebuttal to Pl.'s Reply¹ ("Steeleman Dep."),

25
26 ¹ The court will consider PWCP's rebuttal and exhibits
27 attached thereto because new factual issues were raised in
28 Helix's reply as a result of a discovery order issued by the
Magistrate Judge on Jan. 11, 2006. PWCP did not have an
opportunity to respond to new factual allegations made by
plaintiff in its opposition papers.

1 filed Jan. 24, 2006, 14:5-7). PWCP was formed for the purpose of
2 monitoring public works construction projects within its
3 jurisdiction, and implements this purpose, in part, by educating
4 labor and management as to their rights and responsibilities with
5 respect to public works projects. (Id. ¶ 3).

6 In or around September 2005, PWCP sent a request to the
7 County of Sacramento pursuant to Labor Code § 1776(e), requesting
8 copies of Helix's certified payroll records which include the
9 addresses of Helix's employees. (Geller Decl. ¶ 4). In or
10 around October 2005, Helix sent a letter to the Deputy County
11 Counsel for the County of Sacramento, contesting the validity of
12 PWCP's status as a joint LMC and requesting that the County
13 refuse to turn over employee addresses to PWCP. (Decl. of
14 Richard M. Freeman in Supp. of Pl.'s Mot. for a T.R.O. & Prelim.
15 Inj. ("Freeman Decl."), executed Nov. 21, 2005, ¶ 2). In
16 response, the Deputy County Counsel informed Helix that the
17 County intended to comply with PWCP's request and that prevention
18 of the release of employee addresses would require a court order.
19 (Id. ¶ 3).

20 On November 22, 2006, Helix filed a motion for a temporary
21 restraining order and order to show cause regarding entry of a
22 preliminary injunction. The County did not oppose the motion for
23 entry of the temporary restraining order, and the court granted
24 plaintiff a temporary restraining order. Defendants Division of
25 Labor Standards Enforcement ("DLSA") and PWCP have filed
26 oppositions in response to plaintiff's motion for a preliminary
27 injunction.

28 /////

1 Helix contends (1) that PWCP is not a joint LMC; (2) that
2 compliance monitoring is not within the scope of permissible
3 activities of an LMC; (3) that Labor Code § 1776(e) is preempted
4 by the National Labor Relations Act ("NLRA"); and (4) that Labor
5 Code § 1776(e) violates the Equal Protection Clause. Helix
6 further contends that it and its employees will suffer
7 irreparable injury if the certified payroll records, including
8 employee addresses, are released to PWCP.

9 **STANDARD**

10 To obtain a preliminary injunction, a party must show
11 either: "(1) a combination of probable success on the merits and
12 the possibility of irreparable injury, or (2) that serious
13 questions are raised and the balance of hardships tips sharply in
14 [its favor]." Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.,
15 Inc., 240 F.3d 832, 839-40 (9th Cir. 2001). "These two
16 formulations represent two points on a sliding scale in which the
17 required degree of irreparable harm increases as the probability
18 of success decreases." Roe v. Anderson, 134 F.3d 1400, 1402 (9th
19 Cir. 1998). Under either formulation of the test, a plaintiff
20 must still demonstrate a significant threat of irreparable
21 injury. Oakland Tribune, Inc. v. Chronicle Publishing Co., 762
22 F.2d 1374, 1376 (9th Cir. 1985).

23 **ANALYSIS**

24 **A. Irreparable Harm**

25 Plaintiff contends that Helix and its employees will suffer
26 irreparable injury if a preliminary injunction is not issued
27 "since the PWCP will have then received the home addresses of
28 Helix's employees." (Pl.'s Mot. for a T.R.O. & Prelim. Inj.

1 ("Pl.'s Mot."), filed Nov. 22, 2005, at 19). Plaintiff argues
2 that PWCP and "its union backed entities" will be free to
3 disseminate and utilize this information without any monitoring
4 by plaintiff. (Id.) Specifically, Helix asserts that defendant
5 PWCP will improperly use the employee addresses it obtains to
6 organize a union, harass and solicit non-union employees, post
7 the addresses of the non-union employees in newspapers or trade
8 publications, or sell them to other solicitors. (Pl.'s Reply in
9 Supp. of a T.R.O. & Prelim. Inj. ("Pl.'s Reply"), filed Jan 20,
10 2006, at 12). These arguments fail to demonstrate a significant
11 threat of irreparable injury.

12 The disclosure of employee addresses does not, by itself,
13 amount to irreparable injury to plaintiff or plaintiff's
14 employees. The injury that plaintiff is concerned with is the
15 harassment or intimidation of its employees by a union seeking to
16 organize these employees. IBEW, the union whose potential
17 actions plaintiff is concerned with, is not a party to this
18 action. The injury plaintiff asserts in its motion could only
19 occur if and after PWCP disclosed those names and addresses to
20 the union. Plaintiff has not demonstrated that PWCP's purpose in
21 seeking this information is to gain information for the union to
22 aid in organization efforts. Nor has plaintiff presented any
23 evidence substantiating its allegations that PWCP "serves at the
24 bidding of the IBEW and its Local 340 located in Sacramento."
25 (Pl.'s Mot. at 9). At this juncture, the potential for injury to
26 the plaintiff or its employees is wholly speculative.

27 "Speculative injury does not constitute irreparable injury."

28 Colorado Rive Indian Tribes v. Town of Parker, 776 F.2d 846, 849

1 (9th Cir. 1985). Therefore, plaintiff has not satisfied its
2 burden for the issuance of a preliminary injunction.²

3 For these reasons, plaintiff has not demonstrated a
4 likelihood of irreparable harm if the court does not enjoin the
5 release of its employees home address. As such, plaintiff's
6 motion for a preliminary injunction is DENIED.

7 **B. Merits of Plaintiff's Claims**

8 Although the court has found that plaintiff has not
9 satisfied the requisite showing of a likelihood of irreparable
10 harm in order to obtain a preliminary injunction, for the purpose
11 of completeness, the court will address issues related to the
12 probability of plaintiff's success on the merits.

13 **1. PWCP's Status as a Joint Labor Management Committee**

14 Helix contends that PWCP is not entitled to the certified
15 payroll records because it is not a valid joint LMC formed
16 pursuant to § 175a of the National Labor Relations Act.

17 Specifically, Helix argues that PWCP is not registered with any
18 federal or state agency and is not registered with the California
19 Secretary of State. Helix also presents evidence that in PWCP's
20 formal application to the State of California to act as a labor
21 compliance program, the supporting documentation indicates that
22 it consisted of one investigator; Helix asserts that a joint LMC
23 cannot consist of one person.

24
25 ² Moreover, even if plaintiff provided supported this
26 argument with evidence, the potential injury may be redressed.
27 Section 158 of the National Labor Relations Act makes it unlawful
28 for a labor organization or its agents "to restrain or coerce
employees in the exercise" of the right to organize as well as
the right to refrain from organizing. 29 U.S.C. §§ 157-58 (West
2005).

1 Section 175a of the NLRA sets forth the applicable standards
2 regarding the formation of industrywide LMCs. Section 175a
3 provides that LMCs are "organized jointly by employers and labor
4 organizations representing employees in that plant area or
5 industry" and are "established for the purpose of improving labor
6 management relationships, job security, organizational
7 effectiveness, enhancing economic development or involving
8 workers in decisions affecting their jobs" 29 U.S.C. §
9 175a. The statute imposes no further requirements for the
10 formation of a joint LMC. Nor does federal case law impose
11 additional requirements. Therefore, the only clear requirements
12 to form a valid LMC pursuant to § 175a are (1) joint organization
13 by labor and management groups; and (2) formation for one of the
14 enumerated purposes. As such, there is no requirement that a
15 joint LMC register with a particular state or federal agency or
16 entity. Nor is there a requirement regarding the number of
17 members in a valid joint LMC.

18 PWCP is funded by the Sacramento Electrical Construction
19 Industry Labor-Management Cooperation Committee (the "LMCC"),
20 which is comprised of NECA, a management organization, and IBEW,
21 a labor union. (Sacramento Electrical Construction Industry
22 Labor-Management Cooperation Trust Agreement, attached at Exh. 1
23 to PWCP's Rebuttal to Pl.'s Reply ("Trust Agreement"), filed Jan.
24 24, 2006, at 1). On June 1, 1990, NECA and IBEW entered into a
25 cooperation trust agreement in order to form the LMCC pursuant to
26 29 U.S.C. § 175a. (*Id.* at 1, 26). In March 2002, the Board of
27 Directors of the LMCC passed a resolution authorizing the opening
28 of an additional bank account in the name of the PWCP. (Abram

1 Decl. ¶ 7). The PWCP is a subdivision of the LMCC, which is
2 governed by a committee of trustees. (Steelman Dep. 10:18-11:1).
3 The trustees hold regular monthly meetings, at which the PWCP
4 routinely reports. (Steelman Dep. 14:5-7). The LMCC board of
5 trustees is made up of equal representation of management and
6 labor. (Sacramento Electrical Construction Industry Labor-
7 Management Cooperation Trust Agreement, attached at Exh. 1 to
8 PWCP's Rebuttal to Pl.'s Reply ("Trust Agreement"), filed Jan.
9 24, 2006, 14-15).³ Therefore, the Sacramento Electrical
10 Construction Industry Labor-Management Committee, and PWCP as a
11 subdivision of the LMC, meets the requirement of having been
12 organized jointly by a management organization, NECA, and a labor
13 organization, IBEW.

14 The Trust Agreement provides that the Sacramento Electrical
15 Construction Industry Labor-Management Cooperation Committee is
16 established pursuant to § 175a. (Trust Agreement at 1). The
17 excerpts of the Trust Agreement submitted by the parties do not
18 specifically state that the LMCC was established for one of the
19 listed purposes set forth in § 175a; nor do the excerpts provide
20 explanation of any specific purpose contemplated in formation of
21 the LMCC. However, Helix has not presented any evidence that the
22 LMCC was not formed for one of the purposes set forth in § 175a.
23 As such, the court cannot find that plaintiff would likely
24

25 ³ The balance of the board of trustees has traditionally
26 been three management and three labor. (Steelman Dep. 34:3-9).
27 However, for the past year, management has had only one trustee
28 because management has not yet appointed replacement trustees.
(Steelman Dep. 34:1-2). This does not affect the voting process
of the LMC because the Trust Agreement provides for unit voting,
which allows the management trustee to continue to act as if
three members were present. (Trust Agreement at 16).

1 prevail on its argument that the LMCC, and PWCP as a subdivision
2 of the LMCC, is not a proper joint labor-management committee
3 formed pursuant to § 175a.

4 For the reasons set forth above,⁴ plaintiff has not
5 demonstrated probable success on the merits based upon its
6 argument that PWCP is not a valid LMC.

7 **2. Permissible Activities of Joint Labor Management**
8 **Committees**

9 Helix contends that the function of PWCP exceeds the
10 permissible purposes of an LMC as provided in § 175a.
11 Specifically, Helix argues that "PWCP's purpose is to monitor and
12 harass non-union contractors such as Helix in the hopes of
13 organizing Helix or disrupting its operations thereby decreasing
14 competition." (Pl.'s Mot. at 8). Helix asserts that compliance
15 monitoring is not a permissible activity of a joint LMC.

16 PWCP was formed for the purpose of monitoring public works
17 construction projects within its jurisdiction. (Abrams Decl. ¶
18 3). Part of the duties of the PWCP is to educate labor and
19 management as to their rights and responsibilities with respect
20 to public work projects. (Id.) While these specific purposes
21 and functions are not enumerated in § 175a, the monitoring and
22 enforcement of prevailing wage laws and other industry
23

24 ⁴ Additionally, the California Department of Industrial
25 Relations has recognized PWCP's status as a joint LMC formed
26 pursuant to § 175a. (Exh. 1 to Decl. of Roberta D. Perkins in
27 Opp'n to Pl.'s Mot. for Prelim. Inj. ("Perkins Decl."), executed
28 Jan. 6, 2006). The Department of Industrial Relations found that
it was proper for PWCP to intervene in a review of a civil wage
and penalty assessment with respect to work performed by Helix
Electric, Inc. on the California State University
Telecommunications Infrastructure Upgrade Project. Id.

1 requirements serves the broader purposes of the federal statute.
2 In passing § 175a, Congress issued a Statement of Purpose. One
3 of the Congress' purposes in passing § 175a was "to study and
4 explore ways of eliminating potential problems which reduce the
5 competitiveness and inhibit the economic development of the . . .
6 industry." Section 6(b) of Pub. L. 95-524. Congress also sought
7 "to enhance the involvement of workers in making decisions that
8 affect their working lives;" and "to expand and improve working
9 relationships between workers and managers." Id.

10 Monitoring and enforcing prevailing wage laws help serve the
11 broad purposes of a § 175a joint LMC. The purpose of the
12 prevailing wage law is to benefit and protect workers on public
13 works projects. Lusardi Construction Co. v. Aubry, 1 Cal. 4th
14 976, 987 (1992). By monitoring prevailing wage laws and
15 informing workers on public works projects that their employer
16 may not be complying with these laws, an LMC is "enhancing the
17 involvement of workers in making decisions that affect their
18 working lives" by giving workers more information about their
19 rights and the realities of their current employment. Further,
20 the general objective of prevailing wage laws also

21 subsumes within it a number of specific goals: to
22 protect employees from substandard wages that might be
23 paid if contractors could recruit labor from distant
24 cheap-labor areas; to permit union contractors to
25 compete with nonunion contractors; to benefit the
26 public thought the superior efficiency of well-paid
27 employees; and to compensate nonpublic employees with
28 higher wages for the absence of job security and
employment benefits enjoyed by public employees.

26 Id. Monitoring and enforcement of the prevailing wage laws
27 promotes competition within the industry because one of the goals
28 of prevailing wage laws is to permit union and non-union

1 contractors to compete for public works projects. Compliance
2 with prevailing wage laws therefore promotes more competition
3 within the industry. Finally, ensuring compliance with
4 prevailing wage laws also improves working relationships between
5 workers and managers because prevailing wage laws prevent
6 employers from paying substandard wages to workers; monitoring
7 and enforcing an employers' compliance ensures that workers are
8 paid a proper wage.

9 Compliance monitoring efforts are not specifically
10 enumerated in § 175a. However, allowing joint LMCs to function
11 with the purpose of monitoring and enforcing compliance with
12 state prevailing wage laws does not expand the scope of
13 permissible activities. Rather, enforcement of prevailing wage
14 laws is merely a specific implementation of the broader purposes
15 for which § 175a was enacted. As such, plaintiff has not
16 demonstrated probable success on the merits based on its
17 contention that PWCP functioned outside the permissible scope of
18 purposes and activities of an LMC.

19 **3. Preemption by the National Labor Relation Act**

20 Helix contends that California Labor Code § 1776(e) pits
21 union employers against non-union employers, impermissibly
22 interferes with the jurisdiction of the NLRB, and alters the
23 balance of power between labor and management. Based upon these
24 assertions, Helix argues that California Labor Code § 1776(e) is
25 preempted by the NLRA under the doctrines of Garmon and Machinist
26 preemption.

27 Federal preemption under either the Garmon or Machinists
28 doctrine applies only to legislation that affects protected union

1 activities or affects the relationship between unions and
2 employers. PWCP is not a union. Plaintiff has not presented
3 evidence to demonstrate that PWCP is controlled by a union.
4 Section 1776(e) provides federally recognized LMCs access to
5 certified payroll records of contractors on public works
6 projects. Cal. Lab. Code § 1776(e). This section also
7 authorizes LMCs to file civil actions to collect unpaid
8 prevailing wages and benefits dues. Id. Section 1776(e) does
9 not implicate activities prohibited or protected by §§ 7-8 of the
10 NLRA or alter the balance of power between management and labor.
11 Rather, § 1776(e) empowers non-governmental parties to aid in the
12 enforcement of California's wage and hour laws. Id. This type
13 of conduct is not covered by the NLRA and thus, is not preempted.

14 **a. Garmon Preemption**

15 When state law conflicts with federal labor law under the
16 NLRA, it is preempted by the federal scheme. In Garmon, the
17 Supreme Court reversed a California state court's award of
18 damages to a business being picketed by labor unions. San Diego
19 Building Trades Council et al. v. Garmon, 359 U.S. 236, 246
20 (1959). The Garmon Court considered the narrow question of
21 whether the "California court had jurisdiction to award damages
22 arising out of peaceful union activity." Id. at 239. The Court
23 held that the state court exceeded its proper jurisdiction and
24 that the state court action was preempted by §§ 7-8 of the NLRA.
25 Id. at 246.

26 The Court's analysis turned on the possibility and
27 prevention of conflict between federal and state laws. Id. at
28 242-44. The Court examined the creation of the NLRB as an

1 administrative agency charged with enforcement of the
2 comprehensive federal statutory scheme. Id. Because the NLRB is
3 a regulatory body, "judicial concern has focused on the nature of
4 the activities which the States have sought to regulate." Id. at
5 243. In contrast, when the activity is either protected under §
6 7 of the NLRA or prohibited by § 8, state jurisdiction will be
7 preempted. Id. Further, activities that fall within the
8 penumbra of §§ 7-8 are also preempted. Id. at 245-46.

9 State law is not preempted by the NLRA, however, when the
10 activity regulated by a state is a "peripheral concern of the
11 Labor Management Relations Act" or when the regulated conduct
12 touches interests "deeply rooted in local feeling and
13 responsibility." Id. at 244. When the conduct at issue is
14 violent or an imminent threat to public order, such conduct falls
15 within a state's regulatory jurisdiction because of the
16 compelling state interest in preservation of the peace. Id. at
17 247. The Garmon doctrine was designed to ensure the conformity
18 of national labor policy and avoid conflict with varying state
19 laws. Sears, Roebuck, and Co. v. San Diego Cty. Dist. Council of
20 Carpenters, 436 U.S. 180, (1978). Although state regulation
21 concerning labor-management relations is generally preempted
22 under Garmon, the doctrine does not "support an approach which
23 sweeps away state-court jurisdiction over conduct traditionally
24 subject to state regulation." Id. at 219.

25 In the instant case, § 1776(e) is concerned with the
26 enforcement of state wage and hour laws. The enforcement of
27 California's prevailing wage laws is not actually or arguably
28 protected by §§ 7-8. It is well settled that wages and

1 prevailing wage laws are a subject of traditional state concern.
2 WSB Elec., Inc. v. Curry, 88 F.3d 788, 791 (9th Cir. 1996)
3 (holding that regulation of wages per se is not within ERISA's
4 coverage and is not subject to its broad preemption clause).
5 Therefore, Garmon preemption does not apply to § 1776(e).

6 **b. Machinists Preemption**

7 When state action shifts the balance of power between labor
8 and management or frustrates the federal purpose behind the NLRA,
9 that action is preempted. Machinists v. Wisconsin Employment
10 Relations Comm'n, 427 U.S. 132, 154 (1976). In Machinists, the
11 employer and the employees negotiated a collective-bargaining
12 agreement outlining the terms and conditions of employment. Id.
13 at 133-34. After ratification of the agreement the employer
14 began unilaterally altering the terms and conditions of
15 employment. Id. at 134. Soon after, the union adopted a
16 resolution preventing union members from volunteering for or
17 accepting overtime. Id. The employer filed an action with the
18 NLRB charging the union with a violation of § 8(a) of the NLRA
19 but the charge was dismissed as the conduct did not violate the
20 Act. Id. at 135. The employer also filed an action with the
21 state labor relations board which found that refusing to work
22 overtime was not "arguably protected under § 7 or arguably
23 prohibited under § 8." Id. The state board believed it was not
24 preempted from exercising its authority and ordered the union and
25 its members to stop their refusals to work overtime. Id. at 136.

26 The Machinists Court recognized a range of protected
27 activities not explicitly regulated by the NLRA. Id. at 141.
28 Such activities are circumscribed by the legislative purpose

1 underlying the Act. Id. at 149-50. The Court surveyed the
2 extent to "which federal labor policy and the federal [Labor
3 Relations] Act have pre-empted state regulatory authority to
4 police the use by employees and employers of peaceful methods of
5 putting economic pressure upon one another." Id. The Court held
6 that neither the NLRB nor states may regulate the use of economic
7 weapons or the types of economic pressure that may be brought to
8 bear and used by either party in collective bargaining
9 negotiations. Id. at 146-47. Thus, the state labor board's
10 action was preempted.

11 In this case, § 1776(e) is concerned with the enforcement of
12 prevailing wage laws and does not impermissibly regulate the
13 economic weapons available to either employers or unions.
14 Section 1776(e) simply provides another enforcement mechanism to
15 ensure that workers on public work projects are paid the
16 prevailing wage. Therefore, Machinists preemption does not apply
17 to § 1776(e).

18 **c. Chamber of Commerce v. Lockyer**

19 Helix relies heavily on the Ninth Circuit's ruling in
20 Chamber of Commerce v. Lockyer, 422 F.3d 973 (9th Cir. 2005), to
21 argue that § 1776(e) is preempted by the NLRA. At issue in
22 Lockyer was a statute passed by the California Legislature
23 forbidding "the recipient of a grant of state funds" from using
24 those funds to attempt to influence its employees to support or
25 oppose a union. Id. at 977. The Lockyer court stated that the
26 statute was "regulatory in nature" and not "focused on the police
27 power, state procurement concerns, or local economic needs."
28 Lockyer, supra, 422 F.3d at 977.

1 The court found that the law impermissibly "chill[ed]
2 employer speech on the merits of unionism" and effectively ended
3 employer attempts to defeat union organizing. Id. at 978.
4 Section 8(c) of the NLRA "explicitly protects the right of
5 employers to express their views about unions and union
6 organizing." Id. at 982. Thus, the statute plainly and
7 impermissibly conflicted with the federal scheme of regulation,
8 particularly § 8(c) of the NLRA, and was thus preempted under
9 Garmon. Id.

10 The court also found that the statute took an economic
11 weapon away from management and shifted the balance of power
12 toward unions. Id. at 988. The court noted that behind a facade
13 of labor-management neutrality, the California law actually
14 forced employers to take a position of neutrality rather than a
15 position of opposition to labor. Id. at 978. Therefore, since
16 the statute altered the balance of power between labor and
17 management it was also preempted by Machinists. Id.

18 Lockyer is distinguishable from the statute and facts
19 involved in this case. Labor Code § 1776(e) does not prevent
20 employers or unions from exercising rights granted by the LMRA.
21 Rather, § 1776(e) allows wage compliance monitoring by an
22 independent organization, industrywide joint LMCs. Id. Unlike
23 the statute in Lockyer, the statute at issue in this case
24 concerns enforcement of California's wage and hour laws, a
25 traditional exercise of state police power. The statute in this
26 case does not affect either employers or unions, but grants *joint*
27 *LMCs* the right to access employee addresses from files of the
28 awarding state entity, the DLSE or the Division of Apprenticeship

1 Standards. Cal. Lab. Code § 1776(e). Therefore, Helix's
2 reliance on Lockyer is misplaced.⁵

3 For the reasons set forth above, plaintiff has not
4 demonstrated probable success on the merits based upon its
5 argument that § 1776(e) is preempted by the National Labor
6 Relations Act.

7 **4. Equal Protection Clause**

8 Finally, Helix contends that § 1776(e) violates the Equal
9 Protection Clause of the Fourteenth Amendment because no rational
10 relationship exists between the special advantage given to LMCs
11 and any legitimate state interest. Because this case involves
12 "social and economic policy," and neither targets a suspect class
13 nor impinges upon a fundamental right, the statute is valid so
14 long as there is "any reasonably conceivable state of facts that
15 could provide a rational basis for the classification." FCC v.
16 Beach Communication, Inc., 508 U.S. 307, 313 (1993). "Using such
17 rational-basis review, a statute is presumed constitutional, and
18 'the burden is on the one attacking the legislative arrangement
19 to negative every conceivable basis which might support it.'" Manauskas v. Gonzales, 432 F.3d 1067, 1071 (9th Cir. 2005)
20 (quoting Heller v. Doe, 509 U.S. 312, 320 (1993)). "Where there
21
22

23 ⁵ Helix similarly relies on NLRB precedent, Tech. Service
24 Solutions, 332 NLRB No. 100, slip op. (2000), to support its
25 contention that § 1776(e) impermissibly infringes on the
26 jurisdiction of the NLRB and is therefore preempted by Garmon.
27 (Pl's Mot. at 14). The Technology Services NLRB panel found that
28 an employer has no obligation to provide the addresses of its
employees to a union. (Id. at 3). In this case, however, Helix
is under no obligation to provide a union with the addresses of
its employees. At issue in this case is Helix's opposition to
the release of certain employees addresses by a government agency
to a joint labor-management committee, an issue not raised in
Technology Services.

1 are 'plausible reasons' for [legislative] action, 'our inquiry is
2 at an end.'" Rui One Corp. v. City of Berkeley, 371 F.3d 1137,
3 1154 (9th Cir. 2004) (citing Beach Communication, Inc., 508 U.S.
4 at 313-14.)

5 Section 1776(e) provides LMCs access to certified payroll
6 records of contractors on public works projects, including
7 employee addresses. Cal. Lab. Code § 1776(e). Section 1776(e)
8 was passed because "union representatives and joint labor-
9 management committees [were] unable to determine when contractors
10 [were] misclassifying and underpaying skilled workers in
11 violation of prevailing wage laws." Assembly Committee on
12 Appropriations Report on SB 588, Ex. 4 to Decl. of Matthew S.
13 McConnell in Supp. of Pl.'s Mot. for a T.R.O. & Prelim. Inj.
14 ("McConnell Decl."), executed Nov. 22, 2005). Further, because
15 the "DLSE [had] only 20 field investigators and six auditors in
16 the public works unit," the state agency could not adequately
17 enforce the prevailing wage laws. Id.

18 The State of California has a legitimate interest in
19 regulating wages and employment conditions. Rui One Corp. v.
20 City of Berkeley, 371 F.3d at 1150 (9th Cir. 2004). Enforcement
21 of these regulations is also a legitimate state interest. See
22 City of Long Beach v. Dep't. of Insus. Relations, 34 Cal. 4th
23 942, 949 (2004).

24 The Legislature has declared that it is the public
25 policy of California to vigorously enforce minimum
26 labor standards in order to ensure employees are not
27 required or permitted to work under substandard
28 unlawful conditions and to protect employers who comply
with the law from those who attempt to gain competitive
advantage at the expense of their workers by failing to
comply with minimum labor standards.

1 Id. (internal quotations and citations omitted). "The overall
2 purpose of the prevailing wage law is to protect and benefit
3 employees *on public works projects.*" Id.

4 Because state agencies could not adequately enforce
5 prevailing wage laws alone, (Assembly Committee on Appropriations
6 Report on SB 588, Ex. 4 to McConnell Decl.), the Legislature
7 granted LMCs access to employee addresses for individuals working
8 on public works projects. Cal. Lab. Code. § 1776(e). The
9 release of employee addresses could reasonably help LMCs in their
10 enforcement effort because it would allow LMCs to contact workers
11 upon finding violations in the records and potentially maintain a
12 civil action on their behalf. It is certainly "plausible" that
13 the Legislature specifically released the information to LMCs
14 because, by definition, LMCs represent both labor and management,
15 and therefore, release of the information will not unfairly
16 benefit one over the other. It is also "plausible" that the
17 Legislature found that the ability of LMCs to contact employees
18 could aid them in the enforcement of the California's wage and
19 hour laws on public works projects, a subject of traditional and,
20 at the very least, legitimate state concern. Therefore, §
21 1776(e) does not violate the Equal Protection Clause.

22 **CONCLUSION**

23 Therefore, for the foregoing reasons, the plaintiff's motion
24 for a preliminary injunction is DENIED.

25 IT IS SO ORDERED.
26 DATED: February 24, 2006

27 /s/ Frank C. Damrell Jr.
28 FRANK C. DAMRELL, Jr.
UNITED STATES DISTRICT JUDGE