H

Helix Elec., Inc. v. Division of Labor Standards Enforcement
E.D.Cal.,2006.

United States District Court,E.D. California.
HELIX ELECTRIC, INC., Plaintiff,
v.
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.
No. Civ. 05-2303 FCD KJM.

Feb. 27, 2006.

Matthew Scott Mcconnell, Richard M. Freeman, Sheppard, Mullin, Richter & Hampton LLP, San Diego, CA, for Plaintiffs.
David Maxim Balter, Division Of Labor Standards Enforcement, San Francisco, CA, Ray C. Thompson, Office of County Counsel County Of Sacramento, Sacramento, CA, David A. Rosenfeld, Caren Pamela Sencer, Roberta D. Perkins, Weinberg Roger and Rosenfeld, Alameda, CA, for Defendants.

MEMORANDUM AND ORDER

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

BACKGROUND

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

PWCP represents itself as a joint labor-management committee ("LMC") established pursuant to 29 U.S.C. § 175a. (Decl. Of Kevin Abram in Opp'n to Pl.'s Mot. for Prelim. Inj. ("Abram Decl."), executed Jan. 5, 2006, ¶ 1). PWCP is funded by the Sacramento Electrical Construction Industry Labor-Management Cooperation Committee (the "LMCC"), which was established by the National Electrical Contractors Association ("NECA") and the International Brotherhood of Workers ("IBEW").(*Id.* ¶ 7). However, neither NECA nor IBEW instructs PWCP as to its job duties or directs the work that PWCP performs. (*Id.*) PWCP reports on a monthly basis to the LMCC. (Deposition of A.C. Steelman attached as Exh. 2 to Declaration of Roberta D. Perkins in Supp. of PWCP's Rebuttal to Pl.'s Reply [FN1] ("Steelman Dep."), filed Jan. 24, 2006, 14:5-7). PWCP was formed for the purpose of monitoring public works construction projects within its jurisdiction, and implements this purpose, in part, by educating labor and management as to their rights and responsibilities with respect to public works projects. (*Id.* ¶ 3).

FN1. The court will consider PWCP's rebuttal and exhibits attached thereto because new factual issues were raised in 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.

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

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

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

STANDARD

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

ANALYSIS

A. *Irreparable Harm*

Plaintiff contends that Helix and its employees will suffer irreparable injury if a preliminary injunction is not issued "since the PWCP will have then received the home addresses of Helix's employees."(Pl.'s Mot. for a T.R.O. & Prelim. Inj. ("Pl.'s Mot."), filed Nov. 22, 2005, at 19). Plaintiff argues that PWCP and "its union backed entities" will be free to disseminate and utilize this information without any monitoring by plaintiff. (*Id.*) Specifically, Helix asserts that defendant PWCP will improperly use the employee addresses it obtains to organize a union, harass and solicit non-union employees, post the addresses of the non-union employees in newspapers or trade publications, or sell them to other solicitors. (Pl.'s Reply in Supp. of a T.R.O. & Prelim. Inj. ("Pl.'s Reply"), filed Jan 20, 2006, at 12). These arguments fail to demonstrate a significant threat of irreparable injury.

The disclosure of employee addresses does not, by itself, amount to irreparable injury to plaintiff or plaintiff's employees. The injury that plaintiff is concerned with is the harassment or intimidation of

its employees by a union seeking to organize these employees. IBEW, the union whose potential actions plaintiff is concerned with, is not a party to this action. The injury plaintiff asserts in its motion could only occur if and after PWCP disclosed those names and addresses to the union. Plaintiff has not demonstrated that PWCP's purpose in seeking this information is to gain information for the union to aid in organization efforts. Nor has plaintiff presented any evidence substantiating its allegations that PWCP "serves at the bidding of the IBEW and its Local 340 located in Sacramento."(Pl.'s Mot. at 9). At this juncture, the potential for injury to the plaintiff or its employees is wholly speculative."Speculative injury does not constitute irreparable injury."*Colorado Rive Indian Tribes v. Town of Parker,* 776 F.2d 846, 849 (9th Cir.1985). Therefore, plaintiff has not satisfied its burden for the issuance of a preliminary injunction.[FN2]

> FN2. Moreover, even if plaintiff provided supported this argument with evidence, the potential injury may be redressed. Section 158 of the National Labor Relations Act makes it unlawful 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).

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

B. *Merits of Plaintiff's Claims*

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

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

Helix contends that PWCP is not entitled to the certified payroll records because it is not a valid joint LMC formed pursuant to § 175a of the National Labor Relations Act. Specifically, Helix argues that PWCP is not registered with any federal or state agency and is not registered with the California Secretary of State. Helix also presents evidence that in PWCP's formal application to the State of California to act as a labor compliance program, the supporting documentation indicates that it consisted of one investigator; Helix asserts that a joint LMC cannot consist of one person.

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

PWCP is funded by the Sacramento Electrical Construction Industry Labor-Management Cooperation Committee (the "LMCC"), which is comprised of NECA, a management organization, and IBEW, a labor union. (Sacramento Electrical Construction Industry Labor-Management Cooperation Trust Agreement, attached at Exh. 1 to PWCP's Rebuttal to Pl.'s Reply ("Trust Agreement"), filed Jan. 24,

2006, at 1). On June 1, 1990, NECA and IBEW entered into a cooperation trust agreement in order to form the LMCC pursuant to 29 U.S.C. § 175a. (*Id.* at 1, 26). In March 2002, the Board of Directors of the LMCC passed a resolution authorizing the opening of an additional bank account in the name of the PWCP. (Abram Decl. ¶ 7). The PWCP is a subdivision of the LMCC, which is governed by a committee of trustees. (Steelman Dep. 10:18-11:1). The trustees hold regular monthly meetings, at which the PWCP routinely reports. (Steelman Dep. 14:5-7). The LMCC board of trustees is made up of equal representation of management and labor. (Sacramento Electrical Construction Industry Labor-Management Cooperation Trust Agreement, attached at Exh. 1 to PWCP's Rebuttal to Pl.'s Reply ("Trust Agreement"), filed Jan. 24, 2006, 14-15).[FN3] Therefore, the Sacramento Electrical Construction Industry Labor-Management Committee, and PWCP as a subdivision of the LMC, meets the requirement of having been organized jointly be a management organization, NECA, and a labor organization, IBEW.

> FN3. The balance of the board of trustees has traditionally been three management and three labor. (Steelman Dep. 34:3-9). However, for the past year, management has had only one trustee 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).

*4 The Trust Agreement provides that the Sacramento Electrical Construction Industry Labor-Management Cooperation Committee is established pursuant to § 175a. (Trust Agreement at 1). The excerpts of the Trust Agreement submitted by the parties do not specifically state that the LMCC was established for one of the listed purposes set forth in § 175a; nor do the excerpts provide explanation of any specific purpose contemplated in formation of the LMCC. However, Helix has not presented any evidence that the LMCC was not formed for one of the purposes set forth in § 175a. As such, the court cannot find that plaintiff would likely prevail on its argument that the LMCC, and PWCP as a subdivision of the LMCC, is not a proper joint labor-management committee formed pursuant to § 175a.

For the reasons set forth above,[FN4] plaintiff has not demonstrated probable success on the merits based upon its argument that PWCP is not a valid LMC.

> FN4. Additionally, the California Department of Industrial Relations has recognized PWCP's status as a joint LMC formed pursuant to § 175a. (Exh. 1 to Decl. of Roberta D. Perkins in Opp'n to Pl.'s Mot. for Prelim. Inj. ("Perkins Decl."), executed 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.*

2. Permissible Activities of Joint Labor Management Committees

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

PWCP was formed for the purpose of monitoring public works construction projects within its juris-

diction. (Abrams Decl. ¶ 3). Part of the duties of the PWCP is to educate labor and management as to their rights and responsibilities with respect to public work projects. (*Id.*) While these specific purposes and functions are not enumerated in § 175a, the monitoring and enforcement of prevailing wage laws and other industry requirements serves the broader purposes of the federal statute. In passing § 175a, Congress issued a Statement of Purpose. One of the Congress' purposes in passing § 175a was "to study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the ... industry."Section 6(b) of Pub.L. 95-524.Congress also sought "to enhance the involvement of workers in making decisions that affect their working lives;" and "to expand and improve working relationships between workers and managers."*Id.*

Monitoring and enforcing prevailing wage laws help serve the broad purposes of a § 175a joint LMC. The purpose of the prevailing wage law is to benefit and protect workers on public works projects. *Lusardi Construction Co. v. Aubry,* 1 Cal.4th 976, 987, 4 Cal.Rptr.2d 837, 824 P.2d 643 (1992). By monitoring prevailing wage laws and informing workers on public works projects that their employer may not be complying with these laws, an LMC is "enhancing the involvement of workers in making decisions that affect their working lives" by giving workers more information about their rights and the realities of their current employment. Further, the general objective of prevailing wage laws also

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

Id. Monitoring and enforcement of the prevailing wage laws promotes competition within the industry because one of the goals of prevailing wage laws is to permit union and non-union contractors to compete for public works projects. Compliance with prevailing wage laws therefore promotes more competition within the industry. Finally, ensuring compliance with prevailing wage laws also improves working relationships between workers and managers because prevailing wage laws prevent employers from paying substandard wages to workers; monitoring and enforcing an employers' compliance ensures that workers are paid a proper wage.

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

3. Preemption by the National Labor Relation Act

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

Federal preemption under either the *Garmon* or *Machinists* doctrine applies only to legislation that affects protected union activities or affects the relationship between unions and employers. PWCP is not a union. Plaintiff has not presented evidence to demonstrate that PWCP is controlled by a

Section 1776(e) provides federally recognized LMCs access to certified payroll records of contractors on public works projects. Cal. Lab.Code § 1776(e). This section also authorizes LMCs to file civil actions to collect unpaid prevailing wages and benefits dues. *Id.* Section 1776(e) does not implicate activities prohibited or protected by §§ 7-8 of the NLRA or alter the balance of power between management and labor. Rather, § 1776(e) empowers non-governmental parties to aid in the enforcement of California's wage and hour laws. *Id.* This type of conduct is not covered by the NLRA and thus, is not preempted.

a. *Garmon* Preemption

***6** When state law conflicts with federal labor law under the NLRA, it is preempted by the federal scheme. In *Garmon,* the Supreme Court reversed a California state court's award of damages to a business being picketed by labor unions. *San Diego Building Trades Council et al. v. Garmon,* 359 U.S. 236, 246, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959). The *Garmon* Court considered the narrow question of whether the "California court had jurisdiction to award damages arising out of peaceful union activity."*Id.* at 239.The Court held that the state court exceeded its proper jurisdiction and that the state court action was preempted by §§ 7-8 of the NLRA. *Id.* at 246.

The Court's analysis turned on the possibility and prevention of conflict between federal and state laws. *Id.* at 242-44.The Court examined the creation of the NLRB as an administrative agency charged with enforcement of the comprehensive federal statutory scheme. *Id.* Because the NLRB is a regulatory body, "judicial concern has focused on the nature of the activities which the States have sought to regulate."*Id.* at 243.In contrast, when the activity is either protected under § 7 of the NLRA or prohibited by § 8, state jurisdiction will be preempted. *Id.* Further, activities that fall within the penumbra of §§ 7-8 are also preempted. *Id.* at 245-46.

State law is not preempted by the NLRA, however, when the activity regulated by a state is a "peripheral concern of the Labor Management Relations Act" or when the regulated conduct touches interests "deeply rooted in local feeling and responsibility."*Id.* at 244.When the conduct at issue is violent or an imminent threat to public order, such conduct falls within a state's regulatory jurisdiction because of the compelling state interest in preservation of the peace. *Id.* at 247.The *Garmon* doctrine was designed to ensure the conformity of national labor policy and avoid conflict with varying state laws. *Sears, Roebuck, and Co. v. San Diego Cty. Dist. Council of Carpenters,* 436 U.S. 180, 98 S.Ct. 1745, 56 L.Ed.2d 209, (1978). Although state regulation concerning labor-management relations is generally preempted under *Garmon,* the doctrine does not "support an approach which sweeps away state-court jurisdiction over conduct traditionally subject to state regulation."*Id.* at 219.

In the instant case, § 1776(e) is concerned with the enforcement of state wage and hour laws. The enforcement of California's prevailing wage laws is not actually or arguably protected by §§ 7-8. It is well settled that wages and prevailing wage laws are a subject of traditional state concern. *WSB Elec., Inc. v. Curry,* 88 F.3d 788, 791 (9th Cir.1996) (holding that regulation of wages per se is not within ERISA's coverage and is not subject to its broad preemption clause). Therefore, *Garmon* preemption does not apply to § 1776(e).

b. *Machinists* Preemption

When state action shifts the balance of power between labor and management or frustrates the federal purpose behind the NLRA, that action is preempted.*Machinists v. Wisconsin Employment Relations Comm'n,* 427 U.S. 132, 154, 96 S.Ct. 2548, 49 L.Ed.2d 396 (1976). In *Machinists,* the employer and the employees negotiated a collective-bargaining agreement outlining the terms and conditions of employment. *Id.* at 133-34.After ratification of the agreement the employer began uni-

laterally altering the terms and conditions of employment. *Id.* at 134.Soon after, the union adopted a resolution preventing union members from volunteering for or accepting overtime. *Id.* The employer filed an action with the NLRB charging the union with a violation of § 8(a) of the NLRA but the charge was dismissed as the conduct did not violate the Act. *Id.* at 135.The employer also filed an action with the state labor relations board which found that refusing to work overtime was not "arguably protected under § 7 or arguably prohibited under § 8."*Id.*The state board believed it was not preempted from exercising its authority and ordered the union and its members to stop their refusals to work overtime.*Id.* at 136.

*7 The *Machinists* Court recognized a range of protected activities not explicitly regulated by the NLRA. *Id.* at 141.Such activities are circumscribed by the legislative purpose underlying the Act. *Id.* at 149-50.The Court surveyed the extent to "which federal labor policy and the federal [Labor Relations] Act have pre-empted state regulatory authority to police the use by employees and employers of peaceful methods of putting economic pressure upon one another."*Id.* The Court held that neither the NLRB nor states may regulate the use of economic weapons or the types of economic pressure that may be brought to bear and used by either party in collective bargaining negotiations. *Id.* at 146-47.Thus, the state labor board's action was preempted.

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

c. Chamber of Commerce v. Lockyer

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

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

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

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

awarding state entity, the DLSE or the Division of Apprenticeship Standards. Cal. Lab.Code § 1776(e). Therefore, Helix's reliance on *Lockyer* is misplaced.[FN5]

> FN5. Helix similarly relies on NLRB precedent, *Tech. Service Solutions,* 332 NLRB No. 100, slip op. (2000), to support its contention that § 1776(e) impermissibly infringes on the jurisdiction of the NLRB and is therefore preempted by *Garmon.*(Pl's Mot. at 14). The *Technology Services* NLRB panel found that 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.*

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

4. Equal Protection Clause

Finally, Helix contends that § 1776(e) violates the Equal Protection Clause of the Fourteenth Amendment because no rational relationship exists between the special advantage given to LMCs and any legitimate state interest. Because this case involves "social and economic policy," and neither targets a suspect class nor impinges upon a fundamental right, the statute is valid so long as there is "any reasonably conceivable state of facts that could provide a rational basis for the classification."*FCC v. Beach Communication, Inc.,* 508 U.S. 307, 313, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993)."Using such rational-basis review, a statute is presumed constitutional, and 'the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." ' *Manauskas v. Gonzales,* 432 F.3d 1067, 1071 (9th Cir.2005) (quoting *Heller v. Doe,* 509 U.S. 312, 320, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993)). "Where there are 'plausible reasons' for [legislative] action, 'our inquiry is at an end." ' *Rui One Corp. v. City of Berkeley,* 371 F.3d 1137, 1154 (9th Cir.2004) (citing *Beach Communication, Inc.,* 508 U.S. at 313-14.)

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

The State of California has a legitimate interest in regulating wages and employment conditions. *Rui One Corp. v. City of Berkeley,* 371 F.3d at 1150 (9th Cir.2004). Enforcement of these regulations is also a legitimate state interest. *SeeCity of Long Beach v. Dep't. of Insus. Relations,* 34 Cal.4th 942, 949, 22 Cal.Rptr.3d 518, 102 P.3d 904 (2004).

The Legislature has declared that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard 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.

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

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

CONCLUSION

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

IT IS SO ORDERED.

E.D.Cal.,2006.
Helix Elec., Inc. v. Division of Labor Standards Enforcement
Not Reported in F.Supp.2d, 2006 WL 464083 (E.D.Cal.), 179 L.R.R.M. (BNA) 2138, 11 Wage & Hour Cas.2d (BNA) 667

END OF DOCUMENT