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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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OLIVIA GARCIA, Acting Regional
Director of Region 20 of the
National Labor Relations
Board, for and on behalf of
the NATIONAL LABOR RELATIONS
BOARD,

Petitioner,

v.

SACRAMENTO COCA-COLA BOTTLING
CO., INC.,

Respondent.

NO. 2:10-cv-2176 FCD JFM

MEMORANDUM AND ORDER

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This matter is before the court on petitioner Olivia Garcia's ("petitioner"), Regional Director of Region 20 of the National Labor Relations Board, for and on behalf of the National Labor Relations Board (the "Board"), petition for an injunction under § 10(j) of the National Labor Relations Act. Petitioner seeks an interim order required respondent to recognize and bargain with Teamsters Local 150 (the "Union" or the "affiliated

1 Union") pending the Board's final disposition in this case.
2 Respondent Sacramento Coca-Cola Bottling Co., Inc. ("respondent"
3 or the "Employer") opposes the petition. The court heard oral
4 argument on August 20, 2010. For the reasons set forth below,
5 the Board's petition for a § 10(j) injunction is GRANTED.

6 **BACKGROUND¹**

7 Respondent is a California corporation that owns franchise
8 agreements with Coca-Cola Bottling Co., Inc., under which it is
9 authorized to manufacture, distribute, and sell Coca Cola
10 products in the Sacramento and Modesto geographical areas.
11 (Decl. of Rob Siebers in Supp. of Opp'n to Inj. ("Siebers
12 Decl."), filed Aug. 18, 2010, ¶ 2.) Sacramento Coca-Cola
13 Bottlers Employees Union ("SCCBE") was an in-house union, formed
14 by the employees of respondent in 1966. (Affs. In Support of
15 Pet. for Inj. ("App,"), filed Aug. 13, 2010, at 13.) The unit is
16 comprised of all regular employees engaged in production,
17

18 ¹ The facts of the case are taken from the affidavits and
19 supporting documents submitted by the parties. Respondent filed
20 various objections to petitioner's evidence. As the court does
not rely on the challenged evidence in rendering its conclusion,
respondent's objections are OVERRULED as moot.

21 Respondent also requested an evidentiary hearing and the
22 opportunity to present oral testimony due to "credibility issues"
23 involved in this litigation. However, because "a conflict of
evidence does not preclude the Regional Director from making the
24 requisite showing for a § 10(j) injunction," and because the
facts about which respondent contends there are credibility
25 concerns are irrelevant to the court's analysis, the court DENIED
respondent's request. Scott ex rel. NLRB v. Stephen Dunn &
Assocs., 241 F.3d 652, 662 (9th Cir. 2001) (abrogation recognized
26 on other grounds); see also NLRB v. Electro-Voice, Inc., 83 F.3d
1559, 1571 (7th Cir. 1996) (holding that the district court
27 applied the wrong standard when it resolved credibility conflicts
in the evidence instead of evaluating whether the petitioner had
28 presented sufficient evidence to demonstrate a "better than
negligible chance of prevailing before the Board").

1 distribution and maintenance. (App. at 48.) The unit is
2 currently comprised of approximately 310-320 of respondent's
3 employees. (App. at 31; Siebers Decl. ¶ 6.) The collective
4 bargaining agreement between respondent and the unit extends from
5 November 1, 2009 through October 31, 2013. (Id. at 47; Siebers
6 Decl. ¶ 36; Ex. O to Siebers Decl.)

7 On March 21, 2010 a vote was held to elect ten new Board of
8 Governors for SCCBE (the "SCCBE Board"). New SCCBE Board members
9 included Jerry Rezendes ("Rezendes") and Dennis Young ("Young")
10 as Chairman and President of the SCCBE Board, respectively.
11 (App. at 1, 13, 25.) During the three years prior to taking
12 office, Rezendes and Young had been in contact with Rocky Thomas
13 ("Thomas"), an organizer/business representative of Teamsters
14 Local 150, to discuss the possibility of merging SCCBE with
15 Teamsters Local 150. (Id. at 29.) After the March 21 election,
16 these discussions took on a more serious nature. (Id. at 30.)

17 A few weeks later, a SCCBE meeting was scheduled for April
18 25, 2010 as "a general meeting to introduce the newly elected
19 members of the board," discuss finances, and exchange contact
20 information. (Decl. of Robert Giron in Supp. of Opp'n to Inj.
21 ("Giron Decl."), filed Aug. 18, 2010, ¶ 2; Ex. A to Giron Decl.)
22 Prior to the meeting, approximately four SCCBE Board members were
23 aware of the merger discussions. (Id. at 2, 6, 7, 29.)
24 Immediately before the meeting, several more were made aware
25 that there were on-going merger discussions that were kept secret
26 because Rezendes was afraid of retaliation by respondent for
27 suggesting the merger. (Id. at 2, 6, 18.)

28

1 Fifty to sixty members attended the April 25 meeting. (Id.
2 at 7.) Thomas and Teamsters 150 attorney, David Rosenfeld
3 ("Rosenfeld"), were invited to the meeting by Rezendes and were
4 also in attendance. (Id. at 26.) After the SCCBE Board members
5 were introduced, a member brought up the possibility of merging
6 with Teamsters 150. (Id. at 21.) A motion on the issue was made
7 and seconded.² (Id.) A heated discussion ensued, during which
8 respondent asserts that Young told the audience that if the vote
9 to merge was not taken straight away, respondent would make the
10 members jobs very hard on them, harass them and/or fire them.
11 (Id. at 44, 11; Siebers Decl. ¶ 17; Ex. D to Siebers Decl.)
12 Eventually, Thomas took the floor and read the proposed merger
13 agreement ("Agreement") and answered questions about the potential
14 merger. (App. at 30.)

15 Members were asked to stand on opposite sides of the room
16 to show their support or opposition to the merger. (App. at 12,
17 23, 30.) Around 50 members supported the merger; approximately 5
18 members opposed the merger. (Id. at 8, 14, 27, 30.) However, in
19 light of the discussions and the fact that most members were not
20 aware of the merger idea, the SCCBE Vice President suggested that
21 any merger vote should be held at a later time so all members
22 could be consulted. (Id. at 44.) Young did not agree. He
23 stated that everyone had notice and was invited to come and that
24 the meeting was one of the largest turnouts they had ever had.
25 (Id. at 18.)

26
27 ² Hieu Nguyen was the employee who seconded the motion.
28 She was involved in the initial discussion with Rezendes about
merging SCCBE with Teamsters 150 and explained that she was asked
to bring this idea up at the April 25 meeting. (Id.)

1 A hand vote of the SCCBE Board was taken and the merger with
2 Teamsters 150 was agreed upon by a majority of the Board of
3 Governors. (Id. at 14.)

4 Following the vote by the SCBBE Board, SCCBE's president
5 executed the Agreement with Teamsters 150. (Id. 34.) The
6 Agreement called for retaining the current collective bargaining
7 agreement between SCCBE and respondent in full force and effect,
8 with no changes in terms or conditions. (Id.) The collective
9 bargaining agreement is set to expire in October 2013 and at the
10 time the Union will bargain a new contract. (Id. at 47.)

11 Under the current Agreement employees can become members of
12 the Union without paying an initiation fee and dues will remain
13 for the same for another 18 to 36 months. (Id. at 34.) Any
14 later increase in dues must be approved by the Union members
15 employed at Sacramento Coca-Cola Bottling Co. following the April
16 25 membership meeting. (Id. at 40.)

17 All Board members were asked and agreed to serve as shop
18 stewards for the Union. (Id. at 3, 9, 28, 38.) Once they
19 receive the requisite training, shop stewards will be able to
20 settle grievances at the first or second step of the grievance
21 procedure without assistance from a Union representative; six
22 shop stewards who are former Board of Governors members attended
23 the shop steward training on June 19. (Id. at 39.)

24 All assets and liabilities of SCCBE were transferred to the
25 Union, including the sole assets of approximately \$87,000.
26 (Siebers Decl. ¶ 6.) These funds were deposited in a separate
27 checking account controlled by the Union to be used only for
28

1 representation expenses related to the Sacramento Coca-Cola
2 Bottling Co. unit employees. (App. at 34.)

3 On April 27, 2010, the affiliated Union sent a letter to
4 respondent, advising it that SCCBE had merged with Teamsters
5 Local 150 and designating Thomas as the Union representative.
6 (Siebers Decl. ¶ 14; Exhibit B to Siebers Decl.) In response, on
7 April 28, respondent posted a letter at the worksite, questioning
8 the validity of the merger. (App. at 37.; Siebers Decl. ¶ 15;
9 Ex. C to Siebers Decl.) On April 29, ten employees posted a
10 letter protesting the merger, stating that members would be asked
11 to sign a petition to dissolve any relationship with Teamsters
12 Local 150. (Siebers Decl. ¶ 19.) On May 3, 2010, a petition
13 stating "I DO NOT WANT TO BE AFFILIATED WITH TEAMSTERS LOCAL 150"
14 began circulating among the employees. (App. at 103-119; Siebers
15 Decl. ¶ 7; Ex. K to Siebers Decl.) Fifty-five signatures were
16 obtained on the first day of the petition. (Siebers Decl. ¶ 21.)

17 Three days later, on May 6, 2010, the Union conducted a
18 noticed meeting for respondent's employees. Only 10 of the 308
19 bargaining unit employees attended. (Siebers Decl. ¶ 31; Ex. L
20 to Siebers Decl.)

21 On May 20, 2010, respondent's counsel sent a letter to the
22 Union's counsel, expressly providing that it did not recognize
23 the affiliated Union. (App. at 125.)

24 During the summer of 2010, several grievances were filed by
25 the Union on behalf of employees. (App. at 32, 33, 39.)

26 Petitioner asserts that all 16 of these grievances were ignored
27 and remain unresolved. (Decl. Vigent ¶ 9.) Respondent asserts
28 that it has attempted to resolve all grievances filed since April

1 25, 2010 only with representatives of "SCCBE," not the Union.

2 (Id.)

3 **1. Respondent's and Employee Filings with the Region**

4 On May 13, 2010, respondent filed a charge with Region 20
5 (the "Region"), claiming the Union violated Section 8(b)(1)(A) of
6 the National Labor Relations Act ("NLRA") by restraining,
7 coercing, and threatening employees in order to gain support for
8 the merger. (Decl. Acting Regional Director in Supp. of Pet. for
9 Inj. ("Garcia Decl."), filed Aug. 13, 2010, ¶ 6.) The charge was
10 investigated, and on June 30, 2010 the Region dismissed it after
11 determining it was without merit. (Decl. of Dennis S. Murphy in
12 Supp. of Opp'n to Inj. ("Murphy Decl."), filed Aug. 18, 2010, ¶
13 5; Garcia Decl. ¶ 6.) On July 12, 2010, respondent appealed the
14 decision. (Garcia Decl. ¶ 6; Siebers Decl. ¶ 34.) A month
15 later, on August 12, 2010, respondent's appeal was denied by NLRB
16 Office of Appeals. (Murphy Decl. ¶ 4-5; Ex. C to Murphy Decl.)

17 On May 25, 2010, an employee submitted a petition to the
18 Board, seeking to recall the current Union officials. (Decl. of
19 Robert Giron in Supp. of Opp'n to Inj. ("Giron Decl."), filed
20 Aug. 18, 2010, ¶ 4.) The Board would not accept the petition.

21 (Id.)

22 On June 28, 2010, respondent filed petitions for a
23 representative (RM) election with the Region. (Murphy Decl. ¶
24 6.) Attached to the petitions, respondent submitted a
25 supplemental petition, stating that the signatories did not want
26 to be affiliated with Teamsters Local 150, signed by 56% of the
27 bargaining unit employees. (Id.; Siebers Decl. ¶ 7.) The
28 employees continued to gather signatures and, as of the date of

1 the hearing, the employee petition has been signed by 173
2 bargaining unit employees. (Giron Decl. ¶5.) On July 7, 2010,
3 the Region dismissed the employer's petitions for an election,
4 citing both the contract bar rule and a charge filed by the
5 Union. (Ex. to Pet'r's Reply Brief, filed Aug. 19, 2010.)

6 **2. The Current Litigation**

7 On May 3, 2010, the Union filed an unfair labor practice
8 charge against respondent alleging violation of Section
9 8(a)(1)(5) of the National Labor Relations Act ("NLRA") for
10 refusing to bargain in good faith. (Decl. Acting Regional
11 Director in Supp. of Pet. for Inj. ("Garcia Decl."), filed Aug.
12 13, 2010, ¶ 3.) On June 2, 2010, respondent submitted a response
13 to Teamsters 150's charge with a petition attached, signed by
14 approximately 130 employees stating they do not want to be
15 affiliated with Teamsters. (Murphy Decl. ¶ 3; Ex. B to Murphy
16 Decl.)

17 On June 20, 2010, Region 20 issued a complaint against
18 Respondent on the basis of Teamster Local 150's unfair labor
19 practice claim. A hearing on the complaint was scheduled to be
20 heard on August 25, 2010. However, on August 16, 2010, the Union
21 filed a new unfair labor practice charge with the Board that is
22 related to petitioner's unfair labor practice claim. (Aff. of
23 Regional Director, filed Aug. 19, 2010, ¶ 2.) This action will
24 be heard by an ALJ in October 2010. (Id. ¶ 4.)

25 On August 13, 2010, petitioner filed 10(j) motion in this
26 court, seeking an interim bargaining order requiring respondent
27 to recognize and bargain with the Union during the pendency of
28 proceedings before the ALJ and the NLRB.

1 **ANALYSIS**

2 Section 10(j) of the National Labor Relations Act ("NLRA")
3 provides that, upon issuance of a complaint charging an unfair
4 labor practice, the Board may petition the United States district
5 court for appropriate temporary relief or restraining order, and
6 the court "shall have jurisdiction to grant to the Board such
7 temporary relief or restraining order as it deems just and
8 proper." 29 U.S.C. § 160(j) (2009). Injunctive relief under §
9 10(j) is intended to preserve the status quo pending final action
10 by the Board. Scott ex rel. NLRB v. Stephen Dunn & Assocs., 241
11 F.3d 652, 660 (9th Cir. 2001) (abrogation recognized on other
12 grounds).

13 In determining whether interim relief is "just and proper"
14 under the NLRA, the court considers traditional equitable
15 criteria in determining whether injunctive relief should be
16 granted. Miller v. Pac. Med. Ctr., 19 F.3d 449, 459 (9th Cir.
17 1994) (abrogation recognized on other grounds). The Ninth
18 Circuit has recently clarified the controlling standard for
19 injunctive relief in light of the Supreme Court's decision in
20 Winter v. Natural Res. Def. Council, -- U.S. --, 129 S. Ct. 365
21 (2008). Alliance for Wild Rockies v. Cottrell, -- F.3d --, No.
22 09-35756, 2010 WL 2926463, at *6-7 (9th Cir. July 28, 2010); Am.
23 Trucking Ass'ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052
24 (9th Cir. 2009). A party seeking a preliminary injunction must
25 demonstrate that he is likely to succeed on the merits, that
26 irreparable harm is likely in the absence of preliminary relief,
27 that the balance of equities tips in favor of such relief, and
28 that an injunction is in the public interest. Am. Trucking, 559

1 F.3d at 1052. A preliminary injunction is also appropriate when
2 the moving party demonstrates "that serious questions going to
3 the merits [are] raised and the balance of hardships tips sharply
4 in the [moving party's] favor," so long as that party can
5 establish the other Winter factors, including the likelihood of
6 irreparable harm. Alliance for Wild Rockies, 2010 WL 2926463, at
7 * 7. However, when evaluating a petition under § 10(j), the
8 court must analyze the request "through the prism of the
9 underlying purpose of § 10(j), which is to protect the integrity
10 of the collective bargaining process and to preserve the Board's
11 remedial power while it processes the charge." Miller, 19 F.3d
12 at 459-60.

13 "In assessing whether the Board has met its burden, it is
14 necessary to factor in the district court's lack of jurisdiction
15 over unfair labor practices, and the deference accorded to NLRB
16 determinations by the courts of appeals." Id. at 460 (citing
17 NLRB v. City Disposal Sys., Inc., 465 U.S. 822, 829 (1984) ("[O]n
18 an issue that implicates [the Board's] expertise in labor
19 relations, a reasonable construction by the Board is entitled to
20 considerable deference[.]"); Ford Motor Co. v. NLRB, 441 U.S. 488
21 (1979) ("Of course, the judgment of the Board is subject to
22 judicial review; but if its construction of the statute is
23 reasonably defensible, it should not be rejected merely because
24 the courts might prefer another view of the statute.").

25 **A. Success on the Merits**

26 The district court must evaluate the likelihood of success
27 in the context that the Board's determination on the merits will
28 be given considerable deference on appeal. Id. "A conflict in

1 evidence does not preclude the Regional Director from making the
2 requisite showing for a § 10(j) injunction." Scott, 241 F.3d at
3 662; see Seeler v. Trading Port, Inc., 517 F.2d 33, 36-37 (2d
4 Cir. 1975) (holding that where "there are disputed issues of fact
5 in the case, the Regional Director should be given the benefit of
6 the doubt in a proceeding for § 10(j) relief"). "Rather, to
7 satisfy the 'likelihood of success' prong of the traditional
8 equitable test, he need only show 'a better than negligible
9 chance of success.'" Id. (citing Electro-Voice, 83 F.3d at
10 1568). Moreover, the Ninth Circuit has instructed that "[e]ven
11 on an issue of law, the district court should be hospitable to
12 the views of the General Counsel, however novel." Miller, 19
13 F.3d at 460 (quoting Danielson v. Joint Bd. of Coat, Suit &
14 Allied Garment Workers' Union, 494 F.2d 1230, 1245 (2d Cir.
15 1974)). On a motion for a 10(j) injunction, it is not the duty
16 of the district court "to resolve the factual disputes or the
17 legal issues involved. Those are for the Board." Kennedy v.
18 Teamsters Local, 443 F.2d 627, 630 (9th Cir. 1971). "In short,
19 the Board can make a threshold showing of likelihood of success
20 by producing some evidence to support the unfair labor practice
21 charge, together with an arguable legal theory." Miller, 19 F.3d
22 at 460.³

24 ³ Respondent incorrectly asserted during oral argument
25 that the Miller standard with respect to likelihood of success on
26 the merits is no longer applicable after the Ninth Circuit's
27 decisions in McDermott v. Ampersand Publ'g, LLC, 593 F.3d 950
28 (9th Cir. 2010) and Small v. Operative Plasters' & Cement Masons'
Int'l Ass'n Local 200, AFL-CIO, -- F.3d --, 2010 WL 2681330 (9th
Cir. July 8, 2010). The Miller standard was overruled regarding
its analysis of irreparable injury, see infra at 28, but **not**

(continued...)

1 **1. Question of Representation**

2 Petitioner asserts that it can establish a likelihood of
3 success on the merits because, in accordance with SCCBE's bylaws,
4 a majority of the Board of Governor's approved the merger.
5 Respondent contends that petitioner cannot demonstrate a
6 likelihood of success on the merits because there is a question
7 of representation, as it is unclear whether a majority of
8 employees continue to support the Union after it merged with
9 Teamsters Local 150.

10 Section 7 of the NLRA "guarantees employees the right 'to
11 bargain collectively through representatives of their own
12 choosing,' 29 U.S.C. § 157, and the Board is empowered to
13 determine representation on petition of employees or the
14 employer." NLRB v. Fin. Inst. Emps. of Am. Local 1182 ("Seattle-
15 First"), 475 U.S. 192, 198 (1986) (citing 29 U.S.C. §
16 159(c)(1)(A)(i), 159(c)(1)(B)). The NLRA also "recognizes that
17 employee support for a certified bargaining representative may be
18 eroded by changed circumstances." Id. The Supreme Court has

19 _____
20 ³(...continued)
21 likelihood of success on the merits. The McDermott court
22 specifically reversed Miller's prior holding that irreparable
23 injury could be presumed in light of the Supreme Court's decision
24 in Winter. 593 F.3d at 957. It did not address the district
25 court's review of the facts under Miller. Further, while the
26 Small court addressed Miller's likelihood of success prong in
27 dicta, the court noted that Small was a § 10(1) case, not a §
28 10(j) case, and that the rationale for Miller's standard
regarding review of the facts did not apply where the Region is
required to petition for injunctive relief under § 10(1). 2010
WL 2681330, at *6 & n.3. Accordingly, the court does not
conclude that the Supreme Court's decision in Winter, nor the
Ninth Circuit's cases interpreting its applicability to labor
disputes, substantially changes the standard applied in
determining the likelihood of success on the merits for purposes
of a § 10(j) injunction.

1 noted that "a new affiliation may substantially change a
2 certified union's relationship with the employees it represents,"
3 and that "[t]hese changed circumstances may in turn raise a
4 'question of representation,' if it is unclear whether a majority
5 of employees continue to support the reorganized union." Id. at
6 202.⁴

7 The NLRA "assumes that stable bargaining relationships are
8 best maintained by allowing an affiliated union to continue
9 representing a bargaining unit unless the Board finds that the
10 affiliation raises a question of representation." Id. at 209.
11 "If the Board finds that affiliation raises a question of
12 representation 'undermining . . . the Board's own election and
13 certification procedures,' it can refuse to consider the union's
14 unfair labor practice charge, and is authorized to conduct a
15 representation election." Id. at 202 (quoting Amoco Production
16 Co., 262 N.L.R.B. 1240, 1241 (1982)).⁵ "Any uncertainty on the
17 employer's part does not relieve him of his obligation to bargain

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20 ⁴ In the case of affiliation, a newly affiliated union
21 may choose not petition the Board to amend its certification,
22 "but will instead wait to see whether the employer will continue
23 to bargain. If the employer refuses to bargain, the union may
24 then file an unfair labor practice charge with the Board." Id.
25 at 200 n.8. This is the procedural posture in this case.
26 However, the Board has "used the same standards to examine
27 affiliations whether the issue arose as a defense to an unfair
28 labor practice charge or in a petition to amend a certification.
Id.

26 ⁵ However, the Supreme Court expressly noted that the
27 NLRA "authoriz[es] the Board to conduct a representation election
28 only where affiliation raises a question of representation." Id.
at 203 (emphasis in original). Where a question of
representation has not been sufficiently raised, the Board has no
authority to act. Id.

1 collectively." Id. at 209 (emphasis added).⁶ The Supreme Court
2 has expressly noted that it has "rejected the position that
3 employers may refuse to bargain whenever presented with evidence
4 that their employees no longer support their certified union."
5 Auciello Iron Works, Inc. v. NLRB, 517 U.S. 781, 790 (1996). The
6 Court reasoned that "[t]o allow employers to rely on their
7 employees' rights in refusing to bargain with the formally
8 designated union is not conducive to [industrial peace], it is
9 inimical to it." Id. (quoting Brooks v. NLRB, 348 U.S. 96, 103).
10 Rather, an employer's relief is to petition the Board, not to
11 rely on employees' rights. Seattle-First, 475 U.S. at 209; see
12 Brooks, 348 U.S. at 103; see The Raymond F. Kravis Center for the
13 Performing Arts ("Kravis"), 351 N.L.R.B. 143, 147 (2007) ("When
14 there is a union merger or affiliation, an employer's obligation
15 to recognize and bargain with an incumbent union continues unless
16 the changes resulting from the merger or affiliation are so
17 significant as to alter the identity of the bargaining
18 representative.") (emphasis added).

19 Moreover, the NLRB has concluded that "an employer is not
20 relieved of its bargaining obligation merely because the merger
21 or affiliation is accomplished without due process safeguards."
22 Kravis, 351 N.L.R.B. at 143, 146 (holding that "the lack of a
23 membership vote concerning union affiliation is insufficient to
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26 ⁶ At oral argument, respondent's counsel argued that
27 Seattle-First supported his contention that an employer has the
28 right to unilaterally withdraw recognition after an affiliation
if it reasonably believes the majority of unit employees does not
support the affiliated union. This is not the holding of
Seattle-First.

1 raise a question concerning representation").⁷ Further, the NLRB
2 has held that an employer may not refuse to recognize a valid
3 affiliation even though a majority of the employees later states
4 that they do not support the affiliation. Tawas Indus., Inc.,
5 336 N.L.R.B. 318, 318-19 (2001). In Tawas, a majority of the
6 respondent's employees voted to affiliate its small independent
7 union, TIWA, with UAW. Id. at 318. However, subsequent to the
8 vote but before UAW had committed any time or resources to
9 representing the employees, a majority of employees conveyed to
10 the respondent that they did not want to be represented by UAW.
11 Id. at 319. The respondent informed UAW that it had concluded
12 that the affiliation was not supported by a majority of the
13 employees and thus, refused to recognize the affiliation. Id. at
14 318. The NLRB held that the respondent "could not base its
15 refusal to recognize TIWA's undisputedly valid affiliation with
16 the UAW on the employees' subsequent disaffiliation effort, even
17 if that effort is regarded as untainted, objective evidence that
18 the affiliated union had lost majority support." Id. at 319.
19 The Board reasoned that affiliation or disaffiliation decisions
20 involved essentially internal matters to be governed by the
21 union's own procedures and "that are not effectively subject to
22 an employer's veto." Id. Because union procedures were used to
23 accomplish the affiliation, but were not used to undo the
24 affiliation, the respondent was obligated to recognize the
25 affiliation. Id.

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27 ⁷ At oral argument, respondent also asserted that the
28 Board's decision in Kravis supported unilateral withdrawal of
recognition by an employer if an affiliation was not supported by
a majority of employees. This is not the holding of Kravis.

1 In this case, SCCBE's By-Laws provide, in pertinent part,
2 that "[t]he function of the Board of Governors is to govern the
3 general business of the union" and that "all motions coming
4 before the Board of Governors shall be passed only by a majority
5 vote." (App. 119-20). Petitioner presents evidence that on
6 April 25, 2010, the President of the Board put the matter of
7 merging SCCBE with Local Teamsters 150 to a vote, and the Board
8 voted by a majority to merge with Teamsters Local 150.
9 Furthermore, there is no evidence that the employees or Union
10 subsequently initiated or completed steps to disaffiliate.
11 Accordingly, petitioner has set forth some evidence that the
12 affiliation with Teamsters Local was made in accordance with
13 SCCBE's bylaws and was valid. See Kravis, 351 N.L.R.B. at 143,
14 146-47 (holding that affiliation was valid when it was conducted
15 in accordance with the union's constitution but without a vote by
16 union members).

17 Respondent contends that the vote by the Board of Governors
18 has no relevance because this type of action requires an
19 amendment to the SCCBE By-Laws because it eliminates the Bottler
20 Union as the unit's exclusive representative, as guaranteed by
21 that document. Pursuant to SCCBE By-Laws, the "By-Laws may be
22 amended by a two-thirds (2/3) majority vote of the members
23 present at a duly called meeting." (App. 122.) However, the
24 court need not reach the determination of which By-Laws apply to
25 the decision to affiliate for purposes of a 10(j) injunction.
26 Rather, petitioner has submitted evidence to support its tenable
27 legal theory, namely that a majority vote by the Board of
28 Governors was sufficient because the Union was not eliminated,

1 but merely merged with Teamsters Local 150. This is sufficient
2 to set forth a threshold showing of likelihood of success.

3 Respondent also contends that it properly petitioned for an
4 election instead of recognizing Teamsters Local 150 because it
5 had evidence that a majority of employees did not support
6 affiliation.⁸ Respondent's implied assertion, that an employer
7 is shielded from a refusal to bargain charge by the filing of a
8 petition for election, is directly contradicted by Ninth Circuit
9 precedent. The Ninth Circuit has expressly held that "the filing
10 of an RM petition by an employer does not in itself suspend the
11 employer's duty to bargain. Nor is that duty to bargain
12 suspended when the Regional Director schedules a hearing based on
13 the employer's petition alone." N.T. Enloe Mem'l Hosp. v. NLRB,
14 682 F.2d 790, 794 (9th Cir. 1982); see Brooks v. NLRB, 348 U.S.
15 96, 103 (1954) ("If an employer has doubts about his duty to
16 continue bargaining, it is his responsibility to petition the
17 Board for relief, *while continuing to bargain in good faith* at
18 least until the Board has given some indication that his claim
19 has merit.") (emphasis added); see also RCA del Caribe, Inc., 262
20 N.L.R.B. 963, 965 (1982) (holding that the filing of a
21 representation petition does not require nor permit an employer
22 "to withdraw from bargaining or executing a contract with an
23 incumbent union"). The Ninth Circuit reasoned that there is no
24 compelling policy reason to suspend such an obligation because
25 "[o]therwise, an employer could file a petition and rely on the

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27 ⁸ Moreover, respondent cites no authority for its other
28 implied assertion that there must be demonstrated majority
support for the newly merged union in order for that merger to be
valid. Cf. Kravis, 351 N.L.R.B. at 143, 146-47.

1 petition alone as justification for suspension of bargaining."
2 Id. Accordingly, respondent's assertion that it properly filed a
3 petition for a representative election, which was denied and is
4 currently on appeal, does not provide an affirmative defense to
5 plaintiff's allegations of unfair business practices.⁹

6 **2. Substantial Continuity**

7 Petitioner also asserts that it is likely to succeed on the
8 merits because there is substantial continuity in representation
9 between SCCBE and Local Teamsters 150. Respondent, however,
10 contends that there is a substantial change in the relationship
11 that justifies its refusal to recognize or bargain with the
12 affiliated Union.

13 The Supreme Court has recognized that in the context of an
14 affiliation, just as "with any organizational and structural
15 change, [the] new affiliation may substantially change a
16 certified union's relationship with the employees it represents."
17 Seattle-First, 475 U.S. at 202. These substantial changes may
18 then raise a question of representation and thus, "to protect the
19 employees' interests, the situation may require that the Board
20 exercise its authority to conduct a representation election."
21 Id. (citing 19 U.S.C. § 159(c)(1)). The Court has cautioned,
22 though, that "the Board's decision must take into account that
23 '[t]he industrial stability sought by the Act would unnecessarily
24 be disrupted if every union organizational adjustment were to
25 result in displacement of the employer-bargaining representative

26
27 ⁹ The court notes that the representative election was
28 requested by the employer, not employees, a difference that the
Ninth Circuit has found important. Id. at 794 n.2.

1 relationship.'" Id. at 202-03 (quoting Canton Sign Co., 174
2 N.L.R.B. 906, 909 (1969), *enf. denied on other grounds*, 457 F.2d
3 832 (6th Cir. 1972)).

4 In determining whether there is substantial continuity after
5 an affiliation, the Board considers the totality of the
6 circumstances, "eschewing the tendency toward a 'mechanistic
7 approach' or the use of a 'strict checklist.'" Mike Basil
8 Chevrolet, Inc., 331 N.L.R.B. 1044, 1044 (2000) (quoting Sullivan
9 Bros. Printers, 317 N.L.R.B. 561, 563 (1995), *enf.* 99 F.3d 1217
10 (1st Cir. 1996)). Rather, the Board has held that "the critical
11 question is whether the 'changes are so great that a new
12 organization has come into being.'" Id. at 1044-45; May Dep't
13 Stores Co., 289 N.L.R.B. 661, 665 (1988) ("[T]he general test for
14 determining whether the affiliation of a bargaining
15 representative with another labor organization raised a question
16 concerning representation is whether the affiliation produces a
17 change that is *sufficiently dramatic* to alter the union's
18 identity.") (emphasis in original) (internal quotations and
19 citations omitted). The Board considers factors such as:

20 continued leadership responsibilities by the existing
21 union officials; the perpetuation of membership rights
22 and duties, such as eligibility for membership,
23 qualification to hold office, oversight of executive
24 council activity, the dues/fees structure, authority to
25 change provisions in the governing documents, the
26 frequency of membership meetings, the continuation of
27 the manner in which contract negotiations,
28 administration, and grievance processing are
effectuated; and the preservation of the certified
union's physical facilities, books, and assets.

26 W. Commercial Transp., 288 N.L.R.B. 214, 217 (1988). The Board
27 has previously rejected relative sizes of the two organizations,
28 some loss of autonomy, or a subsequent lack of total control in

1 handling grievances as a basis for finding discontinuity. Mike
2 Basil Chevrolet, Inc., 331 N.L.R.B. at 1044 (holding that there
3 was substantial continuity despite merger with larger
4 organization, some loss of autonomy previously enjoyed by
5 employees, and loss of complete control over, though not
6 involvement in, grievance handling); CPS Chem. Co., 324 N.L.R.B.
7 1018, 1021 (1997), *enf.* 160 F.3d 150 (3d Cir. 1998) (holding that
8 neither differences in size, bylaws, and internal procedures, nor
9 the transfer and commingling of assets was sufficient to
10 demonstrate a discontinuity of representation); May Dep't Stores
11 Co., 289 N.L.R.B. at 665 (holding that there was no discontinuity
12 where the record established some organization changes and a
13 slight diminution in autonomy, but where the leaders and
14 essential structures remained the same); *cf.* W. Commercial
15 Transp., 288 N.L.R.B. at 217-18 (holding that there was not
16 substantial continuity where original union lost virtually all
17 its autonomy by being totally submerged by the affiliated union,
18 no role was open to the original union's officers, and all day-
19 to-day contract administration was taken over by the affiliated
20 union's staff member). Moreover, the Board has concluded that
21 substantial continuity may be demonstrated by evidence such as
22 the eligibility of current members to join the larger union
23 without paying its initiation fees and without an immediate
24 significant increase in membership dues. CPS Chem. Co., 324
25 N.L.R.B. at 1021.

26 In this case, petitioner presents evidence that the merger
27 agreement between SCCBE and Teamsters Local 150 calls for
28 retaining the current collective-bargaining agreement between

1 SCCBE and respondent in full force and effect, with the merger
2 changing no terms or conditions of employment. (App. at 34.) At
3 the time the current contract expires in November 2013, the Union
4 intends to bargain a new contract based on proposals generated by
5 the bargaining unit membership and presented to its negotiating
6 committee through an elected proposal committee. (Id. at 40.)
7 The Union has also indicated that it intends for the former
8 members of SCCBE's Board of Governors to serve on the negotiating
9 committee. (Id.) While all assets and liabilities of SCCBE were
10 transferred to the Union, including the sole assets of
11 approximately \$87,000, it was deposited in a separate checking
12 account controlled by the Union to be used only for
13 representation expenses related to the Sacramento Coca-Cola
14 Bottling Co. unit employees. (Id. at 41.) Further, current
15 employees can become members of the Union without paying an
16 initiation fee and dues will remain for the same for another 18
17 to 36 months. (Id. at 40.) Moreover, any increase in dues must
18 be approved by the Union members employed at Sacramento Coca-Cola
19 Bottling Co. (Id.) Finally, following the April 25 membership
20 meeting, all ten Board of Governors were asked and agreed to
21 serve as shop stewards for the Union. (Id. at 38.) Once they
22 receive the requisite training, shop stewards will be able to
23 settle grievances at the first or second step of the grievance
24 procedure without assistance from a Union representative; six
25 shop stewards who are former Board of Governors members attended
26 the shop steward training on June 19. (Id. at 39.) Based upon
27 this evidence, petitioner has made a showing that the merger
28

1 between SCCBE and Teamsters Local 150 did not dramatically alter
2 the Union's identity or create a wholly new organization.

3 While respondent disputes the continuity between SCCBE and
4 Teamsters Local 150, this court need not reach the ultimate
5 determination of this issue. Applying the undisputed terms of
6 the merger agreement to Board precedent, petitioner has
7 demonstrated that (1) the current members to join the larger
8 Union without paying its initiation fees and without an immediate
9 significant increase in membership dues, see CPS Chem. Co., 324
10 N.L.R.B. at 1021; (2) a majority of the Board of Governors will
11 have a leadership role over its unit employees as shop stewards,
12 see May Dep't Stores Co., 289 N.L.R.B. at 665; (3) the stewards
13 will be involved in, though not have control over, the grievance,
14 see May Dep't Stores Co., 289 N.L.R.B. at 665; and (4) the assets
15 of SCCBE will continue to be used solely for representation
16 expenses related to unit employees. Accordingly, petitioner has
17 presented some evidence and a tenable legal theory that there is
18 substantial continuity in representation between SCCBE and Local
19 Teamsters 150, and thus has demonstrated a likelihood of success
20 on the merits on this issue for purposes of a 10(j) injunction.

21 **3. Contract Bar Doctrine**

22 Petitioner also asserts that it has demonstrated a
23 likelihood of success on the merits because the petition signed
24 by a majority of employees does not trigger a representation
25 election because the contract bar doctrine prohibits any such
26 election. Respondent contends that the contract bar rule does
27 not apply to the circumstances in this case.

28

1 The Board's contract bar doctrine generally provides that a
2 contract with a fixed term duration of no more than three (3)
3 years serves as a bar to elections for the entire three year
4 term. General Cable Corp., 139 NLRB 1123, 1124-25 (1962).

5 Where, as in this case, the contract has a longer fixed term, the
6 contract bar precludes an election for the initial three years.

7 Id.

8 The purpose of the rule is "to promote industrial stability
9 between contractual partners and to afford employees a reasonable
10 opportunity to change or eliminate their bargaining

11 representative." East Mfg. Corp., 242 N.L.R.B. 5, 6 (1979). In
12 order to protect the bargaining atmosphere, the rule is applied
13 "even if a majority of the employees withdraw their support."

14 Pioneer Inn Assocs. v. NLRB, 578 F.2d 835, 838 (9th Cir. 1978)
15 (citation omitted). Indeed, the Board has expressly stated, "we

16 cannot interpret our contract-bar rules in such a way as to

17 permit employers or certified unions to take advantage of

18 whatever benefits may accrue from the contract with the knowledge
19 that they have an option to avoid their contractual obligations

20 and commitments through the device of a petition to the Board for
21 an election." Montgomery Ward & Co., 137 N.L.R.B. 346, 348-49

22 (1962).

23 The Board has examined the applicability of the contract bar
24 rule in the context of an affiliation case where, as here,

25 employees expressed dissatisfaction with the union after the

26 merger took place. Tawas, 336 N.L.R.B. at 320. In Tawas, the

27 Board expressly held that "a disaffiliation is a change in the

28 legal and institutional relationships between two unions. It

1 cannot be carried out externally to the unions." Tawas, 336
2 N.L.R.B. at 320. To hold otherwise and allow an employer to
3 refuse to recognize an affiliation, would effectively give
4 respondent "power to veto" and allow outside interference with
5 internal union decisionmaking protected by the NLRA. Id.
6 Therefore, the Board instructed that when a Union effects a valid
7 affiliation and an employer has doubts about his duty to continue
8 bargaining, "it is [the employer's] responsibility to petition
9 the Board for relief at the appropriate time." Id.¹⁰ Moreover,
10 the Board expressly noted that "[u]nder well-established
11 principles, the respondent could not lawfully withdraw
12 recognition from the union while the collective-bargaining
13 agreement was in effect, even if a majority of bargaining unit
14 members no longer supported" the affiliated Union. Id.

15 The court finds that the Board's decision in Tawas
16 substantially supports petitioner's position that the contract
17 bar rule applies to this case and prevents respondent from
18 seeking an election or withdrawing recognition from the Union.
19 As set forth above, petitioner has presented sufficient evidence
20 and argument to support its assertion that a valid affiliation
21 was effected at the April 25, 2010 meeting and that there was
22 substantial continuity in representation. See Yates Industries,
23 264 N.L.R.B. 192, 203 (1982) ("[A] mere change in designation or
24 affiliation of the bargaining representative does not of itself
25 warrant a conclusion that a contract is no longer a bar nor does
26

27 ¹⁰ The Board also noted that to the extent employees want
28 to undo a union affiliation, "they can - and must - pursue their
goal through internal union channels." Id.

1 it automatically relieve the employer of the obligation to
2 bargain with the 'successor' union."). Further, it is undisputed
3 that the collective bargaining agreement is in effect from
4 November 1, 2009 though October 31, 2013. As such, the contract
5 bar doctrine does not permit a window for questioning
6 representation until 2012. Accordingly, petitioner has shown a
7 likelihood of success on that merits that, as in Tawas,
8 respondent must continue to bargain with the Union, even if a
9 majority of bargaining members no longer support the affiliated
10 Union.

11 **4. Decertification/Disaffiliation Petition¹¹**

12 Petitioner also asserts that it has demonstrated a
13 likelihood of success on the merits because the petition, signed
14 by 56% of the employees and attached to the employer's RM
15 petition, is an invalid instrument with which to decertify the
16 Union. Respondent contends that the employee petition is a valid
17 instrument that clearly sets forth the intention of the
18 signatories to express the desire not to be represented by a
19 Union that is affiliated with Teamsters Local 150. Impliedly,
20 respondent contends that it was entitled to withdraw recognition
21
22
23

24 ¹¹ Petitioner disputes the validity of the petition on the
25 basis that it simply opposes affiliation and does not evince the
26 requisite intent to decertify the Union. As set forth above, the
27 Board has noted that disaffiliation efforts made directly with an
28 employer is invalid. Tawas, 336 N.L.R.B. at 320. However,
assuming *arguendo* that the employee petition was sufficient to
evince dissatisfaction with the Union representation, as set
forth *infra*, respondent still did not have a valid basis for
withdrawal of recognition at the time it acted.

1 based upon a lack of majority support, evidenced by the
2 petition.¹²

3 "[A]n employer may unilaterally withdraw recognition from an
4 incumbent union only where the union has actually lost the
5 support of the majority of the bargaining unit employees."

6 Levitz Furniture Co. of the Pacific, Inc., 333 NLRB 717, 717, 723
7 (2001). In Levitz, the Board adopted a more stringent standard
8 for withdrawals of recognition. Id. at 723. In doing so, the
9 Board relied upon the fundamental policies of the NLRA,
10 specifically those underlying the presumption of continuing
11 majority status: protecting employees right to choose or reject
12 collective-bargaining representatives; encouraging collective
13 bargaining; and promoting stability in bargaining relationships.
14 Id. In light of these underlying goals, the Board held that "an
15 employer who *withdraws* recognition from an incumbent union, in
16 the honest but mistaken belief that the union has lost majority
17 support, should be found to violate Section 8(a)(5)." Id. at

18
19 ¹² To the extent respondent merely contends that the
20 employee petition formed a "good faith, reasonable doubt" to
21 support the Employer's of filing of a petition for representative
22 election, as set forth above, such a filing does not relieve the
23 employer from its obligations to recognize and bargain with the
24 incumbent union, in this case, Local Teamsters 150. See Dresser
25 Indus., Inc., 264 N.L.R.B. 1088, 1089 (1982) ("[T]he mere filing
26 of a decertification petition will no longer require or permit an
27 employer to withdraw from bargaining or executing a contract with
28 an incumbent union.").

24 The court also notes that, pursuant to the contract bar
25 rule, "whatever the employer's dilemma, when faced with competing
26 representational claims, it cannot withdraw recognition from an
27 incumbent union during the term of the agreement." Tawas, 336
28 N.L.R.B. at 320. As set forth above, the court concludes that
petitioner has shown that the contract bar rule likely applies in
this case. However, for the sake of completeness, the court
addresses the merits of respondent's argument regarding
withdrawal of recognition.

1 725. Good faith is not a defense. Id. The Board emphasized
2 "that an employer with objective evidence that the union has lost
3 majority support - for example, a petition signed by a majority
4 of the employees in the bargaining unit - withdraws recognition
5 at its peril." Id. Further, the Board acknowledged that it
6 concluded "it entirely appropriate to place the burden of proof
7 on employers to show actual loss of majority support." Id.

8 In this case, the evidence demonstrates that respondent
9 immediately withdrew recognition of the Union after it received
10 notice of SCCBE's merger with Teamsters Local 150 on April 27,
11 2010 and before it had any evidence that a majority of employees
12 allegedly did not support the affiliated Union. Specifically, on
13 April 28, respondent posted a letter questioning the validity of
14 the merger after "at least 9" of the 308 unit employees contacted
15 management to express their dissatisfaction with the merger.
16 (App. at 37.) Further, petitioner presents evidence that
17 beginning on May 7, 2010, respondent failed to respond to
18 grievances file by the Union on behalf of unit employees. (App.
19 at 32-33, 39.) By letter dated May 20, 2010, counsel for
20 respondent expressly informed counsel for Teamsters Local 150
21 that respondent did not recognize Teamsters Local 150 as the
22 collective bargaining representative of its employees and that it
23 continued to recognize SCCBE as the exclusive bargaining
24 representative. (App. at 125-26.) However, as of May 20, 2010,
25 respondent was only aware of 130 employee signatures out of 308
26 unit employees on the disaffiliation petition. Indeed,
27 respondent did not file a petition for a representative election
28 with the Board until June 28, 2010, with a supplemental petition

1 signed by 56% of the bargaining unit. (Murphy Decl. ¶ 6.)
2 Accordingly, there is no evidence that, at the time the Employer
3 withdrew recognition from the affiliated Union, it knew that the
4 majority of unit employees actually did not support the
5 affiliated Union. As such, respondent's arguments with respect
6 to the effect of the decertification/disaffiliation petition are
7 without merit.

8 **B. Irreparable Harm**

9 The Ninth Circuit has previously held that "if the Board
10 demonstrates that it is likely to prevail on the merits, [the
11 court] presume[s] irreparable injury," but "[i]f the Board has
12 only a fair chance of succeeding on the merits, the court must
13 consider the possibility of irreparable injury." Miller, 19 F.3d
14 at 460. However, the Ninth Circuit recently clarified that "in
15 evaluating the validity of the district court's analysis of the
16 equitable factors, we must employ the Supreme Court's recent
17 interpretation of the threshold showing necessary for granting
18 such an 'extraordinary remedy.'" McDermott v. Ampersand Publ'g,
19 LLC, 593 F.3d 950, 957 (9th Cir. 2010) (quoting Winter, 129 S.
20 Ct. at 374-76). Accordingly, a party seeking interim injunctive
21 relief under § 10(j) must demonstrate "that he is likely to
22 suffer irreparable harm in the absence of preliminary relief."
23 Id. (quoting Winter, 129 S. Ct. at 374).

24 The Ninth Circuit has noted that "the passage of the statute
25 is itself an implied finding by Congress that violations will
26 harm the public." Miller, 19 F.3d at 459. Further, the court
27 "must take into account the probability that declining to issue
28 the injunction will permit the unfair labor practice to reach

1 fruition and thereby render meaningless the Board's remedial
2 authority." Id. at 460.

3 Moreover, courts have historically held that withdrawal of
4 union recognition is often irreparable. See Int'l Union of
5 Elec., Radio & Machine Workers v. NLRB, 426 F.2d 1243, 1249 (D.C.
6 Cir. 1970) ("Employee interest in a union can wane quickly as
7 working conditions remain apparently unaffected by the union or
8 collective bargaining. When the company is finally ordered to
9 bargain with the union some years later, the union may find it
10 represents only a small fraction of employees."); Reichard v.
11 Foster Poultry Farms, 425 F. Supp. 2d 1090, 1100 (E.D. Cal.
12 2006). Specifically, the Supreme Court has noted, "Out of its
13 wide experience, the Board many times has expressed the view that
14 the unlawful refusal of an employer to bargain collectively with
15 its employees' chosen representatives disrupts the employees'
16 morale, deters their organizational activities, and discourages
17 their membership in unions." Franks Bros. Co. v. NLRB, 321 U.S.
18 702, 704 (1944).

19 In light of the implicit finding by Congress and the
20 evidence set forth in this case, petitioner has demonstrated that
21 irreparable injury is likely to occur in the absence of
22 injunctive relief, including an interim bargaining order.
23 Specifically, petitioner presents evidence that anti-Union
24 sentiment has increased among the employees over the time that
25 respondent has refused to recognize the affiliated Union as the
26 bargaining representative of its employees. While respondent
27 presents evidence that 55 signatures were obtained on May 3, the
28 first day the disaffiliation petition was available, it took

1 until June 27, 2010 to obtain a majority of the bargaining unit
2 employees to sign. In essence, the longer respondent refused to
3 recognize the affiliated Union, the more dissatisfied employees
4 apparently became with being affiliated with Teamster Local 150.
5 Further, petitioner presents attendance at Union meetings has
6 substantially declined since respondent has failed to recognize
7 or bargain with the Union. This sequence of events lends
8 credence to petitioner's contention that support for and
9 confidence in the Union is waning because of respondent's
10 continued refusal to recognize the Union.¹³

11 Therefore, petitioner has demonstrated a likelihood of
12 irreparable injury in the absence of injunctive relief.

13 **C. The Balance of Hardships and Public Interest**

14 "In § 10(j) cases, the public interest is to ensure that an
15 unfair labor practice will not succeed because the Board takes
16 too long to investigate and adjudicate the charge. Thus, courts
17 must consider the extent to which this interest is implicated
18 under the circumstances of the particular case." Miller, 19 F.3d
19 at 460. In this case, petitioner has presented evidence that the
20 Union completed a valid merger and has maintained substantial
21 continuity with SCCBE, but that it has been prevented by
22 respondent from representing its members. As such, the public
23

24 ¹³ At oral argument, respondent's counsel, in arguing that
25 there was no substantial continuity after the merger, asserted
26 that bargaining unit employees have not received the same
27 bereavement benefits. Petitioner's counsel asserted that the
28 Union only became aware of this problem when respondent raised
the issue in its opposition filed in this case. The court finds
that the Union's inability to obtain this type of information is
only further evidence of the likelihood of irreparable injury
caused by respondent's conduct.

1 interest is served by recognizing the Union as the collective
2 bargaining representative pending ultimate determination of the
3 alleged unfair labor practices.

4 In weighing the balance of hardships, the court must
5 similarly take into account the probability that declining to
6 enter an injunction will render meaningless the Board's remedial
7 authority. Id. The balance of hardships in this case can be
8 stated succinctly. Given the evidence that Union support has
9 been waning since respondent had refused to recognize the Union
10 and has attempted resolve employee grievances without
11 participation by the Union, the Union may continue to lose
12 support and credibility while these claims are litigated without
13 an interim bargaining order. In light of the strong showing
14 petitioner has made on the merits, the balance of hardships
15 weighs strongly in favor of requiring respondent to recognize the
16 Union.

17 As such, the court finds that the public interest and the
18 balance of hardships weighs in favor of granting the § 10(j)
19 petition.

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1 **ORDER**

2 For the foregoing reasons, the Board's petition is GRANTED.

3 It is hereby

4 ORDERED, ADJUDGED AND DECREED that, pending the final
5 disposition of the matters now pending before the National Labor
6 Relations Board, Respondent, its officers, representatives,
7 supervisors, agents, servants, employees, attorneys and all
8 persons acting on its behalf or in participation with it, be, and
9 they hereby are, enjoined and restrained from:

10 (a) refusing to recognize and bargain with the Union as the
11 exclusive collective-bargaining representative of Respondent's
12 employees in the Unit, with respect to rates of pay, hours of
13 employment, and other terms and conditions of employment;

14 (b) in any like or related manner interfering with,
15 restraining or coercing employees in the exercise of the rights
16 guaranteed them by Section 7 of the Act.

17 It is further

18 ORDERED, ADJUDGED AND DECREED that, pending the final
19 disposition of the matters herein now pending before the National
20 Labor Relations Board, Respondent, its officers, representatives,
21 supervisors, agents, servants, employees, attorneys and all
22 persons acting on its behalf or in participation with it, shall
23 take the following affirmative steps:

24 (a) recognize and bargain with the Union as the exclusive
25 collective-bargaining representative of employees in the Unit,
26 including processing grievances pursuant to the parties' current
27 collective-bargaining agreement;

28

1 (b) post copies of the District Court's order at its
2 facilities in all places where notices to its employees are
3 normally posted; maintain these postings during the Board's
4 administrative proceeding free from all obstructions and
5 defacements; grant all employees free and unrestricted access to
6 said postings; and grant to agents of the Board reasonable access
7 to its facilities to monitor compliance with this posting
8 requirement;

9 (c) Within ten (10) days of the District Court's order,
10 hold a meeting or meetings, scheduled to ensure the widest
11 possible attendance, at which the District Court's order is to be
12 read to the employees by a responsible management official or, at
13 the Employer's option, by a Board Agent in that official's
14 presence; and

15 (d) Within twenty (20) days of the issuance of the District
16 Court's Decision and Order, file with the District Court and
17 serve upon the Regional Director of Region 20 of the Board, a
18 sworn affidavit from a responsible official describing with
19 specificity the manner in which Respondent has complied with the
20 terms of the Court's decree, including the locations of the
21 posted documents.

22 IT IS SO ORDERED.

23 DATED: August 20, 2010

24 

25 FRANK C. DAMRELL, Jr.
26 UNITED STATES DISTRICT JUDGE
27
28