U.S. Department of Labor

Office of Labor-Management Standards
Suite N-5603
200 Constitution Ave., NW
Washington, D.C. 20210

May 29, 2025

Yvette Taylor, Regional Administrator
Federal Transit Administration, Region IV
61 Forsyth Street, SW, Ste. 17T50
Atlanta, GA 30303-8917

Re: U.S. Department of Labor 49 U.S.C. § 5333(b) Certification
County of Miami-Dade Transit Agency; Florida Department of Transportation – SFRTA; Broward County Board of County Commissioners - Broward County Mass Transit Division; Sarasota County Transportation Authority; Jacksonville Transportation Authority; Lakeland Area Mass Transit District; Citrus County Board of County Commissioners – CCT; Central Florida Regional Transportation Authority / LYNX; Palm Beach County Board of Commissioners - Palm Beach County Transit Authority; Hillsborough Area Regional Transit Authority; City of Gainesville; Escambia County Board of Commissioners

Dear Ms. Taylor:

The Department issues this letter to explain its reconsideration of the above-captioned certifications made pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964, 49 U.S.C. § 5333(b). The certifications incorporated into the parties' protective arrangements a waiver of provisions of a Florida law concerning collective bargaining between public sector employers and unions, referred to here as Senate Bill ("SB") 256. As explained below, following a review of these proceedings and the related litigation, the Department has determined that SB 256's provisions do not present a conflict with Section 13(c) and so no waiver is needed to ensure that Florida's transit agencies can continue to comply with their Section 13(c) obligations. In recognition of the reliance interests of affected unions and their members, the Department will delay implementation of this reconsideration decision for 45 days.

Statutory and Procedural Background

Section 13(c)

Before state and local transportation agencies can receive certain federal mass transit funding assistance, Section 13(c) requires the U.S. Secretary of Labor to certify that "fair and equitable" arrangements are in place to protect the interests of affected employees. 49 U.S.C. § 5333(b)(1). The statute specifies the arrangements "shall include provisions that may be necessary for" six objectives, including "the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise" and "the continuation of collective bargaining rights." *Id.* § 5333(b)(2)(A), (B) (commonly referred to as Section 13(c)(1) and (c)(2)).

Florida's SB 256

SB 256 became law in Florida on May 9, 2023. SB 256 made reforms to the laws governing public sector collective bargaining in Florida. Section 3 of SB 256 provides, with certain exceptions not relevant here, that a union "may not have its dues and uniform assessments deducted and collected by the employer from the salaries of" union members. Fla. Stat. § 447.303(1).

Section 4 of SB 256 revised Florida's requirement that, in order to be a certified bargaining agent for public employees in Florida, public sector unions must register with the Public Employees Relations Commission ("PERC") and renew that registration annually. *See id.* § 447.305(1), (2). Section 4 requires that, in connection with each registration renewal application, a union must also petition PERC "for recertification" as the collective bargaining representative if "less than 60 percent of the unit employees . . . pa[id] dues to the organization during its last registration period." *Id.* § 447.305(6). If a union does not comply with the requirements of Section 4, or if PERC

determines a union's re-registration application "is inaccurate or does not comply with this section," then PERC "shall revoke the registration and certification" of the union. *Id.* § 447.305(6), (7).

SB 256 additionally provides for a waiver of the above requirements "to the extent necessary for the public employer to comply with the requirements of [Section 13(c)]." *Id.* § 447.207(12). If a public employer receives notice from the Department of Labor that its eligibility for continued Federal Transit Authority ("FTA") funding is in jeopardy because of Section 13(c), it may petition PERC for a waiver of the provisions. *Id.*

Administrative Proceedings

After the enactment of SB 256, various public transit agencies and regional authorities within Florida (collectively, "transit agencies") submitted new applications for federal funding subject to Section 13(c). In accordance with the procedural guidelines at 29 C.F.R. § 215.3, for each application, the Department provided the respective transit agency and union representing transit employees with the opportunity to raise an objection to certification. Various unions representing public transit workers[1] objected to certification of the grants on the grounds that SB 256 precluded the transit agencies from preserving collectively bargained for benefits and continuing collective bargaining rights as required by Section 13(c)(1) and (2). 49 U.S.C. § 5333(b)(2)(A), (B).

The Department found the unions' objections "sufficient," meaning it determined that "[t]he objection concern[ed] changes in legal or factual circumstances that may materially affect the rights or interests of employees" and so merited further administrative proceedings. 29 C.F.R. § 215.3(d)(3). Subsequently, the Department issued determinations finding that the legislative changes required by SB 256 prevented the transit agencies from complying with their previously certified protective arrangements covering mass transit employees and the requirements of Section 13(c). The determinations directed the transit agencies to obtain waivers from PERC exempting the unions from the relevant provisions of SB 256.

The transit agencies petitioned PERC for a waiver of SB 256, which PERC initially granted only through the expiration date of the parties' existing collective bargaining agreements. Unions objected to these time-limited waivers, arguing they were not sufficient to ensure that transit agencies could continue collective bargaining rights as required by Section 13(c). In response, DOL requested transit agencies obtain corrected waivers that extend at least for the duration of the federally funded project.

On July 21, 2023, in the proceeding involving Broward County, and prior to acting on any transit agencies' second request for waiver, PERC issued an order stating, "it is unclear to the Commission how the current waiver does not satisfy the requirements of 49 U.S.C. § 5333(b) with respect to the protective arrangements and agreements in place." The order requested additional information on four topics, including to "[d]escribe with specificity how [the provisions of SB 256] conflict with any protective arrangements or agreements required by 49 U.S.C. 5333(b), with respect to current or pending grants." The parties requested that the Department provide clarification on that topic.

On August 4, 2023, DOL provided a letter for PERC's benefit (the "OLMS Waiver Letter") explaining its views on how SB 256's changes "interfere with transit employees' collective bargaining rights absent a waiver." Attachment A at 3. With respect to the dues deduction prohibition, the OLMS Waiver Letter stated that SB 256 "removes a critical mandatory subject of collective bargaining: dues check-off." *Id.* With respect to the recertification and revocation provisions, the OLMS Waiver Letter stated that SB 256 "impermissibly undermines the presumption of the continuing majority status of a certified or recognized union," thereby "expand[ing] the means and methods" by which transit employees lose their designated bargaining representative "without regard to the existence of any evidence that the union has lost its majority status." *Id.* at 4. The OLMS Waiver Letter also elaborated on the Department's view that a waiver was needed for the life of the project. It stated that Section 13(c) "ensure[s] that the process of representation and collective bargaining continues and are not at the mercy of changing state laws while federal funds . . . are in place," and therefore "prohibits infringement of collective bargaining processes during the entirety of a federally funded project." *Id.*

[1] The relevant unions include locals of the Amalgamated Transit Union ("ATU"), Transport Workers Union ("TWU"), and the American Federation of State, County and Municipal Employees ("AFSCME").

On August 31, 2023, PERC granted Broward County the requested waiver, although it "question[ed] DOL's interpretation of the 49 U.S.C. § 5333(b) requirements vis-à-vis the provisions of [SB 256]." Attachment B at 11. The order stated that "[t]he waiver shall be in effect so long as any protective arrangement is required by 49 U.S.C. § 5333(b)," and "shall immediately expire upon any final decision of DOL or a court of competent jurisdiction declaring that [SB 256's] provisions do not violate the protections imposed by 49 U.S.C. § 5333(b), or if Congress changes the effect of that law." *Id.* at 11-12. PERC subsequently granted similar waivers to other transit agencies. Once the waivers were submitted, the Department issued Section 13(c) certifications that incorporated the waivers.

Reconsideration

The Department has determined that its previous certifications were based on a flawed interpretation of Section 13(c) that too rigidly views the Department's authority and role under the statute. Section 13(c)'s statutory text makes clear the statute imbues the Department with broad discretion with its language requiring the "the Secretary of Labor['s] conclu[sion]" about what arrangements are "fair and equitable."[2] 49 U.S.C. § 5333(b)(1).

Additionally, Section 13(c)'s "legislative history stress[es] the need for flexibility and discretion" by the Secretary in order to accommodate states' unique circumstances. *Local Div. 589, ATU v. Mass.*, 666 F.2d 618, 634 (1st Cir. 1981). "Congress designed § 13(c) as a means to accommodate state law to collective bargaining, not as a means to substitute a federal law of collective bargaining for state labor law." *Jackson Transit Authority v. Local Div. 1285, ATU*, 457 U.S. 15, 28 (1982).

Section 13(c) does not "subject local government employers to the precise strictures of the NLRA [National Labor Relations Act]" and leaves "intact" "[t]he exclusion of local governments from the coverage of [the NLRA]." *ATU v. Donovan*, 767 F.2d 939, 949-50 (D.C. Cir. 1985). Indeed, "[i]f Congress had intended for the Labor Secretary to approve federal funding only when a state's collective bargaining laws would not have violated the NLRA if adopted by a private employer, Congress could have cited section 8(d) of that Act." *California v. U.S. Dep't of Lab.*, No. 2:13-CV-02069-KJM-DB, 2016 WL 4441221, at *19 (E.D. Cal. Aug. 22, 2016). Congress intended the requirement of "continuation of collective bargaining rights" to refer instead to general principles in federal labor policy: "'[g]ood faith' bargaining, to a point of impasse if necessary, over wages, hours and other terms and conditions of employment." *Donovan*, 767 F.2d at 950.

The Department's prior reasoning, as stated in the OLMS Waiver Letter, upsets this "delicate balance" struck by Congress. *See id*. The Department's prior view instead inappropriately presumes, without discussion of magnitude or circumstances, that when a state legislates in the area of public sector collective bargaining benefits or rights, then the state has improperly acted by "'state fiat'" contrary to Section 13(c). *See* Attachment A at 4 (quoting *Donovan*, 767 F.2d at 953). But on further reflection, the Department erred in "rel[ying] on *Donovan* reflexively, without properly distinguishing its factual context." *Cf. California v. U.S. Dep't of Lab.*, 76 F. Supp. 3d 1125, 1143 (E.D. Cal. 2014). The law in *Donovan* targeted a specific transit agency, prohibited bargaining over five subjects, gave the transit agency unilateral control over promotions and work assignments and, in essence, gave the transit agency the power to fix wages without first bargaining in good faith to the point of impasse. *Donovan*, 767 F.2d at 951-52. Given the discretion granted in Section 13(c) to the Secretary and the statute's flexible intent, *Donovan*'s holding should not be read to mean that "any unilateral action by a state, however modest, precludes certification under section 13(c)(2)." *California*, 2016 WL 4441221, at *20.

SB 256's changes to public sector bargaining are categorically different from the law at issue in *Donovan*. SB 256 affects only one subject of collective bargaining (dues check-off) rather than the five in *Donovan*. In fact, SB 256 does not even remove this subject from collective bargaining, contrary to the Department's claim in the OLMS Waiver Letter. *See* Attachment A at 3. SB 256 ended certain public employers' practice of dues check-off from employee salaries, but it did not prohibit bargaining over all aspects of dues deduction. As PERC's order recognizes, "no evidence has been presented that employers and bargaining agents cannot negotiate, even to impasse, an equitable alternative to payroll dues deduction." Attachment B at 6. "For example, the public employer could offer

[2] For a more thorough discussion of the Department's current views of Section 13(c)'s statutory text and legislative history, see OLMS Response to Objections Letter, CA-03-0806-04 *et al*. (June 14, 2019), available at https://www.dol.gov/sites/dolgov/files/OLMS/regs/compliance/foia/transit/DSP_Cert/ResponseObjections_PEPRA_06-14-19.pdf.

to pay the employee organization's cost for utilizing an alternative dues collection method and/or permit additional dues solicitation through the employer's email system or other workplace communications." *Id.* SB 256 thus still allows transit employees and their public employers to engage in meaningful bargaining over the subject of dues deduction.

A public employer's agreement to deduct dues on behalf of the union is not a necessary condition for the continuation of collective bargaining for Florida's public sector employees. To the extent instructive in the context of Section 13(c) certification, the NLRA does not even require dues check-off. Rather, the NLRB has merely required that employers covered by the NLRA bargain over dues check-off.[3] Moreover, at the time Section 13(c) was enacted and for many decades afterward, NLRA precedent allowed an employer to unilaterally cease dues check-off following expiration of a collective bargaining agreement, categorizing it as a contractual right, which indicates that its absence does not fatally undercut unions.

The importance of dues check-off has surely only diminished given technological advances and the proliferation of many convenient options for arranging recurring financial payments. Therefore, the Department concludes that the transit employees' collective bargaining rights have continued for purposes of Section 13(c) notwithstanding SB 256's changes to the scope of bargaining over dues check-off.

Nor does the Department view as sufficient any objection based on the fact that a transit agency may have breached a dues check-off provision in a collective bargaining agreement. Any dispute arising over a grantee's failure to comply with the dues deductions obligations in its collective bargaining agreement with any of its unions would be subject to the protective arrangement's arbitration provisions for claims resolution. Potential or pending claim actions do not raise material issues or changes in facts or circumstances that warrant alternative protective arrangements.

SB 256's requirements regarding registration and certification also do not impermissibly impair collective bargaining rights or benefits. The Florida law merely requires active and participatory membership through registration and certification, which serves to strengthen union responsiveness. In concluding otherwise, the Department incorrectly presumed that SB 256's registration and certification requirements would cause unions to "lose[] [their] right to act as the exclusive bargaining agent[s] . . . without regard to the existence of any evidence that the union[s] ha[ve] lost [their] majority status." Attachment A at 4. Rather, in light of objective evidence of decreased support among bargaining unit members, SB 256 provides employees an opportunity to reaffirm their choice of union, elect another union, or forego having an exclusive representative. A union need only be reelected by the bare majority of employees in the bargaining unit to remain recognized. Therefore, in practice, the election procedure is based on the principle of ensuring majority support for unions. Moreover, as the PERC order notes, more frequent representation elections ensure that unions are "more accountable to the public employees they represent and will not be able to rest on marginal support in a distant past." Attachment B at 13 (Rubottom, Chair, special concurrence). After enactment of SB 256, Florida's laws still oblige public sector employers to bargain with unions enjoying majority support from represented employees, and so Florida's public employees continue to have collective bargaining rights.

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[3] For more than a half-century prior to 2015, the Board maintained that employers could make unilateral changes to dues check-off provisions after the expiration of a contract; only over the past ten years has the Board vacillated on this issue. *Compare Bethlehem Steel Co.*, 136 N.L.R.B. 1500, 1502 (1962) (holding that the employer was "free of its checkoff obligations to the [u]nion" when the prior collective bargaining agreement is terminated) *with Lincoln Lutheran of Racine*, 362 N.L.R.B. 1655, 1663 (2015) (overruling more than a half century of Board precedent through holding "an employer, following contract expiration, must continue to honor a dues-checkoff arrangement established in that contract until the parties have either reached a successor collective-bargaining agreement or a valid overall bargaining impasse permits unilateral action by the employer"), *and Valley Hosp. Med. Ctr., Inc.*, 368 N.L.R.B. No. 139 (2019) (*Valley Hospital I*) (overruling *Lincoln Lutheran* and returning to the Board's *Bethlehem Steel* precedent), *and Valley Hosp. Med. Ctr., Inc.*, 371 N.L.R.B. No. 160 (2022) (*Valley Hospital II*) (reversing *Valley Hospital I* and readopting the Board's reversal in *Lincoln Lutheran*). "The Board's ever-changing approach to union dues checkoff" evinces the lack of historical certainty in this area. *Valley Hosp. Med. Ctr., Inc. v. NLRB*, 100 F.4th 994, 1003 (9th Cir. 2024) (O'Scannlain, J., concurring).

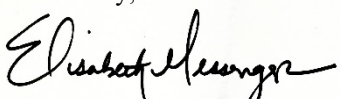
The Department also now finds no conflict between Section 13(c) and SB 256's provision requiring unions to file accurate renewal registrations, on penalty of potentially losing their registration and certification status. As noted above, Section 13(c) was not intended to supplant states' regulatory power. Florida's registration requirements constitute a state regulatory backdrop for negotiations between public sector employers and employees. *See California*, 2016 WL 4441221, at *24 (explaining that "[a] variety of state laws may be consistent with federal labor policy and provide a backdrop to collective bargaining under section 13(c)(2)"). Indeed, annual registration requirements pre-date SB 256 and previously posed no obstacle to Section 13(c) certification. The additional registration requirements added by SB 256, including an audited financial statement and details regarding the proportion of dues paying members, promote greater transparency between unions and their members. Such state regulatory requirements are not inconsistent with Section 13(c)'s obligation to ensure continuation of collective bargaining rights.

The Department acknowledges that the departure from its prior views may unsettle the expectations of interested parties. This reconsideration will lead to the expiration of the waivers exempting unions representing transit workers in Florida from SB 256's requirements. Unions and their members will have to implement alternatives to payroll dues deductions. Unions will need to ensure their registration renewal applications are accurate and in compliance with Florida's laws. Additionally, if they do not meet the 60% threshold of dues paying members when they submit their renewal application to PERC, then within 30 days of submitting that application unions also must submit a petition for recertification. Unions have different renewal dates because the timing depends on when each union was first established. As such, some unions may have registration renewal deadlines soon after this decision while others will have considerably more time to prepare their applications.

To accommodate these reliance interests, while also ensuring Section 13(c) is correctly applied in a manner that ensures fair and equitable arrangements for transit workers without improperly infringing on state sovereignty, this reconsideration will not be considered effective for 45 days after its issuance. This delayed implementation period provides unions with time to transition to dues check-off alternatives and otherwise ensure compliance with registration renewal requirements. In the Department's view, the waivers issued by PERC should still be considered necessary, and so should remain valid, until the effective date of this reconsideration.[4]

In conclusion, after reconsidering the matter, the Department now determines that SB 256 does not impermissibly impact the collective bargaining rights and benefits of the transit workers of the above-captioned transit agencies so as to preclude Section 13(c) certification. As such, the Department should not have found previously that unions' objections based on SB 256 raised the kinds of material issues or changes in legal or factual circumstances that would make the objection "sufficient" under 29 C.F.R. § 215.3(d)(3). Because SB 256 does not conflict with Section 13(c), the Department likewise should not have determined that transit agencies were required to obtain a waiver of SB 256's requirements from PERC in order for the Department to issue its certification. Following the 45-day effective date of this reconsideration, the Department will no longer consider Section 13(c) arrangements already in effect to be supplemented by the waivers.

Sincerely,



Elisabeth Messenger, Director

[redacted]

[4] The Department recognizes that PERC may disagree with this interpretation of the waivers' language stating the waivers "shall immediately expire upon any final decision of DOL . . . that [SB 256's] provisions do not violate the protections imposed by [Section 13(c)]." In such case, the Department believes the unions may be entitled to equitable tolling of registration renewal deadlines from PERC given the unions' reliance and the changed circumstances.

[redacted]