

**UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF LABOR-MANAGEMENT STANDARDS**

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<b>AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME) on behalf of AFSCME Council 79</b>	)	<b>Pending Grant Applications</b>
	)	[REDACTED]
	)	[REDACTED]
<b>-- AND --</b>	)	
[REDACTED]	)	
	)	

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**AFSCME’S REPLY BRIEF ON SPECIFIED ISSUES**

On behalf of the American Federation of State, County and Municipal Employees, AFL-CIO, its affiliated AFSCME Florida Council 79, and its affiliated AFSCME Local 3613 (collectively “AFSCME”), this position statement serves as the reply brief regarding the issues raised by the Department of Labor (“Department” or “DOL”) in its June 27, 2024, Briefing Order, concerning the above referenced matters.

**I. BACKGROUND AND RELEVANT FACTS**

AFSCME has objected to the certification of the pending [REDACTED] [REDACTED] grants because Florida’s recently enacted CS/SB 256: (“CS 256”), amending Florida Statutes Section 447.301 *et seq.*, materially affects and diminishes the previously existing collective bargaining rights of transit employees represented by AFSCME. (AFSCME’s objections dated April 29, 2024; June 21, 2024, AFSCME’s update dated June 13, 2024, and its position brief submitted on July 19, 2024, are hereby incorporated by reference.)

## II. ARGUMENT

As a threshold matter, ■■■ does not dispute the principal flaw undermining its argument that the August 17, 2023, Memorandum of Understanding (“MOU”) between AFSCME Local 3613 and ■■■ meets the requirements of 13(c) and therefore serves as a mutual resolution between the parties. The execution of the MOU was not and cannot be considered a mutually acceptable resolution because the parties undisputedly did not discuss or otherwise consider 13(c) or the PERC waiver process when executing that agreement. Repeatedly in its brief ■■■ as it has consistently done throughout this process, concedes that the purpose of the negotiations resulting in the MOU was to comply with CS 256. CS 256, without a waiver, materially affects and diminishes the previously existing collective bargaining rights of transit employees represented by AFSCME.

■■■ states the negotiations were to “comply with [CS 256]”, were “over the law’s requirements,” were “in response to CS 256’s enactment” and were in recognition that “CS 256 casts doubt on the legality of the dues checkoff provision.” ■■■ Brief at 1-2. ■■■ concedes that “AFSCME did not raise the possibility of ■■■ seeking a waiver, and ■■■ did not unilaterally offer to seek a waiver.” ■■■ Brief at 2. The MOU’s purpose was to seek compliance with CS 256. That the MOU included a provision reinstating dues deduction upon rescindment of the offending CS 256 provisions does not result in the rescinding of the offending CS 256 provisions. Only the legislature can effectuate that change, unless and until ■■■ petitions for and receives a PERC waiver. ■■■ argues that the parties can still “have substantive discussions over the topic.” However, what the employer cannot do, absent a waiver, is deduct dues.

Moreover, the parties did not seek a PERC waiver at the time, because the MOU was negotiated and executed well before the pending █████ transit grant referrals made a waiver application indisputably ripe. In its June 27, 2023 letter, “Changes in Florida State Law, applicability to Public Transit Employees,” the Department recognized that “[i]n order to secure [a] waiver [from PERC], the state law contemplates that the Department of Labor will provide a notice that the public employer's protective arrangement covering mass transit employees does not meet the requirements of 49 U.S.C. § 5333(b), and that a grantee's funding would be jeopardized for that reason.” Because no pending grant objection existed at the time of the MOU, AFSCME did not have such a notice from DOL. Other AFSCME affiliates in Florida have first objected to federal transit grants before requesting that an employer petition PERC for a waiver.

Additionally, █████ assertion that the expiration date of the MOU has no impact because the employer intends to bargain over dues deduction later and prior to the CBA's expiration does not magically erase the effect of the elimination of the dues deductions AFSCME and █████ had bargained into their agreement repeatedly since the union's certification over a decade ago. The problem is not, as █████ argues, that the collective bargaining agreement does or does not include a dues deduction term at some point in the future but is that CS 256 prohibits dues deduction altogether. The lack of a waiver from the dues deduction prohibition in CS 256 offends 13(c), whether or not the language allowing for dues deduction remains in the collective bargaining agreement.

Similarly, █████ emphasis on whether the employer has a duty to reach agreement on dues deduction misses the point. As long as █████ continues to refuse to

petition and obtain a PERC waiver the prohibition on employees voluntarily paying dues via deductions from their paychecks prevents [REDACTED] from making bargained-for dues deductions already long required by its collective bargaining agreements prior to the enactment of CS 256. The parties still cannot implement dues deduction, even if they both agreed. And while under the NLRA, an employer may be able to unilaterally discontinue dues checkoff at impasse, in Florida, dues deduction is a mandatory subject of bargaining between the parties under Florida law, and the parties had agreed to such deductions for over ten years prior to the enactment of CS 256. And as AFSCME stated in its brief, prior to CS 256, Florida employers were required to grant an employee organization's request in bargaining for dues deduction. That under the NLRA, the absence of a dues checkoff clause could be a status quo term maintained during negotiations for a new agreement does not change the fact that CS 256 removed the prior right to bargain (and even, under Florida law, demand) such a provision. See amendments to Florida Statutes Sec. 447.303 (statute formerly providing "an employee organization which has been certified as a bargaining agent shall have the right to have its dues and uniform assessments deducted and collected by the employer.") The DOL, as set forth in its May 13, 2024 communication, has already determined that this prohibition on dues deduction does not comply with 13(c). Nothing in the MOU changes the facts relied upon in making that determination.

Finally, [REDACTED] argument that the burdensome recertification requirements in CS 256 do not materially affect and diminish previously existing collective bargaining rights directly contradicts DOL findings in this case and others. The DOL has consistently recognized this impediment in the Florida cases since the passage of CS 256 and in

other states that have imposed draconian recertification requirements. See, e.g., communication to parties connected to grant referral IA-207-010 and IA-2017-011, dated June 19, 2017. That unions or corporations in other contexts have legally mandated reporting requirements does not alter the draconian nature of the reporting changes mandated by CS 256. CS 256 continues to present an annual existential threat to transit employee unions with revocation of their certification and cancellation of their CBAs as the penalty for noncompliance.

### III. CONCLUSION

For the reasons stated above, the August 17, 2023, MOU does not materially alter the interference or eliminate it, and the parties did not mutually agree that the MOU would serve as a protective arrangement. Therefore, absent a waiver by PERC or some other change in the facts that removes the prohibitions on dues deduction and the annual recertification requirements, the conflict with 13(c) remains.

Respectfully submitted,



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