

February 18, 2020

Arthur F. Rosenfeld, Director
Office of Labor-Management Standards
U.S. Department of Labor
200 Constitution Ave. NW
Washington, D.C. 20210

RE: RIN 1245-AA08, Labor Organization Annual Financial Reports: Coverage of Intermediate Bodies

Director Rosenfeld,

The Freedom Foundation (“Foundation”) is a nonprofit organization organized under 26 U.S.C. § 501(c)(3). Founded in 1991 in Olympia, Wash., the organization’s mission is to promote individual liberty, free enterprise and limited, accountable government. In recent years, the Foundation has opened offices in Oregon, California, Ohio and Pennsylvania, and devoted much of its attention to supporting reforms to make labor unions representing public employees more transparent and accountable to their members and taxpayers.

Because of the Foundation’s expertise on labor union operations — developed through dozens of lawsuits, legal complaints, legislative debates and interactions with tens of thousands of union-represented public employees — the Foundation strongly supports the Department of Labor’s (“the Department”) proposed regulation to extend the application of the Labor-Management Reporting and Disclosure Act (LMRDA) to certain labor union “intermediate bodies.”

Such transparency is critical to helping union-represented public employees understand the operations of their unions and detect any potential mismanagement or misconduct on the part of union officials. Further, the additional transparency brought about by this proposed rule would discourage misconduct from occurring in the first place.

Specifically, the Foundation would like to offer seven comments, observations and suggestions in support of the proposed rule: (1) Greater union financial transparency will assist public employees in determining whether to join certain unions as members; (2) greater financial transparency will help ensure intermediate bodies abide by state laws, such as those regulating campaign finance; (3) extending minimum standards for union elections to additional intermediate bodies will help protect the integrity of union democracy; (4) the labor movement increasingly consists of public sector employees, which demands additional scrutiny of public sector unions; (5) at least four councils of the American Federation of State, County and Municipal Employees will likely be covered by the proposed rule; (6) the LM-2 filing threshold

for intermediate bodies should remain at \$250,000; and, (7) the Department should consider a minor alteration to the proposed text of 29 CFR § 401.9(a).

1. Greater union financial transparency will assist public employees in determining whether to join certain unions as members.

Since public sector collective bargaining took hold in the 1960s and '70s, union represented public employees were generally compelled by state laws to financially support a union as a condition of employment through the payment of “agency fees” deducted from their wages by their employer.

Thankfully, this requirement was struck down as unconstitutional by the U.S. Supreme Court in its June 2018 decision in *Janus v. AFSCME*, 138 S. Ct. 2448 (2018). Now, every union-represented public servant can make their own decision about whether to join and financially support a labor union.

However, many such employees lack access to the resources they need to make an informed choice. While some unions represent a mix of public and private-sector workers and file LM reports with the Office of Labor-Management Standards (OLMS), many others represent only public employees and, consequently, file no such reports.

For example, with a purported 95,000 members — all public employees — the Washington Education Association (WEA) is the largest labor union in the state of Washington.¹ While public school employees can now choose whether to financially support WEA, they have no legal right to access the union’s financial information to determine whether the organization’s use of members’ dues aligns with their views and values.

While the proposed rule would not entirely remedy the problem, as locals and UniServs beneath the WEA would remain unregulated, extending financial transparency requirements to unions like the WEA will give teachers and other public employees a great deal more information with which to guide the exercise of their newly-acknowledged First Amendment rights.

2. Greater financial transparency will help ensure intermediate bodies abide by state laws, such as those regulating campaign finance.

While extending the LMRDA to additional intermediate bodies will advance the statute’s goals of combatting corruption within organized labor and protecting union democracy, as explained in the proposed rule, the added financial transparency required of these intermediate bodies will aid in the enforcement of state laws as well, such as those governing the financing of state and local election campaigns.

In Washington state, the Freedom Foundation regularly references and relies upon LM

¹ Washington Education Association. “Unity Agenda.” 2018.
https://www.washingtonea.org/file_viewer.php?id=9546

reports submitted to OLMS to document violations of state campaign finance laws, including the reports as supporting documentation in at least 10 formal complaints filed with the Washington Public Disclosure Commission (PDC) and/or Attorney General's Office (AGO) since 2016.

Many of these complaints have resulted in state officials taking enforcement actions while others are the subject of continuing litigation. Of particular relevance to the proposed rule are two complaints filed by the Freedom Foundation against “intermediate bodies” in Washington.

The first complaint was filed against the Service Employees International Union Washington State Council/Leadership Council 14 (“Council 14”) in July of 2017.² Relying on LM-2 reports filed by Council 14 with OLMS, the Freedom Foundation documented that nearly all of Council 14’s expenditures went towards political activity during election years, yet it had failed to report its political contributions and expenditures to the PDC as required by state law. In response to the Foundation’s complaint, the AGO filed suit against Council 14 for its failure to disclose at least \$4 million in receipts and nearly \$4.7 million in expenditures over a period of several years.³ In February of 2019, Council 14 settled the AGO’s lawsuit by agreeing to file the required reports and pay \$250,000 in penalties and fees.⁴

The second campaign finance complaint filed by the Freedom Foundation against an “intermediate body” in Washington involves the Amalgamated Transit Union Legislative Council of Washington (ATULC). In part by using LM-3 reports filed by the ATULC, the Freedom Foundation documented that as much as 80-90 percent of the union’s budget went towards political activity during election years, without ATULC disclosing any of these contributions or expenditures to the PDC as required. In March 2019, following an initial review, the PDC launched a formal — and ongoing — investigation into the ATULC.⁵

Without access to LM reports from OLMS, documenting the violations of state campaign finance laws by these two intermediate bodies would have been at least more difficult, if not impossible.

Their placement within most unions’ organizational structure — generally above the day-to-day representational work of local unions, but generally below the nationally-focused union headquarters — means intermediate bodies may tend to be particularly focused on

² Freedom Foundation. “SEIU Council 14 the latest subject of Freedom Foundation complaint, AG lawsuit.” July 12, 2017. <https://www.freedomfoundation.com/press-release/seiu-council-14-the-latest-subject-of-freedom-foundation-complaint-ag-lawsuit/>

³ Washington State Office of the Attorney General. “AGO files campaign finance complaint against SEIU Washington State Council.” July 11, 2017. <https://www.atg.wa.gov/news/news-releases/ago-files-campaign-finance-complaint-against-seiu-washington-state-council>

⁴ Washington State Office of the Attorney General. “SEIU State Council to pay up to \$250,000 over campaign finance violations.” February 19, 2019. <https://www.atg.wa.gov/news/news-releases/seiu-state-council-pay-250000-over-campaign-finance-violations>

⁵ Public Disclosure Commission Case No. 43940. <https://www.pdc.wa.gov/browse/cases/43940>

state politics and influencing elections. Accordingly, extending the LMRDA's financial disclosure requirements to additional intermediate bodies will help shed light on the political activities of these entities, which will help ensure state campaign finance rules, and potentially other laws, are being properly observed.

3. Extending minimum standards for union elections to additional intermediate bodies will help protect the integrity of union democracy.

While the thrust of the proposed rule involves the application of the LMRDA's financial disclosure requirements to additional intermediate bodies, the importance of the LMRDA's minimum standards for the conduct of union elections should not be overlooked.

The Freedom Foundation has communicated with hundreds of thousands of public employees in recent years about their rights regarding union membership and dues payment and continues to interact with and assist public employees from multiple states daily.

From time to time, employees raise concerns about the conduct of union elections and seek assistance or guidance from the Foundation. Too often, however, the Foundation must inform the employees they have no recourse, as the LMRDA does not apply to their union and state laws provide no similar protections.

In one recent case, a union's conduct appeared to both violate its own bylaws and transgress the LMRDA's baseline election requirements. Certain candidates were promoted and assisted by union officials conducting the election, deadlines for ballot return were changed midstream with little notice, the rights of election observers were limited, and the integrity of the election severely called into question. Unfortunately, the local union represents only public employees and, as such, is not covered by the LMRDA. The employees challenging the election attempted to appeal the results through internal union procedures, to no avail.

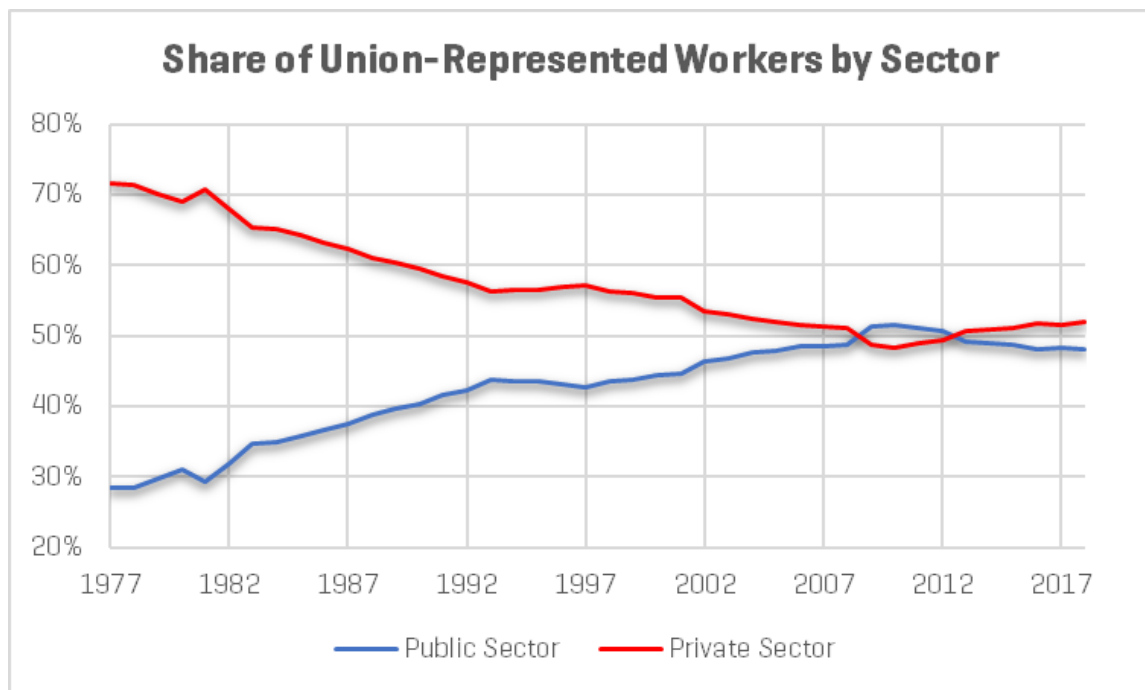
While extending the LMRDA to additional intermediate bodies would not have prevented this particular situation, as it involved only a local union, it can prevent others like it from occurring and promote union democracy by ensuring that additional entities conduct their elections in accordance with basic standards.

4. The labor movement increasingly consists of public sector employees, which demands additional scrutiny of public sector unions.

The Freedom Foundation agrees with the Department's explanation in the proposed rule of the "increased prevalence of public sector unions and their use of substantial monies affecting matters of great public interest..."

Indeed, the composition of the American labor movement has changed dramatically since the LMRDA's passage in 1959, with government workers making up an increasing share

of unions' overall membership. While data on public sector union representation is only available as far back as 1977, the trend is undeniable, as illustrated by the following chart:



Source: Author's analysis of data available at UnionStats.com, a project of Barry Hirsch (Andrew Young School of Policy Studies, Georgia State University) and David Macpherson (Department of Economics, Trinity University). The data comes from the monthly household Current Population Survey conducted by the Census Bureau and is compiled using Bureau of Labor Statistics methods. For the chart's supporting data, refer to Appendix A.

In short, public sector unions went from effectively a nonentity at the time of the LMRDA's passage to half of the American labor movement today.

Such a dramatic shift justifies the Department's present proposal to maximize the application of the LMRDA within legal boundaries in order to better "serve[] the public interest in disclosure and financial integrity."

5. At least four councils of the American Federation of State, County and Municipal Employees will likely be covered by the proposed rule.

In footnote seven of the proposed rule, the Department requested comment about whether the proposed rule would affect unions other than affiliates of the American Federation of Teachers, Fraternal Order of Police, National Education Association, and International Association of Fire Fighters. The Foundation believes it would.

In addition to the unions already identified by the Department, the Foundation believes four councils of the American Federation of State, County and Municipal Employees (AFSCME) will also be newly covered by the LMRDA under the proposed rule.

Article IX of AFSCME’s constitution, “Subordinate Bodies,” makes it clear that locals are the fundamental unit within the union’s structure. Section 2 provides that AFSCME “may charter local unions in any appropriate jurisdiction.”⁶ Councils, on the other hand, are generally discussed in the context of the local’s financial obligations to them as a secondary, intermediate entity between the local and the national headquarters.⁷

While designated “councils” by AFSCME, these entities appear to be the “conference” type of “intermediate body” described in 29 CFR § 451.4(f)(1):

“A conference is an organic body within a national or international labor organization formed on a geographical area, trade division, employer-wide or similar basis and composed of affiliate locals of the parent national or international organization.”

The Freedom Foundation’s review of the affiliate directory on AFSCME’s website⁸ and reports filed by AFSCME affiliates with OLMS identified 50 AFSCME councils.⁹ Of these, 44 currently file reports with OLMS and six do not.

Of the six councils that do not file LM reports with OLMS, one — Council 27 in Georgia — does not appear to be active any longer, though it remains listed in AFSCME’s directory.¹⁰ The status of another, Council 35 in New York, is uncertain. A website exists for “AFSCME Local 264 & Council 35,” but does not appear to have been updated since 2013.¹¹

The remaining four councils not presently reporting to OLMS appear to be active, have local unions within their jurisdiction, receive disbursements from AFSCME headquarters, and otherwise appear subject to the proposed rule.

A. AFSCME Council 2

Known as the Washington State Council of County and City Employees, AFSCME Council 2 is an active entity based in Everett, Washington. Council 2’s website lists 45 subordinate local unions within its jurisdiction in Washington state.¹² According to its most recent Form 990 filed with the Internal Revenue Service (IRS) covering calendar year 2017, Council 2 had total revenue of \$9.9 million.¹³ It previously filed reports with OLMS, with its terminal LM-2 covering 2013.¹⁴

⁶ AFSCME. “AFSCME International Constitution 2018.” <https://www.afscme.org/news/publications/afscme-governance/pdf/AFSCME-International-Constitution-2018.pdf>

⁷ Phrases like, “the council, if any, with which such local union is affiliated,” are common.

⁸ Available online at: <https://www.afscme.org/union/directory>

⁹ Refer to Appendix B for a complete listing of identified AFSCME Councils.

¹⁰ See <https://www.afscme.org/union/directory/virginia>

¹¹ See <http://afscmelocal264.org/>

¹² Washington State Council of County and City Employees. “Locals.” <https://www.council2.com/local-unions/>

¹³ See <https://pdf.guidestar.org/PDF/Images/2017/910/638/2017-910638592-0f7674bf-9O.pdf>

¹⁴ See <https://olms.dol-esa.gov/query/orgReport.do?rptId=549063&rptForm=LM2Form>

According to LM-2 reports filed by AFSCME headquarters,¹⁵ Council 2 has received at least \$854,826 from AFSCME since 2007. Most recently, Council 2 received \$5,000 from AFSCME in 2017.

B. AFSCME Council 18

Unlike Council 2, AFSCME Council 18: New Mexico and Colorado, based in Albuquerque, does not appear to have ever filed reports with OLMS. Nonetheless, it remains an active union with 59 locals subject to its jurisdiction, according to its website.¹⁶ The union's Form 990 covering calendar year 2018 indicates its total annual revenue was \$2 million.¹⁷

AFSCME headquarters' LM-2 reports record at least \$1,567,496 in disbursements to Council 18 since 2005. Most recently, Council 18 received \$145,603 from AFSCME in 2018.

C. AFSCME Council 95

Based in Puerto Rico, AFSCME Council 95, or Servidores Públicos Unidos De Puerto Rico, claims 15 locals under its jurisdiction.¹⁸ Its most recent Form 990 filed with the IRS covers calendar year 2018 and records \$1.2 million in revenue. Council 95 appears to be heavily subsidized by AFSCME headquarters. LM-2 reports indicate AFSCME has disbursed \$4,720,225 to Council 95 since 2005, with the headquarters most recently sending \$81,406 in 2018.

D. AFSCME Council 7/Texas Corrections/Texas Organizing Council

While its website does not identify the union as "Council 7" of AFSCME, but rather "AFSCME Texas Corrections," the entities appear to be one and the same.¹⁹ The website for AFSCME headquarters categorizes certain content under the heading, "TX - Council 7." The posted content relates to AFSCME-represented Texas corrections officers, the same as those under the jurisdiction of "AFSCME Texas Corrections."²⁰

Regardless, the website for AFSCME Texas Corrections strongly suggests it is an AFSCME "council" rather than a local, as union officers listed on the "About Us" page are identified as belonging to to five different local unions.²¹

Further, a Form 990 filed with the IRS by the "AFSCME Texas Organizing Council"

¹⁵ OLMS file no. 000-289.

¹⁶ AFSCME Council 18: New Mexico and Colorado. "Local Unions." <https://www.afscme18.org/local-unions>

¹⁷ See <https://pdf.guidestar.org/PDF/Images/2018/850/237/2018-850237912-112a5459-90.pdf>

¹⁸ See

http://www.spupr.com/www.spupr.com/Ultimas_Noticias_%21%21%21/Ultimas_Noticias_%21%21%21.html

¹⁹ See <https://www.afscmetexascorrections.org/>

²⁰ See <https://www.afscme.org/now/filter/affiliates/tx-council-7>

²¹ AFSCME Texas Corrections. "About Us." <https://www.afscmetexascorrections.org/about-us>

for calendar year 2017²² lists the same address that “AFSCME Texas Corrections” provides as its contact address on its website²³ — 1314 Tenth Street, Suite 230, Huntsville, Texas 77320.

Lastly, LM-2 reports filed by AFSCME headquarters record at least \$115,057 in payments to “AFSCME Correctional Employees/Council 7,” “AFSCME Texas Council 7,” and “Texas Correctional Emp Council 7” since 2008, with the latest payment of \$9,407 occurring in 2014.

No matter what name it goes by, this entity appears to be a functioning AFSCME Council with locals subject to its jurisdiction and would presumably be covered by the proposed rule.

6. The LM-2 filing threshold for intermediate bodies should remain at \$250,000.

One of the Department’s specific requests for comment involves “whether to raise the threshold for filing the LM-2 form from \$250,000 in annual receipts for intermediate bodies covered by the proposed rulemaking.”

The Foundation sees no reason that a local union with receipts in excess of \$250,000 *should* be required to file an LM-2 form but that an intermediate body with comparable receipts *should not* be required to similarly report. If anything, the burden of filing an LM-2 would probably be less keenly felt by intermediate bodies, which tend to focus more on coalition building and political matters, than by local unions, which often bear the brunt of a union’s representational duties and obligations and manage a larger number of financial transactions.

7. The Department should consider a minor alteration to the proposed text of 29 CFR § 401.9(a).

The proposed rule would add three new paragraphs to the definition of “labor organization” in 29 CFR § 401.9. As proposed, paragraph (a) would read:

“(a) Any organization that exclusively represents public sector employees, is composed solely of labor unions that exclusively represent public sector employees, or is a conference, general committee, joint or system board, or joint council subordinate to a national or international union that is composed solely of public sector labor unions is not a ‘labor organization’ covered by the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA).”

There are two references in the paragraph to unions “representing” public sector employees, underlined above: “any organization that exclusively represents public sector employees” and “labor unions that exclusively represent public sector employees.” In this context, the subsequent use of the phrase “public sector labor unions” to describe the

²² See <https://pdf.guidestar.org/PDF/Images/2017/464/129/2017-464129525-1031a3a6-9O.pdf>

²³ AFSCME Texas Corrections. “Contact Us.” <https://www.afscmetexascorrections.org/contact-us>

same characteristics stands out as both conspicuous and imprecise. A more accurate and uniform approach would be to replace “public sector labor unions” with “unions representing public sector employees.”

To conclude, the Freedom Foundation applauds the Department’s interest in expanding the application of the LMRDA to certain intermediate bodies and sincerely hopes this information is helpful to the Department’s work on this important and worthwhile proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Maxford Nelsen", with a stylized, cursive script.

Maxford Nelsen
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Appendix A

Share of Union-Represented Workers by Sector

Year	Union Represented Public-Sector Employees		Union Represented Private-Sector Employees		Total Union Represented Employees (in thousands)
	Number (in thousands)	% of Total	Number (in thousands)	% of Total	
1977	6111.1	28.4%	15423.5	71.6%	21534.6
1978	6234.4	28.5%	15663.1	71.5%	21897.5
1979	7010.6	29.8%	16529.5	70.2%	23540.1
1980	6967.7	31.0%	15525.7	69.0%	22493.4
1981	6267.8	29.2%	15166.6	70.8%	21434.4
1982	N/A	N/A	N/A	N/A	N/A
1983	7112.2	34.6%	13419.9	65.4%	20532.1
1984	6945.9	34.8%	12985.6	65.2%	19931.5
1985	6920.6	35.8%	12437.5	64.2%	19358.1
1986	7073.9	36.7%	12203.9	63.3%	19277.8
1987	7165.7	37.6%	11885.2	62.4%	19050.9
1988	7485.1	38.9%	11756.3	61.1%	19241.4
1989	7614.4	39.7%	11583.1	60.3%	19197.5
1990	7691.4	40.4%	11366.4	59.6%	19057.8
1991	7796	41.6%	10937.8	58.4%	18733.8
1992	7840.6	42.3%	10699.5	57.7%	18540.1
1993	8162.4	43.8%	10484	56.2%	18646.4
1994	8191.8	43.5%	10650.6	56.5%	18842.4
1995	7986.6	43.5%	10359.8	56.5%	18346.4
1996	7829.7	43.1%	10328.4	56.9%	18158.1
1997	7668	42.8%	10255	57.2%	17923
1998	7814.7	43.6%	10103.6	56.4%	17918.3
1999	7966.3	43.8%	10216	56.2%	18182.3
2000	7975.6	44.4%	9968.5	55.6%	17944.1
2001	7975.4	44.6%	9902.7	55.4%	17878.1
2002	8131.9	46.5%	9369.7	53.5%	17501.6
2003	8184.7	46.9%	9263.7	53.1%	17448.4
2004	8131.1	47.6%	8956.2	52.4%	17087.3
2005	8261.8	48.0%	8961.6	52.0%	17223.4
2006	8172.4	48.5%	8687.7	51.5%	16860.1
2007	8373.3	48.6%	8870	51.4%	17243.3
2008	8676.2	48.9%	9084.4	51.1%	17760.6
2009	8677.5	51.3%	8226.1	48.7%	16903.6

2010	8406	51.6%	7883.6	48.4%	16289.6
2011	8309.1	51.0%	7971.9	49.0%	16281
2012	8061.6	50.7%	7844.3	49.3%	15905.9
2013	7894.1	49.3%	8122.1	50.7%	16016.2
2014	7923.1	49.1%	8219.3	50.9%	16142.4
2015	8022.7	48.8%	8410.1	51.2%	16432.8
2016	7826.5	48.1%	8438.1	51.9%	16264.6
2017	7945.2	48.3%	8490.9	51.7%	16436.1
2018	7861.9	48.0%	8512.4	52.0%	16374.3

Appendix B

List of AFSCME Councils

Council	Name	State	OLMS File No.	Active
2	Washington State Council of County and City Employees	WA	N/A	Y
7	AFSCME Texas Corrections/Organizing Council	TX	N/A	Y
18	New Mexico and Colorado	NM	N/A	Y
27		GA	N/A	N?
35		NY	N/A	Y?
95	Servidores Públicos Unidos De Puerto Rico	PR	N/A	Y
1	New Jersey Public Employees Council	NJ	541-565	
3	Maryland State & University Employees	MD	544-935	
4	Connecticut & Special District Employees	CT	508-916	
5	Minnesota	MN	543-153	
8	Ohio	OH	512-927	
9		MT	529-407	
13	Pennsylvania Public Employees	PA	071-060	
17	Louisiana Public Employees	LA	505-505	
20	District Of Columbia	DC	064-538	
25	Michigan	MI	512-610	
26	Capital Area	DC	504-756	
28	Washington Federation of State Employees	WA	544-112	
31	Illinois Public Employees	IL	511-506	
32	AFSCME Wisconsin	WI	545-266	
33	Philadelphia-Eastern Pennsylvania Public Employees	PA	526-885	
36		CA	543-163	
37	New York City District Council of Municipal Local Unions	NY	059-403	
47	Administrative, Professional & Technical Association	PA	514-329	
57	Northern California	CA	517-192	
61		IA	513-272	
63	AFSCME New Jersey	NJ	545-799	
65	Minnesota	MN	059-814	
66	New York County and Municipal Employees	NY	514-332	
67	Maryland Public Employees	MD	068-090	
71		NJ	541-173	
73	Central New Jersey District	NJ	070-187	
75	Oregon	OR	528-285	

76	Colorado	CO	519-038	
79	Florida Public Employees	FL	513-362	
81	Delaware Public Employees	DE	540-411	
82	New York State Law Enforcement Officers Union	NY	542-928	
83	Southwestern Pennsylvania Public Employees	PA	071-061	
84	Western Pennsylvania Public Employees	PA	071-062	
85	Northwestern Pennsylvania Public Employees	PA	071-063	
86	North Central Pennsylvania Public Employees	PA	071-064	
87	Northeastern Pennsylvania Public Employees	PA	071-065	
88	Southeastern Pennsylvania Public Employees	PA	071-066	
89	Southern Pennsylvania Public Employees	PA	071-067	
90	Dauphin County Pennsylvania Public Employees	PA	071-068	
93		MA	511-964	
94	Rhode Island	RI	542-672	
962		IN	545-360	
1707	Community & Social Agency Employees Union	NY	061-014	
2051	Prairie Meadows Racetrack & Casino	IA	542-686	