

## **A Brief Overview of the Law Governing the AFL-CIO's State and Local Central Labor Bodies**

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May 19, 2008

### **I. Introduction**

In every state and hundreds of communities around the country, the labor movement benefits from the presence and work of state, area, and local labor bodies chartered by the national AFL-CIO. Unlike their affiliate local unions, these central labor bodies are not directly involved in direct representation of workers, contract negotiations or administration, direct organizing, or litigation under the National Labor Relations Act or the Railway Labor Act. Instead, the AFL-CIO's state and local central bodies are designed to coordinate and lead the labor movement's work in particular geographic areas around the labor movement's legislative, policy, and electoral goals. State and local central bodies also provide support to organizing campaigns and contract fights in their areas, although state federations and central labor councils do not directly represent workers.

While central labor bodies experience many of the same legal problems as local unions and other not-for-profit organizations, they also face their own unique challenges. In grappling with these issues, state federations and central labor councils operate under a somewhat different set of legal rules as compared to local unions.

This paper outlines some of the common legal issues and questions faced by state and local central bodies in running their organizations, and describes some of the key laws and rules governing these organizations. This paper is designed to be a

resource for union lawyers who might be unfamiliar with this particular breed of labor organization but who might be called upon from time to time to provide advice to a state or local central body facing a legal or constitutional question.

## **II. What is an AFL-CIO state federation or central labor council?**

The AFL-CIO's state, area, and local central bodies are not-for-profit 501(c)(5) labor organizations under the Internal Revenue Code. They are covered by the AFL-CIO's group exemption for tax exempt status.

State federations and central labor councils are not 501(c)(3) charitable organizations. A number of state and local labor bodies have established separate 501(c)(3) organizations for various purposes, including job training, research, and advocacy work.<sup>1</sup>

Central labor bodies are also labor organizations for federal election law purposes.<sup>2</sup> This means that, like other labor organizations, state, area, and local labor councils may use regular per capita revenue to fund electoral communications with members of the AFL-CIO that include "express advocacy" (i.e., "vote for" or "vote against" a particular electoral candidate).<sup>3</sup> See 11 C.F.R. § 100.134(a).

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<sup>1</sup> The law governing such 501(c)(3) organizations is covered comprehensively in a related paper for this workshop prepared by Mike Trister.

<sup>2</sup> With regard to campaign-related communications to its members, a labor organization is defined as "an organization of any kind (any local, national, or international union, or any local or State central body of a federation of unions is each considered a separate labor organization for purposes of this section) or any agency or employee representative committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 11 C.F.R. § 100.134(b).

<sup>3</sup> State federations and central labor councils must support the endorsement of the national AFL-CIO on candidates for President and Vice-President and cannot make separate endorsements. Rule 43(g) of the Rules Governing State and Area Central Bodies. See infra, Section III.B.

Finally, as discussed below, the AFL-CIO's state, area, and local central bodies are excluded from the definition of "labor organization" under the Labor-Management Reporting and Disclosure Act.

### **III. The Law Governing AFL-CIO State, Area, and Local Central Bodies**

Although central labor bodies and local unions share some similar legal challenges, the legal rules applicable to them differ in two important respects. First, central labor bodies are not subject to the Labor-Management Reporting and Disclosure Act ("LMRDA" or "Landrum Griffin Act"). Second, they are subject to Rules established by the AFL-CIO.

#### **A. The Labor-Management Reporting and Disclosure Act**

The LMRDA grants certain rights to union members while mandating certain responsibilities of labor organizations. For example, the LMRDA includes reporting requirements and specific obligations regarding union elections and trusteeships. Among the most common reporting requirements are the union's responsibility to file annual LM-2 financial reports and the union officers' responsibility to file LM-30 employee reports.

By its terms, the LMRDA applies to "labor organizations." The definition of that term specifically exempts "a State or local central body" from coverage." 29 U.S.C. § 402(i). Moreover, the Department of Labor regulations define a "[s]tate or local central body" as an organization that:

"(1) [i]s chartered by a federation of national or international unions; and (2) [a]dmits to membership local unions and subordinate bodies of national or international unions that are affiliated with the chartering federation within the State or local central body's territory and any local unions or subordinate bodies directly affiliated with the federation in such territory; and (3) [e]xists primarily to carry on educational, legislative and coordinating activities."

29 C.F.R. § 451.5(a). The regulations provide further that the “term does not include organizations of local unions or subordinate bodies (1) of a single national or international union; or (2) of a particular department of a federation or similar association of national or international unions.” 29 C.F.R. § 451.5(b). Thus, courts have held that the LMRDA does not apply to state and local central bodies. See, e.g., Kanawha Valley Labor Council, AFL-CIO v. AFL-CIO, 667 F.2d 436, 438 (4<sup>th</sup> Cir. 1981) (“KVLC, not being a ‘labor organization’ under the LMRDA, is without its protections.”); Colorado Labor Council, AFL-CIO v. AFL-CIO, 482 F.2d 396, 398 (10<sup>th</sup> Cir. 1973) (holding that state labor council is not covered by any provision of the LMRDA).

Because the LMRDA does not apply, central labor bodies are not required to file LM-2 reports and their officers are not required to file LM-30 reports.<sup>4</sup> Central labor bodies are, however, required to file a Form 990 annually with the Internal Revenue Service. In addition, officers of state, area, and local central bodies who also hold a position within their union must file LM-30 reports in their union officer or employee capacity if they receive things of value in that capacity that fall within the LM-30 reporting requirements.<sup>5</sup>

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<sup>4</sup> State and local central bodies sometimes overlook the fact they are not required to file LM-2 reports and inadvertently file them. Similarly, the Department of Labor sometimes confuses state and local central bodies with LMRDA-covered labor organizations and contacts them about a missing LM-2 report. Some of this confusion can be avoided through knowledgeable local counsel informing state and local central bodies of the applicable rules.

<sup>5</sup> On a similar note, even though the U.S. Department of Labor does not have jurisdiction over state, area, and local central bodies as labor organizations under the LMRDA, the Department of Labor does, at times, include state, area, or local central bodies within an investigation involving alleged malfeasance at an LMRDA-covered labor organization (e.g., allegations of double-dipping by an officer of a local labor organization and central labor council).

In addition, because the LMRDA does not apply, central labor bodies are not bound by its election and trusteeship provisions. These bodies, however, are covered by rules regarding central body elections and trusteeships imposed by the AFL-CIO and discussed briefly below.

### **B. Rules and Standards Established by the AFL-CIO**

The AFL-CIO's Constitution provides that central labor bodies may be chartered on a city, state, or regional basis as deemed advisable by the Executive Council. The Constitution further authorizes the Executive Council to establish such programs, rules and procedures as are necessary or advisable to ensure effective performance by central labor bodies and to issue rules governing the conduct, activities, affairs, finances, and property of such bodies. (Article XIV, § § 1,3). See Colorado Labor Council, 481 F.2d at 397 ("As concerns state and local central bodies, the Rules of the AFL-CIO provide that state and local central bodies which are granted charters by the AFL-CIO shall conform their activities on national affairs to the policies of the AFL-CIO.").

Under this authority, the AFL-CIO has issued a number of sets of Rules and Standards governing state and local central bodies. First, the AFL-CIO has established one set of Rules Governing AFL-CIO State Central Bodies and a separate, but nearly identical, set of Rules Governing Area Labor Councils and Central Labor Councils. (A copy of the Rules Governing State Central Bodies is attached as Appendix A, and the Rules Governing Area Labor Councils and Central Labor Councils is attached as Appendix B). These two sets of "Rules Governing" cover a number of significant points, including the following:

## **1. Organizations Permitted to Affiliate with State and Local Central Bodies**

The AFL-CIO Constitution defines the composition of state and local central bodies and provides that they “shall be composed exclusively of locals of national and international unions and organizing committees affiliated with the Federation, directly affiliated local unions, local central bodies within the geographical limits of state and regional bodies, and such other subordinate bodies, constituent entities and allied retiree organizations as the Executive Council may determine are eligible for affiliation or other participation.” Article XIV, Section 1. This language is repeated in the Rules Governing.

Thus, certain organizations can affiliate with the AFL-CIO’s state and local organizations as a matter of right – namely, locals of national unions affiliated with the national AFL-CIO, and local unions affiliated directly with the national AFL-CIO (i.e., DALUs). Affiliation by other organizations is by permission of the national AFL-CIO’s Executive Council.

### **a. Constituency Groups**

The Executive Council has authorized affiliation by a number of groups. Recently, the Executive Council established rules allowing local chapters of designated constituency groups to affiliate with state and local central bodies. These organizations include the A. Philip Randolph Institute, the Asian Pacific-American Labor Alliance, the Coalition of Black Trade Unionists, the Coalition of Labor Union Women, the Labor Council for Latin American Advancement, and Pride at Work. Similarly, state chapters of the Alliance for Retired Americans are permitted to affiliate with state federations.

## **b. Solidarity Charters**

Following the disaffiliation from the national AFL-CIO by several national unions in 2005, the AFL-CIO's Executive Council adopted the Solidarity Charter program to allow local unions of the disaffiliated national unions to affiliate with the AFL-CIO's state and local central bodies. A copy of the Solidarity Charter program is attached as Appendix C. Nearly 3,000 locals of the disaffiliated national unions have received Solidarity Charters and have remained an important part of state and local labor movements. These unions pay the same per capita and have the same rights within a state or local central body as other affiliated unions. They do not pay per capita to, or have rights in, the national AFL-CIO or have protections like Article XX and XXI that only apply to the AFL-CIO's national union affiliates.

## **c. Directly Affiliated Local Unions**

Local unions directly affiliated with the national AFL-CIO have a right to affiliate with state and local central bodies. In recent years, the national AFL-CIO has adopted two new programs to authorize new direct affiliations: the Direct Local Affiliates program and the NEA Labor Solidarity Partnership. Through these programs, formerly independent unions (in the case of Direct Local Affiliates) and locals of the National Education Association (through the NEA Partnership) receive certificates to directly affiliate with, and pay per capita to, the national AFL-CIO, thereby making them eligible to affiliate with the AFL-CIO's state and local central bodies.

## **2. Constitutions**

A second significant aspect of the Rules Governing is the requirement that central labor bodies have individual constitutions and by-laws that conform to the

Constitution of the AFL-CIO and that are approved by the President of the AFL-CIO. The constitutions and by-laws must contain requirements concerning representation and voting, eligibility for office, and per capita tax and fees. The Rules Governing give the President of the AFL-CIO the authority to waive provisions of a state or local central bodies' constitution in certain limited circumstances.

### **3. Elections**

Even though state and local central bodies are not covered by the election provisions of the LMRDA, the Rules Governing include extensive provisions on elections. The rules specify that local unions' voting strength is based on the number of members on whom the local union pays per capita tax. The rules state that the "base period" for calculating voting strength can be no longer than 24 months. Voting strength for new affiliates is prorated for the period of time within the base period that the union has been affiliated. Significantly, elections in state and local central bodies are not by secret ballot – delegates declare their votes openly. The Rules Governing include procedures for appealing elections to the President of the AFL-CIO after exhaustion of any local procedures.

### **4. Discipline of State and Local Central Bodies**

The Rules Governing give the President of the AFL-CIO broad authority to suspend or expel officers or organizations, impose trusteeships, and revoke charters for non-compliance with the Constitution of the AFL-CIO or the Rules Governing, or for "engage[ing] in any activity or course of conduct which is contrary or detrimental to the welfare or the best interests of the AFL-CIO, or where any such organization fails to conform its policies to the policies of the AFL-CIO." Notice of the charges and a hearing

are required before disciplinary action is taken, except that the President is authorized to take emergency action “where the interests of the AFL-CIO reasonably require such action.” (Rule 25). This authority has been utilized on occasion. See, e.g., Kanawha Valley Labor Council, AFL-CIO v. AFL-CIO, 667 F.2d 436, 437 (4<sup>th</sup> Cir. 1981) (discussing dispute arising out of political endorsements); Colorado Labor Council, AFL-CIO v. AFL-CIO, 481 F.2d 396, 397 (10<sup>th</sup> Cir. 1973) (same). The Rules Governing further provide for appeals from disciplinary actions imposed under these rules.

### **5. Financial Responsibilities**

The Rules Governing require state and local central bodies to “follow such financial practices and keep records that will ensure that their funds and properties will be safeguarded and will be expended only for authorized purposes.” (Rule 16). The rules also state that funds “shall be expended only pursuant to authorization by the procedures set forth [in the state or local organization’s] constitution or bylaws,” and “shall be used only for legitimate expenditures in furtherance of the objectives of such council or the AFL-CIO.” (Rule 15). State and local central bodies are required to file annual financial reports with the AFL-CIO. The Secretary-Treasurer of the AFL-CIO may require an audit of any state, area, or local central body at any time.

### **6. Rules on Political Endorsements**

Both the Rules Governing State Central Bodies and the Rules Governing Area Labor Councils and Central Labor Councils include Rules Governing Committees On Political Education. These rules include important requirements regarding the composition and responsibilities of political education committees and limitations and procedures pertaining to political endorsements.

## **7. Ethical Practices Code**

The fiduciary duties of state federation and central labor council officers are governed by an Ethical Practices Code for AFL-CIO Officers and Representatives, adopted by the AFL-CIO Executive Council. (A copy of Ethical Practices Code for AFL-CIO Officers and Representatives is attached as Appendix D.) By its terms, the Ethical Practices Code binds the officers and managerial employees of state and local central labor bodies. Moreover, each central labor body is responsible for enforcing the substance of the Code through its own Ethical Practices Committee.

The Ethical Practices Code sets out the general fiduciary obligations of officers and managerial employees and is specifically directed toward, among other things, self-dealing by officers and employees. The Code states that “every AFL-CIO officer and managerial employee, whether elected or appointed, has a high fiduciary duty and sacred trust to serve the best interests of the members honestly and faithfully.” The Code prohibits officers and managerial employees from having a personal financial interest which conflicts with the full performance of his or her fiduciary duties. The Code prohibits officers and managerial employees from accepting any non de minimis payment from an employer which bargains with the AFL-CIO or from a business that does business, or seeks to do business, with the AFL-CIO. Other provisions address obligations of AFL-CIO officers and managerial employees involved in retirement, health or welfare funds. The provisions of the Ethical Practices Code are enforced through an Ethical Practices Committee of the AFL-CIO Executive Council and by each state or local central body through its own Ethical Practices Committee.

## **8. Performance Standards and Benchmarks for State Federations and Central Labor Councils**

In 2005, the AFL-CIO Executive Council adopted Performance Standards and Benchmarks for State Federations, Area Labor Councils, and CLCs. (A copy of Performance Standards and Benchmarks for State Feds and for Area CLCs is attached as Exhibit E.) These Standards and Benchmarks seek to better focus the work of state, area, and local central bodies in the areas of political work, legislative work, and organization building, with particular emphasis on financial practices and accountability. At the same time as issuing the Performance Standards and Benchmarks, the Executive Council amended the Rules Governing to state that a state or local central body's failure to meet the Performance Standards and Benchmarks could be grounds for disciplinary action against the state or local body or its officers.

### **C. Other Laws Applicable to Central Labor Bodies**

As not-for-profit 501(c)(5) labor organizations, central labor bodies must satisfy the annual reporting requirements that the Internal Revenue Service imposes on all 501(c) organizations (i.e., the Form 990).

Most state, area, and local central bodies are unincorporated associations. They may be subject to state or local laws governing the operation of these organizations, and may be subject to state or local reporting requirements as not-for-profit organizations operating in a particular state.

Almost all state federations, and many larger central labor councils, have employees, and are subject to payroll tax, unemployment insurance, and other applicable laws as an employer. Depending on their size, these organizations may be subject to federal, state, or local wage and hour laws or equal employment opportunity

laws. See e.g., Rattley v. N.Y. State AFL-CIO, 2002 U.S. Dist. LEXIS 9119 (S.D.N.Y. 2002) (considering action brought against New York State Federation under federal and state anti-discrimination laws).

**Appendices:**

- A. Rules Governing AFL-CIO State Central Bodies
- B. Rules Governing Area Labor Councils and Central Labor Councils
- C. AFL-CIO Solidarity Charter Program
- D. AFL-CIO Ethical Practices Code
- E. Standards and Benchmarks for State Federations and Central Labor Councils