

MEETING  
IN PROGRESS

# COLLECTIVE BARGAINING TRANSPARENCY

A win for the public, for union  
members and for local government

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Better Cities Project (BCP)  
is a nonprofit that researches and  
promotes practical policy solutions for  
America's largest cities.

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***BCP uncovers ideas that work,  
promotes realistic solutions and  
forges partnerships that help people  
in America's largest cities live free  
and happy lives.***





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# COLLECTIVE BARGAINING TRANSPARENCY IS A WIN-WIN-WIN

**G**overnment employee wages and benefits have extraordinary impact in virtually every city. A 2018 National League of Cities survey found that wage hikes impacted 88% of surveyed city budgets, more than any other factor listed.

Opening up the negotiations behind those expenditures is good for taxpayers, good for union members and good for local government.

- ▶ **GOOD FOR TAXPAYERS:** Since government-employee contracts account for such a large portion of public spending, they should not be negotiated in secret. Taxpayers provide the money for these agreements and they should be able to follow the process, holding government officials accountable for the spending decisions they make.
- ▶ **GOOD FOR UNION MEMBERS:** Because they know exactly what proposals their union representatives are requesting and rejecting, transparency benefits rank-and-file union members, providing information on how they are being represented.
- ▶ **GOOD FOR LOCAL GOVERNMENT:** Transparency instills more accountability into the collective bargaining process by quickly identifying whether one side is being unreasonable in negotiations or acting in bad faith. This clarity correlates with higher levels of trust in government, an important factor as local officials tackle a range of challenges requiring voter buy-in.

The people have a right to know how public spending decisions are made on their behalf. Ending collective bargaining secrecy and opening union contract negotiations to the public, as other states and cities have done, is a practical and ethical way to achieve that standard.

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# WHY TRANSPARENCY MATTERS

We need look no further than the recent protests across the country to understand the importance that government transparency, or the lack of it, has on building public trust. This is especially true when it comes to the decisions being made in various government employee contracts for those in a position of public trust, like teachers and police.

When these decisions are made behind closed doors and the contracts subsequently undermine common-sense proposals for accountability, frustration and mistrust in our important institutions grow. Thankfully, there is bipartisan support for adopting important contract transparency reforms.

Consider the following statement from a May 24, 2016, legal brief filed by then-President Obama's Department of Justice concerning accountability for the Seattle Police Department (emphasis added):

"We also note that the Accountability Workgroups yielded a number of 'nearconsensus' concepts for the future of SPD's police accountability, including: **possible modifications to the collective bargaining process to enhance the transparency of union negotiations...** It is our understanding that each of these positions — both consensus and near-consensus — will be communicated to City legislators and will serve to inform and assist in their legislative process."

Unfortunately, Seattle officials did not adopt this transparency proposal.

It's not just a Seattle problem though. As reported by Route Fifty:

"In Philadelphia, Rev. Mark Kelly Tyler, a pastor at Mother Bethel A.M.E. Church and a leader with the interfaith organization POWER, has been critical of the local police contract and wants to see more transparency and public input in how it's negotiated. 'It's pretty much done in the dark and without any input from the citizens,' he said."

We can only imagine how things would have been different this year with the recent protests had the public instead been able to be more informed about the various discussions and decisions being made in these various government employment contracts.



# WORKERS AND TAXPAYERS BENEFIT FROM TRANSPARENCY

Employee wages and benefits are one of the largest costs in any local government, and those costs are typically established in collective bargaining agreements. But too often, the negotiations behind these agreements are made behind closed doors.

Taxpayers are ultimately responsible for funding these contract agreements, and should be allowed to monitor the negotiation process similar to any other public aspect of the people's work. Similarly, rank-and-file public union employees can also be left in the dark when there's no transparency in the collective bargaining process.

**Too often, only the government officials and union executives who negotiated the deal know details such as what offers were made, and rejected, in collective bargaining negotiations. Taxpayers, union members, lawmakers and the media only find out after the agreement has been reached.**

Secrecy is not the rule in every state, but it holds sway in too many parts of the country.

It doesn't have to be this way, and there are steps local government leaders can take to establish collective bargaining transparency in their communities.





# CONTRACT TRANSPARENCY ACROSS THE COUNTRY

Contract transparency is the norm in nearly half of all states. Some states open the entire negotiation process to the public, while others include an exemption when government officials are strategizing among themselves.

But once public officials meet with union negotiators, the public is allowed to be informed and monitor the process. This is what occurs in Florida, as that state's attorney general explains:

*"The Legislature has, therefore, divided Sunshine Law policy on collective bargaining for public employees into two parts: when the public employer is meeting with its own side, it is exempt from the Sunshine Law; when the public employer is meeting with the other side, it is required to comply with the Sunshine Law."*

The Governor of Idaho recently signed a bipartisan bill — passed unanimously in the legislature — to bring public employee union negotiations under the open meetings law. The lack of dissent on this reform shows transparency in public union negotiations enjoys broad support among both parties.

Texas also requires, by statute, transparency for government collective bargaining:

*"Sec. 174.108. OPEN DELIBERATIONS. A deliberation relating to collective bargaining between a public employer and an association, a deliberation by a quorum of an association authorized to bargain collectively,*

*or a deliberation by a member of a public employer authorized to bargain collectively shall be open to the public and comply with state law."*

In 2014, 70% of Colorado voters approved Proposition 104 to require "any meeting between any representative of a school district and any representative of employees, at which a collective bargaining agreement is discussed to be open to the public."

Several local governments have also enacted contract transparency. In Washington State, for example, Gig Harbor, Lincoln County, Kittitas County, Ferry County, Spokane County, the Pullman School District and the Kennewick School District have adopted this type of transparency policy.

It is also very popular at the local level with voters. In 2019, 76% of Spokane voters adopted a charter amendment: "The City of Spokane will conduct all collective bargaining contract negotiations in a manner that is transparent and open to public observation both in person and through video streaming or playback. This section does not require the city to permit public comment opportunities during negotiations."



# HOW DOES CONTRACT TRANSPARENCY WORK IN PRACTICE? A LOOK AT OREGON

One state with government union contract transparency is Oregon. Here is a description of how it is working for school districts.

Lisa Freiley, Director of Human Resource Development for the Oregon School Boards Association, said the following about transparent contract talks:

*"Our school districts have been bargaining in public for many years. About 15 years ago, our legislature made a change to collective bargaining law in regards to public vs. private negotiations. The prior law allowed one party to request negotiations take place in executive session (e.g. private) and the result was private session negotiations. When the legislature made the change, they decided to require negotiations to take place in public unless both parties wanted to negotiate in executive session (e.g. private). So there is still an option if you are dealing with some really sensitive subjects. The union was quite upset with the change in the beginning but it is just standard practice these days. Most negotiate in public but some still use executive session (e.g. private).*

*The school districts have actually found it to be a useful process because it requires both parties to behave in a professional and respectful manner when you know parents, media and other community members will be watching. This has often resulted in more reasonable proposals (relatively speaking — the really outrageous stuff very seldom makes it to the table during open negotiations). It also allows the other bargaining unit members to hear and see what the board/district is saying rather than having to be filtered through the union's newsletter. The other thing we have found is that the public and media really only show up either in the beginning (then they get bored and stop coming) or during high conflict negotiations and then we have found the ability for parents, teachers and the community to hear the discussions for themselves to be beneficial."*

This experience confirms points made by transparency advocates: Both the public and union members benefit from not being kept in the dark.

# HOW LOCAL GOVERNMENT CAN STEP IN – AND STEP UP – ON BARGAINING TRANSPARENCY

For local governments without collective bargaining transparency at the state level, there's still plenty of room to act. Any local collective bargaining transparency ordinance should include:



A clear statement that labor negotiations between government and government employees are an extension of the people's business and taxpayers have a vested interest in the proceedings.



Definitions clearly covering individuals, labor organizations or their agents, and employees. It does little good to have a collective bargaining ordinance in place if it's so poorly defined that bad actors on either side can skirt it.



A declaration that collective bargaining sessions, with exceptions for grievance, mediation or arbitration meetings, are public meetings subject to advance public notice and all applicable state open meeting laws.



A declaration that documents created or presented by the government or received from the labor organization during collective bargaining sessions are public records subject to state public records laws.



Creation of a public information policy requiring the government to operate or contract for the operation of a website that allows public access to all tentative and finalized collective bargaining agreements pursuant to relevant state statutes.



A severability clause indicating that if any provision of the ordinance or its application is held invalid, that invalidity shall not affect any other provision or application of the measure that can be given effect without the invalid provision or application.



# AN ALTERNATIVE TO FULLY OPEN CONTRACT TALKS

Ideally, contract negotiations should be fully open to the public. But at a minimum, government officials should adopt an openness process like the one used by the City of Costa Mesa, California, to keep the public informed. The city's policy is called Civic Openness in Negotiations, or COIN.

Under COIN, all contract proposals and documents to be discussed in closed-door negotiations are made publicly available before and after the meetings, with fiscal analysis showing the potential costs. While not full-fledged open meetings, access to all of the documents better informs the public about promises and tradeoffs being proposed with their tax dollars before an agreement is reached.

This openness also makes clear whether one side or the other is being unreasonable in its demands, and quickly reveals whether anyone is acting in bad faith. It's a hybrid solution that could be adopted by local officials if full open meetings are not allowed.



# COLLECTIVE BARGAINING TRANSPARENCY MODEL ORDINANCE/LEGISLATION

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Nearly half of all states have legislated some form of collective bargaining transparency. If your state hasn't — or if you lead a community that would like to implement strong transparency practices no matter what your state has done — then the model ordinance/legislation below provides a framework.

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## Declaration of Findings, Purposes and Policy

The right of public employees to know how labor organizations are collecting and spending their dues and the right of taxpayers to the process and content of collective bargaining agreements is paramount to [state or locality].

The federal Labor-Management Reporting and Disclosure Act provides that the finances of labor organizations with private-sector members to be open to public inspection. However, that disclosure does not extend to labor organization with only public-sector members in [state or locality].

Further, the [state or local open meeting act] allows the public to observe how their tax dollars are spent and how policies are set forth by public officials. However, the [state or local open meetings act] does not extend this same transparency to the collective bargaining process, which is an extension of the people's business and one in which taxpayers have a vested interest.

[State or locality] puts the utmost importance on transparency and protecting the rights of its public employees and taxpayers. Therefore, the legislature expands [state or local open meetings act and freedom of information act] to include collective bargaining sessions between a labor organization and a public employer, including posting draft

and final collective bargaining agreements, and requires labor organizations to publicly disclose their finances.

**Sec. 1. As used in this act:**

- (A) “Public Employer” means the [state or locality] or any of its political subdivisions, any government agency, instrumentality, special district or school board or district, that employs one or more employees in any capacity.
- (B) “Public employee” means an employee of a public employer, public employees will not include those employees covered by the Federal National Labor Relations Act, the Railway Labor Act or the Federal Service Labor-Management Relations Statute. [include state employees if in a locality]
- (C) “Labor organization” means any organization, agency, or public employee representation committee or plan, in which public employees participate and that exists for the purpose, in whole or in part, of dealing with a public employer concerning collective bargaining, grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.
- (D) “Department” means [state or local Department of Labor or another agency].
- (E) “Collective bargaining” for the purpose of this act only, means the duty of a public employer and a labor organization to meet and bargain in good faith or meet and confer in an effort to finalize a written agreement or contract with respect to wages, hours, working conditions or other terms and conditions of employment for public employees.

**Sec. 2 Labor organization financial transparency**

- (A) Labor organization representing public employees shall maintain financial records substantially similar to and no less comprehensive than the records required to be maintained under 29 U.S.C. sec 431(b) and regulations pertaining thereto or any successor statute or regulation.
- (B) Labor organization shall annually provide records required under subsection (A) in a searchable, electronic format to the Department and to the employees it represents.



- (C) The labor organization shall keep records and the data or summary by which the records can be verified, explained, or clarified for a period of not less than five (5) years.
- (D) The Department shall post the records required under subsection (A) and (B) to their website in a searchable electronic format.

### Sec 3. Labor organization contract transparency

- (A) Before a public employer may vote or in any other way ratify a collective bargaining agreement [or contract], amendment or memorandum of understanding agreed to during negotiations between the public employer or their representatives and a labor organization or their representatives, the tentative collective bargaining agreement [or contract] amendment or memorandum of understanding, shall be posted publicly on the website of the Department for not less than 14 days with the ability of the public to comment.
  - (i) In an emergency, as provided for under [state or local Open Meetings Act] an amendment to a current collective bargaining agreement [or contract] or memorandum of understanding between a public employer and labor organization may be entered into immediately but must be posted publicly within 24 hours of agreement and will expire at the end of the emergency unless ratified again under the provisions of this section.
- (B) The notice of such collective bargaining agreement [or contract] shall include:
  - (i) The full text of the agreement in electronic searchable format.
  - (ii) The current number of labor organization members in the bargaining unit covered by the agreement







- (iii) The current total number of public employees covered by the agreement
  - (iv) A fiscal note on the cost estimate of the agreement including other post-employment benefits (OPEB) liabilities both current and projected for at least 5 years in the future.
- (C) Once ratified, the Department shall publicly post the collective bargaining agreement including all provisions in subsection (B) for a period of 5 years past the expiration of the agreement. At least annually, the labor organization shall provide the Department with any updates to subsection (B) and the Department shall post any updates on their website.

#### **Sec. 4 Collective bargaining transparency**

- (A) Collective bargaining negotiations between a public employer and a labor organization to reach a collective bargaining agreement shall be subject to [state or local open meetings act].
- (B) The requirement of sub-section (A) applies to negotiations between the public employer's representatives and representatives of the labor organization. This requirement shall also apply to meetings with any labor negotiation arbitrators, fact finders, mediators or similar labor dispute meeting facilitators when meeting with both parties to the negotiation at the same time. Provided, however, a public employer or its designated representatives may hold an executive session for the specific purpose of:
- (i) Deliberating on a collective bargaining agreement offer or to formulate a counteroffer; or
  - (ii) Receiving information about a specific employee, when the information has a direct bearing on the issues being negotiated and a reasonable person would conclude that the release of that information would violate that employee's right to privacy.

- (C) For this section, only the public employer may physically close the collective bargaining session required by sub section (A) and the requirements of [state or local open meetings act] may be satisfied if the public employer publicly broadcasts the negotiation session on their website or other widely accessible means.
- (D) All documentation exchanged between the parties during negotiations, including all offers, counteroffers and meeting minutes, shall be subject to [state or local freedom of information act.]
- (E) The public employer shall post notice of all negotiation sessions at the earliest possible time practicable but not less than 48 hours in advance except for an emergency as provided in [state or local open meetings act]. This shall be done by the public employer by posting notice of the negotiation session on the front page of its official website. The public employer shall also post notice within 48 hours at its regular meeting physical posting locations.
- (F) Public testimony, if any, shall be posted as an agenda item.
- (G) The public employer shall post a notice on their website of the availability by the Department of any tentative collective bargaining agreement reached under section 3 of this act not less than 24 hours after reaching such a tentative collective bargaining agreement.

### Sec. 5 Penalties

- (A) Any person who willfully violates this Act shall be fined not more than [x] and shall be paid to [state or local agency].
- (B) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any document, report or other information required under the Act shall be fined not more than \$[x].
- (C) Any person who willfully makes a false entry in or willfully conceals, withholds or destroys any books, records, reports or statements required to be kept by any provision of this Act shall be fined not more than \$[x] and shall be paid to [state or local agency].
- (D) Each individual required to sign reports under Section 2 shall be personally responsible for the filing of such reports and for any statement contained therein which he knows to be false.
- (E) Whenever it shall appear that any person has violated or is about to violate any of the provisions of this Act, the [insert public official responsible here] may bring a civil action for such relief (including injunctions) as may be appropriate. Any such action may be brought in the [state or local court] where the violation occurred.

### Sec. 6 Severability

If any provision, section, subsection, sentence, phrase or word, of this Act or its application is held unconstitutional, in violation of federal law, [include state law if in a locality] or invalid in any way the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected and shall remain in effect to the maximum extent provided by law.





# NEXT STEPS **READY TO MAKE YOUR NEGOTIATIONS A WIN-WIN-WIN?**

Whether you have an office at city hall or in the state legislature, a seat at the kitchen table as an informed citizen or a desk in a newsroom, BCP can help you understand collective bargaining transparency and other practical policy solutions.

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