

POLICY NOTE

Local governments can improve transparency and accountability by opening secret collective bargaining sessions to the public

By Jason Mercier, Director, Center for Government Reform

August 2017

Key Findings:

1. State and local government employment contracts should not be negotiated in secret.
2. Citizens have a right to know how public spending decisions are made on their behalf.
3. Lincoln County, and Pullman and Tukwila School Districts have recently ended secrecy and embraced government employee contract transparency.
4. Contract transparency is currently the norm in several states across the country.
5. According to a statewide poll, 76% of Washington voters support opening government employee contract negotiations.

Introduction

Washington state has one of the strongest open government laws in the country.

The state's Open Public Meetings Act (OPMA) says:

*"The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."*¹

Despite this strong mandate for government transparency from the people, government employee contracts are usually negotiated in secret, meaning an important and costly taxpayer expense is hidden until the final bill comes due. There have been several efforts in recent years to close this loophole to the people's right to know, but they have not been successful so far at the state level.²

Three local governments in Washington, however, have recently ended secrecy and embraced government employee contract transparency. The first was Lincoln County on September 6, 2016.³ The Pullman School District adopted contract transparency on January 25, 2017.⁴ Then the Tukwila School District adopted a contract transparency resolution on July 11, 2017.⁵

This paper provides a review of these successful Washington state contract transparency efforts. It also includes similar examples of openness from across the country to show that elected officials can provide the public and taxpayers more information on these important spending decisions.

1 "Revised Code of Washington 42.30.010 – Open Public Meetings Act," Washington State Legislature at <http://app.leg.wa.gov/RCW/default.aspx?cite=42.30.010>

2 "SB 5545 and HB 1287: Requiring government employee collective bargaining sessions to be open to the public," by Jason Mercier, Legislative Memo Washington Policy Center, February 8, 2017, at <http://www.washingtonpolicy.org/publications/detail/sb-5545-hb-1287-requiring-government-employee-collective-bargaining-sessions-to-be-open-to-the-public>

3 "Lincoln County embraces collective bargaining transparency," by Jason Mercier, press release, Washington Policy Center, September 8, 2016, at <http://www.washingtonpolicy.org/publications/detail/lincoln-county-embraces-collective-bargaining-transparency>.

4 "Pullman Teacher's Union Becomes First in Washington Required to Negotiate Contracts in Public," by Evan Ellis, Pullman Radio (1150 AM), January 25, 2017, at <http://pullmanradio.com/pullman-teachers-union-becomes-first-in-wa-now-required-to-negotiate-contracts-in-public/>.

5 "Public Welcome to View Tukwila School District Collective Bargaining," by T.C. Wallace, press release, Tukwila School District, July 12, 2017, at <https://tukwilaschools.org/wp-content/uploads/2017/07/Press-Release-Resolution-855.pdf>.

Since government employee contracts account for such a large portion of spending, they should not be negotiated in secret. The public provides the money for these agreements. Taxpayers should be allowed to follow the process and hold government officials accountable for the spending decisions they make on our behalf.

Lincoln County leads the way

On September 6, 2016, Lincoln County Commissioners (in Eastern Washington) unanimously approved a resolution to require transparency for all the county's formerly-secret collective bargaining talks. This was the first contract transparency resolution of its kind in the state. According to the resolution:⁶

“From this day forward, Lincoln County shall conduct all collective bargaining contract negotiations in a manner that is open to the public; AND Lincoln County shall provide public notice of all collective bargaining negotiations in accordance with the Open Public Meetings Act (RCW 42.30.060 - 42.30.080) . . .”

The Lincoln County resolution highlights several reasons for embracing collective bargaining transparency. Among them:

- “A transparent government is the top priority for Lincoln County;
- Collective Bargaining Agreements are among the most expensive contracts negotiated by Lincoln County;
- Both taxpayers and employees deserve to know how they are being represented during collective bargaining negotiations, and;
- The impression of secret deal-making will be eliminated by making collective bargaining negotiations open to the public.”

The resolution also makes clear that having transparent collective bargaining talks does not mean either side will be forced to disclose its strategy or allow the public to interrupt the open talks:

- “Public observance of collective bargaining contract negotiations will not preclude bargaining representatives of both sides from meeting separately and privately to discuss negotiating tactics, goals, and methods, and;
- Opening collective bargaining negotiations to the public does not mean that the public will participate in the negotiations.”

In a statement to the Washington state Senate, Lincoln County Commissioner Rob Coffman described how the contract transparency process was working:⁷

“As some of you may know, Lincoln County became the first public entity in the State of Washington to pass a resolution to open collective bargaining negotiations to the public.

6 “Lincoln County Resolution 16-21,” passed by the Lincoln County Commission, Davenport, Washington, September 6, 2016, at <http://www.washingtonpolicy.org/library/docLib/CB-Transparency-Resolution.pdf>

7 Lincoln County Commissioner Rob Coffman, testimony on SB 5545 (Requiring public employee collective bargaining sessions to be open meetings), Committee on Commerce, Labor and Sports, Washington state Senate, February 6, 2017, copy available on request.

Today I would like to tell you a little about how this came about, how it has worked for us and why it a good thing for all of the taxpayers in the State . . .

It has been extremely well received by the public and our employees. The taxpayers and the employees deserve to know how they are represented during these negotiations. Just to be clear, because these meetings are open to the public, does not mean that the public can participate . . .

Our first round of negotiations was well attended by the public and turned out to be very productive. The last thing any elected official wants to do is harm working people.

Former Washington State Attorney General Rob McKenna stated the union's opposition to open negotiations quite well, 'let's be clear about what they're opposing: They're against the public being able to watch public officials bargain with public employee unions over spending the public's money.' My question remains: What does anyone have to hide from the public who we all serve? The answer should be absolutely nothing."

Pullman and Tukwila School Districts adopt contract transparency

Joining Lincoln County in adopting government employee contract transparency are the Pullman and Tukwila school districts.

Pullman School Board member Susan Weed explained the reason for adopting a policy of openness:

"It's not our money. I just think it's important that everyone knows what's going on."⁸

In a press release the Tukwila School District said:⁹

"By opening the collective bargaining process to public view, the District will provide an incentive for both parties (management and labor) to take timely, reasonable, publicly defensible positions that allow the community to better understand the budget and other implications of collective bargaining contracts.

The District's policy direction is a result of careful discussion of ways to improve the collective bargaining process to ensure accountability to the taxpayers of the Tukwila School District . . .

A more open process will facilitate communication of topics and issues within the District, and with taxpayers to ensure their elected school directors are accountable for how the District spends its budget."

8 "Agencies invite public to watch contract negotiations," by Karen Peterson, *The Tacoma News Tribune*, January 28, 2017, at <http://www.thenewstribune.com/news/local/news-columns-blogs/karen-peterson/article129367829.html>

9 Public Welcome to View Tukwila School District Collective Bargaining," by T.C. Wallace, press release, Tukwila School District, July 12, 2017, at <https://tukwilaschools.org/wp-content/uploads/2017/07/Press-Release-Resolution-855.pdf>.

President Obama's Department of Justice comments on police contract transparency

Collective bargaining transparency has also become an important issue in Seattle. The following is 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):¹⁰

*"We also note that the Accountability Workgroups yielded a number of 'near-consensus' 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."*

Reporting on this Department of Justice recommendation *The Seattle Times* wrote:¹¹

"The Department of Justice and other parties involved in Seattle Police reforms actually favor more disclosure during contract negotiations. During meetings in March and April, there was 'near consensus' that accountability would be increased by bringing more transparency to the collective-bargaining process, according to a DOJ report on the meetings."

City Attorney Pete Holmes favors more transparency, though he said any legislative changes wouldn't apply to the police contract now under negotiation.

"We really should open up the negotiations," he said, referring to future contracts.

Holmes noted that there's no requirement in state law that the city's bargaining process be confidential."

Examples of contract openness from other states

Contract transparency is currently the norm in several states across the country. Some states open the entire negotiation process to the public, while others include an exemption when government officials are strategizing among themselves. Once public officials meet with union negotiators, however, 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."¹²

10 "United States of America v. City of Seattle - United States' Brief Regarding SPD Accountability Systems Review, No. 2:12-cv-01282-JLR, U.S. District Court, Western District of Washington, May 24, 2016, at http://www.seattle.gov/Documents/Departments/CommunityPoliceCommission/052416_Dkt_291_DOJ_Accountability_Filing.pdf

11 "Seattle should make negotiations more visible to the public," editorial, *The Seattle Times*, August 5, 2016, at <http://www.seattletimes.com/opinion/editorials/seattle-should-make-negotiations-more-visible-to-the-public/>

12 "What types of discussions are covered by the Sunshine Law?," Florida Office of the Attorney General, January 4, 2011 at [http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AKBS9L/\\$file/2017+Sunshine+Law+Manual.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AKBS9L/$file/2017+Sunshine+Law+Manual.pdf).

The Governor of Idaho recently signed into law a bipartisan bill passed unanimously by the state House and Senate to bring public employee union negotiations under the open meetings law.¹³ The lack of dissent on this reform in Idaho shows transparency for public union negotiations enjoys the broad support of both parties.

Texas also requires transparency for government collective bargaining as shown by this statute:¹⁴

“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 percent 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.”¹⁵

These are just a few of the examples from across the country of government officials putting the public first by providing transparency for these important decisions.

PERC rejects union complaint against transparency

One of the reasons Washington officials give for why they do not allow contract transparency is fear of being sued by public-sector unions. This idea, however, has already been tested. The experience of Lincoln County shows the law is clearly on the side of openness and transparency.

On October 28, 2016, the state Public Employment Relations Commission (PERC) issued a “deficiency notice” in response to a union complaint against Lincoln County’s contract transparency resolution. The PERC letter said:¹⁶

“It is not apparent that bargaining guidelines and other parameters could arguably constitute a mandatory subject of bargaining. In order to state a cause of action for unilateral change the complainant would need to explain how the employer’s decision to make bargaining open to the public, or other specific actions by the employer, could constitute a change to a mandatory subject of bargaining.

“At this time, the complaints lack necessary elements to qualify for further case processing before the Commission.”

David Dewhirst, Litigation Counsel for the Freedom Foundation, provided pro-bono legal assistance for Lincoln County. Here is his analysis of the PERC letter:

13 “House Bill 167 – Relating to Labor,” Idaho Legislature, April 6, 2015, at <http://www.legislature.idaho.gov/legislation/2015/H0167.htm>.

14 “Texas Local Government Code - Sec. 174.108. OPEN DELIBERATIONS,” Texas Legislature, Accessed on August 7, 2017, at <http://www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.174.htm>

15 “Colorado School Board Open Meetings, Proposition 104 (2014),” Ballotpedia, accessed on August 9, 2017, at [https://ballotpedia.org/Colorado_School_Board_Open_Meetings,_Proposition_104_\(2014\)](https://ballotpedia.org/Colorado_School_Board_Open_Meetings,_Proposition_104_(2014))

16 Letter to Lincoln County Commissioners, Public Employment Relations Commission, October 28, 2016, at <http://www.washingtonpolicy.org/library/docLib/PERC.pdf>

“Openly negotiating public employee contracts has always been legal in Washington. First, under the Open Public Meetings Act, there is a strong default presumption that all public meetings should be conducted with optimal transparency.

“But in 1989, when that law was applied to the act of labor contract negotiations, the Legislature – at the behest of union lobbyists – created an exception to the rule and gave governments the option to conduct union contract negotiations in secret. That exception turned into the rule, and until 2016, every government in Washington negotiated with employee unions behind closed doors.

“But governments are entitled to return that exception to its proper place and choose to negotiate contracts in public. No law mandates closed negotiations. Lincoln County took the first brave step of restoring transparency to their union contract negotiations, and several others are now on the cusp of doing the same.”¹⁷

Civic Openness in Negotiations (COIN)

Ideally, contract negotiations in Washington should be made subject to the state’s Open Public Meetings Act. At a minimum, though, government officials should adopt an openness process like the one used by the City of Costa Mesa in California to keep the public informed. The policy used there is called COIN (Civic Openness in Negotiations).¹⁸

Under the COIN process, all of the contract proposals and documents that are to be discussed in closed-door secret negotiations are made publicly available before and after the meetings, with fiscal analysis provided showing the potential costs.

While not full-fledged open meetings, providing access to all of the documents before the meetings better informs the public about the promises and tradeoffs being proposed with their tax dollars before an agreement is reached. This 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.

This form of openness works well in Costa Mesa and could be adopted by Washington state and local officials if full open meetings are not allowed.

Strong public support for contract transparency

Ending secrecy in government employee contract negotiations is popular. A statewide poll of 500 Washington voters conducted in 2015 found that 76% supported “requiring collective bargaining negotiations for government employers to be open to the public.”¹⁹ Multiple editorials have also been written across the state calling for government officials to open the doors to the public concerning government employment contracts. One such example is this editorial by *The Spokesman Review*:²⁰

17 E-mail to the author from David Dewhirst, Litigation Counsel, Freedom Foundation, April 20, 2017, copy available on request.

18 “City of Costa Mesa: COIN process (labor negotiations),” accessed on August 8, 2017, at <http://www.costamesaca.gov/index.aspx?page=1570>

19 Wickers Group statewide poll of 500 Washington voters, June 2015, copy available on request.

20 “Lincoln County leads way on government transparency,” editorial, *The Spokesman Review*, September 18, 2016, at <http://www.spokesman.com/stories/2016/sep/18/editorial-lincoln-county-leads-on-transparency/>



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“Bargainers say an open process would politicize the process and prevent frank discussions. These arguments are unpersuasive.

It’s already a political process, with the heavy influence of unions on the minds of governors, mayors and commissioners seeking re-election. The people left outside the door are paying for the decisions made by those inside. And we highly doubt honesty would go by the wayside if the public were watching. More likely, it would be cringe-inducing negotiating points that would go unspoken . . .

The key question for government is: Do you trust the public? If the answer is no, don’t expect it in return.”

Conclusion

State and local employment contracts should not be negotiated in secret. The public provides the money for these agreements. Taxpayers should be allowed to follow the process and hold government officials accountable for the spending decisions they make on our behalf.

Government employees should also be able to see firsthand what offers and counteroffers are being made by union executives in their name. A policy of open public meetings would identify whether one side or the other is being unreasonable and would quickly reveal who, if anyone, is acting in bad faith.

As noted by the Lincoln County contract transparency resolution:

“Both taxpayers and employees deserve to know how they are being represented during collective bargaining negotiations; and the impression of secret deal-making will be eliminated by making collective bargaining negotiations open to the public.”²¹

Lincoln County and the Pullman and Tukwila School districts have blazed the trail in fulfilling the strong mandate for transparency provided by the state Open Public Meetings Act. To build trust with taxpayers, government officials at all levels should do the same, by adopting public employee contract transparency requirements.

It is important to remember as declared by the Open Public Meetings Act that the people “do not give their public servants the right to decide what is good” for them to know, and “the people insist on remaining informed so that they may retain control over the instruments they have created.”

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.

APPENDIX

Lincoln County Transparency Resolution

²¹ “Lincoln County embraces collective bargaining transparency,” by Jason Mercier, press release, Washington Policy Center, September 8, 2016, at <http://www.washingtonpolicy.org/publications/detail/lincoln-county-embraces-collective-bargaining-transparency>.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
LINCOLN COUNTY, WASHINGTON**

**IN THE MATTER OF IMPROVING)
TRANSPARENCY BY NEGOTIATING)
COLLECTIVE BARGAINING CONTRACTS)
IN A MANNER OPEN TO THE PUBLIC)**

RESOLUTION 16-21

WHEREAS, A transparent government is the top priority for Lincoln County; AND

WHEREAS, The Open Public Meetings Act was passed by citizen initiative in 1972, AND

WHEREAS, The legislative declaration of the Open Public Meetings Act (RCW 42.30.010) states in part:

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. ;AND

WHEREAS, Collective Bargaining Agreements are among the most expensive contracts negotiated by Lincoln County; AND

WHEREAS, Both taxpayers and employees deserve to know how they are being represented during collective bargaining negotiations; AND

WHEREAS, The impression of secret deal-making will be eliminated by making collective bargaining negotiations open to the public, AND

WHEREAS, Public observance of collective bargaining contract negotiations will not preclude bargaining representatives of both sides from meeting separately and privately to discuss negotiating tactics, goals, and methods, AND

WHEREAS, Opening collective bargaining negotiations to the public does not mean that the public will participate in the negotiations; AND

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
LINCOLN COUNTY, WASHINGTON**

**IN THE MATTER OF IMPROVING)
TRANSPARENCY BY NEGOTIATING)
COLLECTIVE BARGAINING CONTRACTS)
IN A MANNER OPEN TO THE PUBLIC)**

RESOLUTION 16-21

- WHEREAS,** Collective bargaining is defined in statute (RCW 41.56.030) as:
...the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.; AND
- WHEREAS,** Making collective bargaining contract negotiations transparent does not conflict with and is not preempted by state law; AND
- WHEREAS,** The Open Public Meetings Act (RCW 42.30.140) permits collective bargaining contract negotiations to be exempted from the open public meetings *requirements*, but this exemption does not *compel* such negotiations to be secret; AND
- WHEREAS,** The Open Public Meetings Act (RCW 42.30.140) does not prohibit governments from making these negotiations open to the public;

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
LINCOLN COUNTY, WASHINGTON**

**IN THE MATTER OF IMPROVING)
TRANSPARENCY BY NEGOTIATING)
COLLECTIVE BARGAINING CONTRACTS)
IN A MANNER OPEN TO THE PUBLIC)**

RESOLUTION 16-21

THEREFORE, BE IT RESOLVED,

From this day forward, Lincoln County shall conduct all collective bargaining contract negotiations in a manner that is open to the public; AND

Lincoln County shall provide public notice of all collective bargaining negotiations in accordance with the Open Public Meetings Act (RCW 42.30.060 - 42.30.080); AND

This resolution does not include meetings related to any activity conducted pursuant to the enforcement of a collective bargaining agreement (CBA) after the CBA is negotiated and executed, including but not limited to grievance proceedings; AND

That Lincoln County send a copy of this resolution to all Department Heads, to all union representatives, and all others deemed appropriate by the Board of Lincoln County Commissioners.

DATED at Davenport, Lincoln County, Washington, this 6th day of September, 2016.

BOARD OF COUNTY COMMISSIONERS
OF LINCOLN COUNTY, WASHINGTON

ATTEST

Chairman – Rob Coffman

Clerk of the Board – Shelly Johnston

Vice Chairman – Scott M. Hutsell

By _____
Deputy Clerk of the Board
Marci Patterson

Member – Mark R. Stedman