

POLICY NOTE

Government collective bargaining transparency essential for public trust

Both the public and union members benefit from not being kept in the dark

By Jason Mercier, Director, Center for Government Reform

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Key Findings

1. 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.
2. When government employment decisions are made behind closed doors and the contracts subsequently undermine common-sense proposals for accountability, frustration and mistrust in our important institutions grow.
3. Since taxpayers are ultimately responsible for funding these government union contract agreements, they should be allowed to monitor the negotiation process so they may hold the elected officials who represent them accountable for their actions.
4. Contract transparency is the norm in nearly half the states across the country.
5. Several local governments in Washington State have also enacted contract transparency.

Introduction

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

Aside from the need for accountability, one of the largest cost drivers for local governments is collective bargaining agreements. Too often, however,

6. Since government employee contracts account for such a large portion of public spending, they should not be negotiated in secret.

these important talks between government unions and elected officials are made behind closed doors. Since taxpayers are ultimately responsible for funding these government union contract agreements, they should be allowed to monitor the negotiation process so they may hold the elected officials who represent them accountable for their actions.

It is not just taxpayers who are deprived of their right to know how they are being represented. Rank and file government employees on whose behalf their union negotiates are also left in the dark as a result of our state's lack of transparency in the collective bargaining process.

Government employees are taxpayers as well, and they may be concerned about the financial obligations public officials are committing the public to paying, especially when such obligations are agreed to in secret.

Only the government officials and union executives who negotiated the deal have the privilege of knowing the 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.

These stakeholders are left wondering whether, and how well, their interests were represented. Secrecy is not the rule in every state.

Examples of contract transparency across the country

Contract transparency is the norm in nearly half the 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."

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. The lack of dissent to 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:

"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.”

Several local governments in Washington State have also enacted contract transparency. 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 percent of Spokane voters adopted a charter amendment requiring:

“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.”

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.

How government union contract transparency works in practice

One of the states 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, she 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



Jason Mercieris is the Director of the Center for Government Reform at Washington Policy Center and is based in the Tri-Cities. He serves on the boards of the Washington Coalition for Open Government and Verify More, and was an advisor to the 2002 Washington State Tax Structure Committee. Jason is an ex-officio for the Tri-City Regional Chamber of Commerce. In June 2010, former Governor Gregoire appointed Jason as WPC's representative on her Fiscal Responsibility and Reform Panel.

Jason is also a member of the State Tax Advisory Board for the Tax Foundation. He has testified numerous times before legislative committees on government reform issues, and his op-eds regularly appear in newspapers around the state, including *The Seattle Times* and *Tri-City Herald*. Jason also provides a regular TV update for KVEW (ABC Tri-Cities) and can be heard frequently on several radio stations including KOMO, KVI, KONA, KXLY and KIRO.

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found the ability for parents, teachers and the community to hear the discussions for themselves to be beneficial.”

This experience confirms the points made by advocates for transparent contract talks. Both the public and union members benefit from not being kept in the dark.

Alternative to fully open contract talks

Ideally, contract negotiations should be fully open to the public. 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).

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 local officials in our state if full open meetings are not allowed.

Conclusion

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 government union agreements. The public should be allowed to follow the process and hold elected officials accountable for the spending decisions they make on taxpayers' behalf.

Similarly, union members would benefit from knowing exactly what proposals their union representatives are requesting, and what proposals they are rejecting. In addition to providing taxpayers and union members with current information on how they are being represented, open negotiations would instill more accountability into the process by quickly identifying whether one side is being unreasonable in negotiations to help the public determine who is acting in good or bad faith.

Along with the need to provide fiscal transparency, opening contract talks up to the public would also help to ensure important accountability provisions for government employees are also being implemented and not negotiated away by elected officials behind closed doors. The current protests have underscored the need for this type of public accountability in government employment contract decisions.

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