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## Opening the Curtain on Government Unions

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### Introduction

Pennsylvania has improved government transparency in the last 20 years through open meetings, open records, and public databases. However, collective bargaining proceedings remain entirely sealed off.

Collective bargaining is the process by which labor unions negotiate pay, benefits, and working conditions with government agencies. Because such labor contracts involve billions of taxpayer dollars, citizens have a right to know what each side is proposing before being legally obligated to fund them. In addition, Pennsylvania should require state labor unions representing government workers to file annual financial reports demonstrating how union dues are spent.

Together, such transparency reforms would make government more accountable to taxpayers, and unions more accountable to their members, while better controlling government spending.

### Why Transparency in Collective Bargaining Matters

Current open government laws in Pennsylvania specifically exempt certain collective bargaining proceedings from public scrutiny. The 1998 Sunshine Act provides for open meetings, but permits government officials to use executive or secret sessions “to hold information, strategy and negotiation sessions related to the negotiation or arbitration of a collective bargaining agreement or, in the absence of a collective bargaining unit, related to labor relations and arbitration.”<sup>1</sup>

Similarly, Pennsylvania’s 2008 Right to Know law gives citizens wide access to all types of government records, but the law exempts those “pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings.”<sup>2</sup>

State lawmakers have also advanced openness in government through the creation of public databases. One important piece of progress was the passage of 2011 legislation creating PennWATCH, an internet database listing state government agencies’ revenue, spending,

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<sup>1</sup> Pennsylvania Sunshine Act of 1998, 65 Pa. Cons. Stat. Ann. § 708,  
<http://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=65&div=0&chpt=7&sctn=8&subctn=0>

<sup>2</sup> Pennsylvania Right to Know Law of 2008, § 708.

<http://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=2008&sessInd=0&smthLwInd=0&act=3&chpt=7&sctn=8&subctn=0>

employee compensation, performance, and other budgetary details.<sup>3</sup> However, transparency in collective bargaining proceedings remains untouched by open government efforts.

Pennsylvania should not neglect such a critical piece in creating accountable government. In any enterprise, public or private, employee compensation represents a significant portion of spending. In 2012, salaries and wages alone—not counting pensions or other benefits—accounted for 23 percent of Pennsylvania’s state and local government spending.<sup>4</sup>

In the last decade, many government salaries have grown at astonishing rates. The biggest cost driver in government worker compensation, however, is not salaries but benefits such as retirement contributions and health care.

For example, while salaries for commonwealth agency workers (those under the governor’s jurisdiction) has fallen, benefits rose 56 percent between 2009 and 2014. And while employment dropped in Pennsylvania’s 500 school districts between 2004 and 2013, total benefit costs rose 40 percent. Retirement contributions for school districts skyrocketed a mind-boggling 195 percent (since 2008-09), even after adjusting for inflation, partly due to underfunding in previous years.

<b>Commonwealth Agency Employment (Complement), 2014 dollars</b>					
	No. of Employees	Average Pay Per Employee	Average Benefits Per Employee	Total Avg Compensation Per Employee	Benefits as % of Salary
2005	84,038	\$51,522	\$21,503	\$73,025	41.7%
2009	84,775	\$52,769	\$25,001	\$77,771	47.4%
2014	72,650	\$51,432	\$33,590	\$85,022	65.3%
10-Year change	-13.6%	-0.2%	56.2%	16.4%	

Source: Pennsylvania Office of Administration, “2015 State Government Workforce Statistics,” [http://www.oabis.state.pa.us/SGWS/2015/2015\\_SGWS\\_Dashboard\\_Charts.pdf#page=18](http://www.oabis.state.pa.us/SGWS/2015/2015_SGWS_Dashboard_Charts.pdf#page=18). The report details statistics for agencies under the Pennsylvania Governor’s jurisdiction.

<b>School District Employee Compensation, 2014 dollars</b>			
	Salaries	Total Benefits	Retirement Contributions*
2004-05*	\$11,703,481,899	\$3,814,469,292	\$616,628,992
2013-14	\$10,912,776,411	\$5,350,638,885	\$1,819,028,329
10-Year change	-6.8%	40.3%	195 %

Source: Pennsylvania Department of Education, Summaries of Annual Financial Reports, “Object-Level Expenditures 1997-98 to 2013-14,” [http://www.portal.state.pa.us/portal/server.pt/community/summaries\\_of\\_annual\\_financial\\_report\\_data/7673/other\\_financial\\_information/509049](http://www.portal.state.pa.us/portal/server.pt/community/summaries_of_annual_financial_report_data/7673/other_financial_information/509049).  
\*Starting year is 2008-09, the earliest available year that retirement contributions are reported.

Both in Pennsylvania and the United States as a whole, public sector compensation is outstripping that in the private sector. In 2010, the latest year such data are available, statistics from Pennsylvania’s main metropolitan areas showed mean hourly wages for public sector

<sup>3</sup> Pennsylvania Web Accountability and Transparency (PennWatch) Act of 2011, <http://www.legis.state.pa.us/WU01/LI/LI/US/HTM/2011/0/0018..HTM>

<sup>4</sup> U.S. Census Bureau, “State and Local Government Finances by Level and Type of Government and by State: 2012,” [http://thedataweb.rm.census.gov/TheDataWeb\\_HotReport2/stateandlocalfinance/stateandlocalfinance.html?YEAR4=2012&STATE=40](http://thedataweb.rm.census.gov/TheDataWeb_HotReport2/stateandlocalfinance/stateandlocalfinance.html?YEAR4=2012&STATE=40)

workers in management, service, and sales and office occupations exceeded those in the private sector by 10 to 30 percent in many cases, and were even double in others.<sup>5</sup>

National figures demonstrate that Pennsylvania is not alone in inflated public sector compensation. Whereas benefits are usually much less than 50 percent of salary for professional, service and office positions in the private sector, benefits for public sector employees range from 50-70 percent.

## Employer Costs Per Hour by Worker Type

*National, 2014*

Private Sector					
	Management, Professional and Related	Sales and Office	Service	Educational Services	Healthcare and Social Assistance
Wages and Salaries	\$38.14	\$16.81	\$10.93	\$30.36	\$21.97
Total Benefits	\$17.42	\$6.76	\$3.45	\$11.48	\$9.25
Benefits as % of Pay	46%	40%	32%	38%	42%
Total Compensation	\$55.56	\$23.57	\$14.38	\$41.84	\$31.22

State and Local Government					
	Management, Professional and Related	Sales and Office	Service	Educational Services	Healthcare and Social Assistance
Wages and Salaries	\$35.52	\$18.01	\$19.24	\$31.26	\$26.10
Total Benefits	\$17.72	\$12.16	\$13.78	\$15.38	\$14.97
Benefits as % of Pay	50%	68%	72%	49%	57%
Total Compensation	\$53.24	\$30.18	\$33.02	\$46.64	\$41.08

Government Premium					
	Management, Professional and Related	Sales and Office	Service	Educational Services	Healthcare and Social Assistance
Wages and Salaries	-\$2.62	\$1.20	\$8.31	\$0.90	\$4.13
Total Benefits	\$0.30	\$5.40	\$10.33	\$3.90	\$5.72
Total Compensation	-\$2.32	\$6.61	\$18.64	\$4.80	\$9.86

Source: Bureau of Labor Statistics, "Employer Costs for Employee Compensation—December 2014," <http://www.bls.gov/news.release/pdf/ecec.pdf>

<sup>5</sup> Commonwealth Foundation Policy Points, "Public vs. Private Employment & Pay," May 11, 2010, <http://www.commonwealthfoundation.org/issues/detail/public-vs-private-employment-pay>. The metropolitan areas analyzed were Philadelphia, York, Pittsburgh, Reading and Johnstown.

The latest local, state and public school statistics for Pennsylvania reveal the disturbing trend about the outsized growth in employee benefits compared to salaries and wages. For example, a brief look at commonwealth agency workforce numbers shows that only 10 years ago, average benefits constituted 42 percent of a worker's salary. By 2015, the number jumped to 65 percent.

Furthermore, average benefits for state employees by union often exceed even that high threshold. The average salary for a worker in the American Federation of State, County, and Municipal Employees, or AFSCME, is \$41,896 under the blanket contract negotiated between the union and Pennsylvania's governor. Average annual benefits are \$30,347, a whopping 72 percent of pay.

For state police, the ratio is even higher, with the \$65,285 in average annual benefits constituting 76 percent of pay. Liquor store clerks in the United Food and Commercial Workers, or UFCW, see the highest rate of benefits, which at over \$28,000 averages 89 percent of their yearly average salary.<sup>6</sup>

The common denominator in these increasingly costly labor contracts is secretive collective bargaining negotiations between government agencies and labor unions. Behind closed doors, unions can negotiate for compensation unaffordable to taxpayers in the long run. In Pennsylvania, the problem is magnified exponentially because of the sheer number of local government subdivisions—nearly 5,000 municipalities, counties, townships, school districts and other entities—the third-highest in the country.<sup>7</sup>

Already, Pennsylvania is seeing the impact on taxes and state and local budgets as officials scramble to make up for years of pension underfunding. The root problem, however, was that government officials promised too much in the first place. A major solution to the problem of bank-breaking backroom deals is to bring collective bargaining negotiations out to the front, making them public for all workers and taxpayers.

## **Crafting Collective Bargaining Transparency**

Twelve states currently have laws that make collective bargaining proceedings open to the public in some form, whether through open meetings, allowing scrutiny of proposed contracts, or a combination of both. Ideally, total transparency is achieved by laying open the various stages of collective bargaining:

1. **Strategizing.** Before government negotiators and union representatives start contract talks, each side confers with its own team about the best approach and content of negotiation. Such transparency for strategic meetings is not entirely essential; as private entities, unions can always confer in secret with their own side and government officials may benefit from the same privilege. However, Montana's sunshine law covers government agencies' strategy sessions, with exemptions (such as closing a meeting if personal matters are being discussed).
2. **Collective bargaining negotiations.** At this stage, the most important, both government and union sides come to the table to hash out a labor contract. Nearly all states with

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<sup>6</sup> Pennsylvania Office of Administration, "2015 State Government Workforce Statistics," [http://www.oabis.state.pa.us/SGWS/2015/2015\\_SGWS\\_Dashboard\\_Charts.pdf#page=18](http://www.oabis.state.pa.us/SGWS/2015/2015_SGWS_Dashboard_Charts.pdf#page=18). The report details statistics for agencies under the PA governor's jurisdiction.

<sup>7</sup> U.S. Census Bureau, "2012 Census of Governments," <http://www2.census.gov/govs/cog/2012isd.pdf>

collective bargaining transparency have this provision. Pennsylvania should remove the collective bargaining exemption to open meetings laws and allow both press and public to observe labor contract negotiations. The reform would do much to inform taxpayers of each side's priorities and the associated costs. It would also create accountability where there has been none. Both taxpayers and union members alike may be surprised at what their representatives are focusing on and offer alternatives.

- 3. Public scrutiny and comment.** A waiting period while the final proposal is publicized is essential to widely inform taxpayers of the labor contract they will be funding for the next four or five years. This allows cost projections to be publicized, objections to be raised, and important elements re-negotiated, if the contract does not represent the best interest of both taxpayer and worker.
- 4. Posting finalized agreements.** Pennsylvania's open records law already provides public access to records of government business. By official request, members of the public may obtain copies of collective bargaining agreements. However, because of the budgetary impact of union-negotiated labor contracts, access should be simplified.

Ideally, all state and local government agencies should simply post entire contracts on their websites. That way, any Pennsylvanian searching for a collective bargaining agreement could go to the most intuitive location for a school district, county, city, or other entity. Quick and easy access to enacted, current collective bargaining agreements further keeps the public informed of what provisions need to be addressed during the next contract negotiation.

## Collective Bargaining Transparency Laws in Other States

Twelve states currently allow public access to state labor contracts negotiations through open meetings law, open records law, the posting of draft union contracts or a combination of those requirements. Below is a summary of what each of those states do to provide transparency in collective bargaining.

### Alaska

Alaska statute requires a school district to allow for public comment on issues to be discussed during bargaining.<sup>8</sup> In addition, "initial proposals, last-best-offer proposals, tentative agreements before ratification, and final agreements reached by the parties are public documents and are subject to inspection and copying" under public records law.<sup>9</sup>

### Colorado

Recently established state law requires school boards or their representatives to negotiate collective bargaining agreements in meetings that are open to the public.<sup>10</sup> Proposition 104, which passed as a ballot initiative during the November 2014 elections,<sup>11</sup> applies only to school districts.

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<sup>8</sup> Alaska Stat. § 23.40.235, <http://www.legis.state.ak.us/basis/statutes.asp#23.40.235>

<sup>9</sup> Alaska Stat. § 40.25.110 <http://www.legis.state.ak.us/basis/statutes.asp#40.25.110>

<sup>10</sup> Colorado Sunshine Law, Colo. Rev. Stat. § 24.6.402,

<http://www.lexisnexis.com/hottopics/colorado/?source=COLO;CODE&tocpath=1W8KUUS008YBS4JDA,2TSKVHQBIS9AOUSCX,3LSIKKF5U9K86ELHP;1SLFKOROE3F9I8E8E,2US0W00QM8UWN2QSP,3MWHWPWOMETRGSSDDDS;1KJTMFO8UI7CI827M,2IUK3WUASGOFK7MSD,3HWOMOYY8HPGS04JK;10WKPASOKZOEOSTPP,29ISTX7HUWWYHLSOI,3EYQM8MYZIPS9UFLL&shorthead=no>; Colorado School Collective Bargaining Agreement Sunshine Act of 2014, Colo.Rev.Stat. § 22-32-109.4, <http://www.lexisnexis.com/hottopics/colorado/?app=00075&view=full&interface=1&docinfo=off&searchtype=get&search=C.R.S.+22-32-109.4>

<sup>11</sup> 9News, "Prop 104: Colorado School Board Open Meetings Passes," November 4, 2014,

<http://www.9news.com/story/news/politics/2014/11/04/colorado-school-board-open-meetings-results/18442933/>

## Florida

Bargaining sessions between government agencies and employee representatives are open under Florida's open meetings law.<sup>12</sup> The 1987 case *Fort Myers v. News-Press Pub. Co. Inc.* further affirmed all phases of collective bargaining are open, including impasse proceedings.<sup>13</sup> Public employer strategy "discussions" on collective bargaining are closed, as are materials the public employer develops for its own preparation before and during negotiations.<sup>14</sup>

## Idaho

Initially, either public employers or employee representatives could close bargaining sessions. However, Idaho law still required that minutes be taken with enough detail to "identify the purpose and topic of the executive session."<sup>15</sup> In April 2015, Idaho became the latest state to expand access to collective bargaining proceedings. House Bill 167 removes closed sessions and requires open meetings and records in all labor negotiations. Government officials can meet privately to strategize, however, and open sessions can be closed if a specific employee comes up in discussion.<sup>16</sup> The bill passed unanimously in both the state House and Senate and takes effect on July 1, 2015.<sup>17</sup>

## Iowa

Iowa law exempts labor negotiations from its open records law, but the public may attend sessions where both employer and employee sides are required to present their "initial bargaining positions."<sup>18</sup>

## Kansas

Labor negotiations are open meetings,<sup>19</sup> but a government agency may go into executive session unless the employee side is present.<sup>20</sup> School employee contract negotiations are also public with an exemption for meetings dealing with investigating and resolving an impasse during negotiations.<sup>21</sup> Records pertaining to collective bargaining negotiations are also open, unless they would reveal information "discussed in a lawful executive session."<sup>22</sup>

## Minnesota

Negotiations, mediation sessions and hearings with public employees are open to the public.<sup>23</sup> Government officials may close meetings to discuss strategy, but the meetings must still be recorded and those records kept for two years after the contract is signed and made available to the public.<sup>24</sup>

<sup>12</sup> Fla. Stat. § 286.011, <http://www.flsenate.gov/Laws/Statutes/2014/286.011>

<sup>13</sup> *Fort Myers v. News-Press Pub. Co., Inc.*, 514 So.2d 408 (Fla. Dist. Ct. App. 1987), [http://www.legale.com/decision/1987922514So2d408\\_1866.xml/FORT%20MYERS%20v.%20NEWS-PRESS%20PUB.%20CO.,%20INC.](http://www.legale.com/decision/1987922514So2d408_1866.xml/FORT%20MYERS%20v.%20NEWS-PRESS%20PUB.%20CO.,%20INC.)

<sup>14</sup> Fla. Stat. § 447.605, <http://www.flsenate.gov/Laws/Statutes/2014/447.605>

<sup>15</sup> Idaho Code Ann. § 67-2344, <http://legislature.idaho.gov/idstat/Title67/T67CH23SECT67-2344.htm>

<sup>16</sup> Idaho State Legislature, House, House Bill No. 167 of 2015, 63<sup>rd</sup> Legislature, 1st Session,

<http://www.legislature.idaho.gov/legislation/2015/H0167E1.pdf>

<sup>17</sup> State of Idaho Legislature, House Bill 167, <http://www.legislature.idaho.gov/legislation/2015/H0167.htm>

<sup>18</sup> Iowa Code § 20.17.3, <https://www.legis.iowa.gov/docs/code/2015/20.17.pdf>

<sup>19</sup> Kans. Stat. Ann. § 75-4319,

[http://www.kslegislature.org/li/b2015\\_16/statute/075\\_000\\_0000\\_chapter/075\\_043\\_0000\\_article/075\\_043\\_0019\\_section/075\\_043\\_0019\\_k/](http://www.kslegislature.org/li/b2015_16/statute/075_000_0000_chapter/075_043_0000_article/075_043_0019_section/075_043_0019_k/).

<sup>20</sup> Kansas Office of the Attorney General, "Kansas Open Meetings Act," updated May 23, 2012,

<https://ag.ks.gov/docs/publications/kansas-open-meetings-act-%28koma%29-guidelines.PDF?sfvrsn=4>

<sup>21</sup> Kans. Stat. Ann. § 72-5423,

[http://www.kslegislature.org/li/b2015\\_16/statute/072\\_000\\_0000\\_chapter/072\\_054\\_0000\\_article/072\\_054\\_0023\\_section/072\\_054\\_0023\\_k/](http://www.kslegislature.org/li/b2015_16/statute/072_000_0000_chapter/072_054_0000_article/072_054_0023_section/072_054_0023_k/)

<sup>22</sup> Kans. Stat. Ann. § 45-221,

[http://www.kslegislature.org/li/b2015\\_16/statute/045\\_000\\_0000\\_chapter/045\\_002\\_0000\\_article/045\\_002\\_0021\\_section/045\\_002\\_0021\\_k/](http://www.kslegislature.org/li/b2015_16/statute/045_000_0000_chapter/045_002_0000_article/045_002_0021_section/045_002_0021_k/)

<sup>23</sup> Minn. Stat. § 179A.135, <https://www.revisor.mn.gov/statutes/?id=179A.14>

<sup>24</sup> Minn. Stat. § 13D.03, <https://www.revisor.mn.gov/statutes/?id=13D.03>

## Montana

All meetings of governmental bodies are open to the public in Montana.<sup>25</sup> Montana enshrines the public's open access to government business, or "right to know," in Article II, Section 9 of its constitution. Records of government business, meetings and transactions are also open.<sup>26</sup>

In 1977, the state legislature amended the open meeting law to allow closed meetings when government officials wanted to discuss strategy related to collective bargaining or litigation. However, in 1992, the Montana Supreme Court declared the collective bargaining exception unconstitutional in *Great Falls Tribune Co. v. Great Falls Public Schools*, and it was removed from statute. (In a separate case, the court also struck down the litigation strategy exception). In short, the court strongly reinforced the principle that only protecting an individual's privacy overrides the public's constitutional right to attend even the collective bargaining strategy sessions held by government officials.<sup>27</sup>

## Ohio

Ohio collective bargaining sessions are private and not subject to the state's open meetings law and neither are meeting minutes.<sup>28</sup> However, the state supreme court in *Calvary v. Upper Arlington* in 2000 ruled that draft and final collective bargaining agreements are public record because they document government officials' activities—in this case, Upper Arlington's "version of what it and the union agreed on during collective bargaining, and the city relied on that version in submitting the draft to the city council for approval."<sup>29</sup>

## Oregon

State law requires open labor negotiations unless both sides request negotiations shift to executive session.<sup>30</sup> In the 1977 case *Southwestern Oregon Publishing Company v. Southwestern Oregon Community College*, the Oregon Court of Appeals created a further exception to open collective bargaining sessions if a government agency hires a labor negotiator to bargain with employees on its behalf.<sup>31</sup>

## Tennessee

Labor negotiations between public employee unions or associations and representatives of a state or local government entity are open to the public. Both sides must give advance notice of when and where negotiations will be held. However, both government and union sides may meet privately with their own side to strategize.<sup>32</sup>

## Texas

Labor negotiations with local governments are open to the public, though each side may meet privately to discuss strategy. Meet and confer proposals are publicly available only after the governmental entity is ready to ratify the draft agreement.<sup>33</sup> The same requirements apply to

<sup>25</sup> Mont. Code Ann. § 2-3-203, <http://leg.mt.gov/bills/mca/2/3/2-3-203.htm>

<sup>26</sup> Mont. Code Ann. § 2-6-102, <http://leg.mt.gov/bills/mca/2/6/2-6-102.htm>

<sup>27</sup> Timothy S. Hamill and Cynthia K. Staley, "Recent Developments in Montana Law," *Montana Law Review*, 54, no. 2 (Summer 1993), <http://scholarship.law.umt.edu/cgi/viewcontent.cgi?article=1618&context=mlr>

<sup>28</sup> Ohio Rev. Code § 4117.21, <http://codes.ohio.gov/orc/4117.21>

<sup>29</sup> State *ex rel.* Calvary v. City of Upper Arlington, 89 Ohio St. 3d 229 (Ohio 2000), <http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2000/2000-Ohio-142.pdf>

<sup>30</sup> Or. Rev. Stat. § 192.660, [https://www.oregonlegislature.gov/bills\\_laws/ors/ors192.html](https://www.oregonlegislature.gov/bills_laws/ors/ors192.html)

<sup>31</sup> *Southwestern Or. Pub. v. Southwestern Occd.*, 559 P.2d 1289 (Or. Ct. App. 1977), <http://law.justia.com/cases/oregon/court-of-appeals/1977/559-p-2d-1289-3.html>

<sup>32</sup> Tenn. Code Ann. § 8-44-201, <http://www.tnpress.com/sunshinelaw/openmeetingslaw.pdf>

<sup>33</sup> Tex. Bus. & Com. Code § 146.012 and § 146.013, <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.146.htm>

negotiations with police and firefighters, who are covered under a different section of local government code.<sup>34</sup>

States with Collective Bargaining Transparency Laws					
		Open Contract Negotiations	Open Government Strategy Sessions	Public May View Draft Contracts / Proposals	Public May View Records or Minutes of Closed Meetings
Minimal	Iowa	X			
	Ohio			X	
	Oregon	X			
Moderate or Mostly Transparent	Alaska*	X		X	
	Colorado*	X	X		
	Florida	X		X	
	Idaho	X			N/A
	Kansas	X			X
	Minnesota	X			X
	Tennessee	X			
	Texas	X		X	
Completely Transparent	Montana	X	X	X	N/A

Sources: Individual state statutes on open meetings and open records. \*School districts only.

## Mandatory Financial Reporting by Government Unions

In the 1950s, the U.S. Senate investigated the Teamsters for racketeering, enrichment of union leaders using union funds, and other malfeasance. As a result, Congress passed the Landrum-Griffin Act of 1959, also known as the Labor-Management Reporting and Disclosure (LMRDA) Act. It was the first federal law to seek accountability from labor unions and enact financial reporting and trusteeship standards for them.<sup>35</sup>

The financial disclosure reports filed, however, were often basic, sometimes showing millions of dollars in vague categories such as “grants.” Not until the George W. Bush administration did that change, when then-Secretary of Labor Elaine Chao required unions with annual receipts of \$250,000 or more to itemize expenditures over \$5,000.<sup>36</sup> For 10 years now, these detailed financial reports show large unions’ income and assets; salaries and compensation of employees and officers; administrative and overhead expenses; spending on political activities and lobbying; and spending on representational activities on behalf of union members. Such disclosure has given union members a clearer idea of how their union dues are

<sup>34</sup> Tex. Bus. & Com. Code § 142, <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.142.htm>

<sup>35</sup> Jack Barbash, “Unions and Rights in the Space Age,” in *The American Worker*, ed. Robert B Morris, <http://www.dol.gov/dol/aboutdol/history/chapter6.htm>.

<sup>36</sup> W. James Antle III, “Hard Labor: Elaine Chao, Reformer,” *Labor Watch*, March 3, 2009, <http://capitalresearch.org/2009/03/hard-labor-elaine-chao-reformer/>

spent. Reports for every year are posted immediately and publicly available on the U.S. Department of Labor’s website.

However, only unions that have private sector members are required to file annual financial disclosure reports—unions with only public sector employees are exempt. In Pennsylvania, that leads to gaps in information on large, fiscally influential unions. For example, the Pennsylvania State Education Association—the largest in the state—must file an annual “LM-2” report with the federal government. However, the Philadelphia Federation of Teachers, which represents employees in the state’s largest school district, is not required to file the same report.

Pennsylvania should rectify the difference by passing its own state-level financial reporting law for public sector unions. Indeed, the rationale for exempting public sector unions from such reporting is becoming thinner. In the mid-20<sup>th</sup> century, most union members worked in the private sector. Today, the ratio has flipped: In 2014, only 7.7 percent of Pennsylvania’s private sector workers were union members, compared to 52.7 percent of government workers.<sup>37</sup>

A concern for both the public and union members emerged after the 2010 U.S. Supreme Court handed down its decision in *Citizens United v. Federal Election Commission*. Effectively, the court negated any restriction on the use of union dues (or corporate funds) to support candidates for office, except direct contributions or coordinated efforts. Another U.S. District Court ruling, *SpeechNow.org v FEC*, facilitated the creation of independent expenditure-only committees, or Super PACs.

While Super PACs cannot directly finance political parties or candidates or collaborate with them, they can still advocate for the election or defeat of a particular candidate or cause. In combination, the court rulings have meant labor unions can now donate an unlimited amount of the union dues they receive to Super PACs. As the Commonwealth Foundation previously reported, three major national government unions contributed \$1.6 million in 2014 to the Super PAC PA Families First, which ran ads against then-Gov. Tom Corbett.<sup>38</sup>

The latest federal rulings are in opposition to Pennsylvania state law from 1970. Section 1701 of the Public Employee Relations Act states that “No employe organization shall make any contribution out of the funds of the employe organization either directly or indirectly to any political party or organization or in support of any political candidate for public office.”<sup>39</sup>

In 2014, college professor Mary Trometter sued the Pennsylvania State Education Association for violating state law and using union dues to send a letter to her husband, urging him to vote for Gov. Tom Wolf.<sup>40</sup> Such cases demonstrate that even when workers support the mission of their labor unions, they may not agree with the political spending decisions their union leaders make. The disconnect between federal and state law on union spending for political candidates must still be resolved, but Pennsylvania’s legislature can still ensure maximum transparency for both union members and the public by requiring state government unions to file LM-2-style annual financial reports if they represent any public sector employees.

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<sup>37</sup> Barry T. Hirsch and David A. Macpherson, “Union Membership, Coverage, Density and Employment by State, 2014,” [unionstats.com](http://unionstats.com)

<sup>38</sup> Bob Dick, “Political Spending by Government Unions During the 2014 Election,” February 11, 2015, <http://www.commonwealthfoundation.org/issues/detail/political-spending-by-government-unions-during-the-2014-election>

<sup>39</sup> Pennsylvania Department of Labor and Industry, “Public Employee Relations Act,” <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=552991&mode=2>.

<sup>40</sup> Thomas Fitzgerald, “Teacher Files Against Union for Backing Wolf,” *Philadelphia Inquirer*, November 18, 2014, [http://www.philly.com/philly/blogs/big\\_tent/Teacher-files-against-union-literature-backing-Wolf.html](http://www.philly.com/philly/blogs/big_tent/Teacher-files-against-union-literature-backing-Wolf.html)

In fact, some improvements can be made on the federal report while largely keeping the same LM-2 reporting categories. For example:

- The threshold for itemizing transactions should be lowered from \$5,000 to \$1,000 to capture more financial activity.
- The state report should also detail total officer and employee benefits, including health care, and not just the current limited federal requirements that include items such as reimbursement for travel. The change would give a more accurate picture of the total compensation union officials receive.
- Split the category “Political Activities and Lobbying” into two, so it is clear how much a union is spending on each activity.
- The state should require unions to report political activity items completely. For example, instead of merely reporting “\$10,000 for phone banks,” the line item should also include what candidate or cause the phone banks were supporting.<sup>41</sup>

Between collective bargaining transparency and union financial disclosure reports, Pennsylvanians will gain a much clearer picture of how taxpayer dollars are spent, and how labor unions are influencing state politics.

## **Answers to Major Objections on Collective Bargaining Transparency**

In other states and in Pennsylvania, opponents of transparency in collective bargaining have raised common objections to the open government reform as such measures advanced in state legislatures. Below are some of the main objections and reasons they do not stand.

### **1. Collective bargaining transparency measures are “an attack on unions.”**

In April 2015, the Pennsylvania Senate considered bills requiring a cost analysis of proposed labor contracts, posting of draft agreements before they are signed, and open collective bargaining sessions. UFCW Local 1776 called the bills “blatant attempts to hurt public sector workers.”<sup>42</sup> The state affiliate of the Service Employees International Union called the bills an “unprecedented intrusion” into labor negotiations,<sup>43</sup> while several other unions chimed in.

This objection misses the point on why collective bargaining transparency is even necessary for government unions. In the private sector, there are only two parties at a collective bargaining session—company officials and labor union officials. They negotiate over the distribution of the business’ income. But a government agency negotiates with a union using a third party’s money—that coming from taxpayers. Where public money is concerned, meetings and budget proposals have always been open to public scrutiny during debate, not just after. Creating transparency in collective bargaining proceedings is about making all government operations open, not targeting any one group.

### **2. Open collective bargaining sessions will foster meaningless grandstanding and delay the signing of labor contracts.**

The same point about grandstanding could be made about state and national legislators when cameras, press, or public pack a committee hearing room. And yet nobody would argue

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<sup>41</sup> Mehrens, Nathan, interview by Priya Abraham. Phone interview, April 30, 2015. Mehrens was former special assistant to the U.S. Department of Labor Deputy Assistant Secretary. He worked extensively with the Labor-Management Reporting and Disclosure Act.

<sup>42</sup> UFCW 1776 e-mail to legislators, May 6, 2015

<sup>43</sup> SEIU letter to state senators, May 5, 2015

that such proceedings, especially as they affect public spending or policy, should therefore be closed off. Any deliberations over spending public money should be open. Furthermore, delays in securing labor contracts so taxpayers and workers can attend negotiations or assess draft agreements is actually desirable when millions, and sometimes billions, of dollars are in play. Due process means there is a better chance public money is allocated where it's most needed.

**3. If collective bargaining meetings are open, internal party caucus meetings of the state legislature should be open too.**

This objection compares apples to oranges. Caucus meetings correlate more closely with the private strategy meetings government officials and union negotiators have *with their own side*. Furthermore, caucus meetings do not involve making decisions over public money, whereas collective bargaining does.

Legislative debate, where the opposing political parties must face off, are more like actual collective bargaining negotiations with both sides present. Even so, some states such as Montana and Colorado have established that even government strategy sessions on collective bargaining should not remain secret. Legislative debate is of course open to the public, as collective bargaining should be.

**4. Taxpayers already get enough information when finalized contracts are made public. If they're unhappy, they can simply vote their elected representatives out of office.**

Once a collective bargaining agreement is signed, a government agency and its supporting taxpayers are contractually obligated to follow through on the compensation terms it contains. There is no turning back. By the time a contract becomes public, or the next election rolls around, it is often too late to fix the problem of over-committed funds. That's not fair either to taxpayers, who have to shoulder growing taxes, or union members, who may have preferred that their leadership focus on different issues.

## **Conclusion**

Wherever major public policy or public money decisions are concerned, allowing public and press access to proceedings is crucial to transparent government. Moreover, transparency in government union collective bargaining is becoming increasingly necessary as public sector compensation outstrips that in the private sector, with the result being heavier tax burdens for working people.

In addition, government union members should have a clear idea of how their unions spend money, and voters should be aware of how union political spending is shaping elections. As such, public annual financial reports from unions should be required at the state level. With both reforms, Pennsylvania will continue its encouraging progress towards open, truly representative government.

## **About the Author and the Commonwealth Foundation**

Priya Abraham is a Senior Fellow with the Commonwealth Foundation.

The Commonwealth Foundation is Pennsylvania's free market think tank. The Commonwealth Foundation transforms free-market ideas into public policies so *all* Pennsylvanians can flourish.



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