



Colorado Education and Open Negotiations: Increasing Public Access to School District Bargaining

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Summary

Forty-two of Colorado's 178 school districts bargain exclusively with a local teachers union. Often conducted by tax-funded district employees on both sides, negotiations forge policies that determine the use of taxpayer dollars. Yet only one of the 42 districts (Poudre R-1) has an established policy that thoroughly ensures the public's right to observe bargaining negotiations.

A 2001 state sunshine law requires Colorado school districts to post completed bargaining agreements online, but the process to create the agreements remains almost completely unseen. In 2004 and 2005, two separate legislative bills to expand public access to negotiations were defeated. Eleven other states have laws providing at least some public access to collective bargaining sessions or records, including six states that guarantee open negotiations.

No negotiations between government agencies and private organizations over public policies and public dollars should be held in secret. As unions tend to exert extraordinary influence over the election of the board members with whom they negotiate, it is even more crucial to make bargaining sessions accessible to the press, parents and other concerned citizens.

District officials who negotiate on behalf of the local school board tend to prefer closed sessions to maintain productive relationships with employee associations and to prevent inflamed passions from distorting the process. While their concerns may make the case to preclude public participation in most bargaining sessions, it should not require prohibiting all citizen input nor limiting public observation of the process.

Local policies to enhance bargaining transparency would be hard to achieve as they would be subject to the same dynamics that create closed negotiations. A statewide open negotiations law not only would honor the taxpaying public's right to know, but also would offer the potential to make negotiated outcomes more responsible and fairer to all involved.

Colorado School Districts and Open Negotiations

Colorado's minimal public sector labor law offers local school boards very little guidance concerning how to bargain with employees, if a board chooses to bargain at all. Exclusive bargaining relationships recognize a private association's privileged status to negotiate on behalf of all members of a particular employee class.

Of the state's 178 school districts, 42 districts – covering nearly 90 percent of public school students – have an exclusive bargaining relationship with an association representing teachers and other licensed professional employees. Eighteen of the 42 districts also have an exclusive bargaining relationship with one or more associations representing various support staff and other classified employees.¹

The timing and procedures for negotiations are not governed by a statewide standard. Even so, Colorado school districts in exclusive bargaining relationships typically hold sessions over one or more weeks during the spring. Some districts re-open the entire agreement for discussion every third or fourth year, but focus on renewing the salary schedule and a very small set of issues in the intervening years. Other districts modify the agreement annually as needed.²

Tax dollars pay district employees on both sides of the negotiating table. Administrators typically represent the board of education in bargaining sessions, though more often in smaller districts a board member also may participate. In many districts, union representatives are granted special paid release time from professional duties to negotiate. Negotiated items often determine how scarce, tax-funded resources are allotted and how teachers and other employees use their time. Besides salary schedules and benefits packages, examples of negotiated policies of concern to parents or other citizens may include the following:

- Teacher seniority and transfer rights
- Limitations on teacher hours spent in the classroom
- Uses of short-term or extended classroom leave, including for association business

Federal and state legislative decisions affecting public education are rightly subject to a deliberative process that invites public scrutiny and ultimately holds lawmakers accountable for their decisions. Yet in most school districts, Colorado citizens have no access to the proceedings that forge collective bargaining agreements. Of the state's 42 teacher association master agreements, 18 explicitly state that negotiation sessions are "closed." Sixteen district agreements are silent on the issue.³ Only eight agreements stipulate that negotiations between district officials and association representatives are to be conducted in "open sessions" (see table 1 below).

Seven of the eight "open session" districts have clauses allowing the school board and union officials to mutually agree to close negotiations.⁴ Only Poudre School District in Fort Collins acknowledges practicing open negotiations.⁵ For more than a decade, Poudre also has had extensive agreement language on the procedures of "public observation" of negotiations. Officials say that citizen participation has been "limited."⁶

While nearly all negotiation sessions between Colorado Springs School District 11 and the Colorado Springs Education Association are closed from public observation, the agreement stipulates that "the session at which the parties exchange initial proposals" is open.⁷ The initial session includes presentations from district and union officials, primarily to lay out basic financial conditions to provide a common base of understanding for both sides. In some cases, a time for public comment or questions has been allowed. The meetings have been standard practice in District 11 for more than a decade, but attendance in recent years has been small.⁸

Table 1. Colorado School Districts: Public Access to Licensed Employee Collective Bargaining Negotiations, as Provided in Master Agreements

Open Negotiations	Closed Negotiations		Silent on Open vs. Closed	
Adams 50 (Westminster)	Adams 12	Huerfano Re-1	Adams 14 (Commerce City)	Littleton Public Schools
Canon City Re-1	Alamosa Re-11J	Las Animas Re-1	Aurora Public Schools	Park County Re-2
Durango 9-R	Boulder Valley Re-2	Mapleton Public Schools	Brighton 27J	St. Vrain Valley Re-1
Englewood 1	Centennial R-1	Mesa Valley 51	Denver Public Schools	Summit Re-1
Jefferson County R-1	Center 26 Jt	Montrose County Re-1J	Douglas County Schools	Telluride R-1
Poudre R-1 (Fort Collins)	Cherry Creek Schools	Pueblo City Schools	East Otero R-1	Thompson R-2J (Loveland)
Salida R-32 J	Colorado Springs 11	Pueblo County 70	Gunnison Watershed Re 1J	Trinidad 1
Weld 6 (Greeley-Evans)	Florence Re-2	Sheridan 2	Lake County R-1	Weld County Re-5J
	Fort Morgan Re-3	South Conejos Re-10		

Note: School districts that acknowledge practicing open negotiations marked in bold.

Low levels of public interest in negotiation activities may be explained in part by school districts' consistent failure to advertise times and locations of sessions. Some degree of apathy among citizens, and more specifically among the press, undoubtedly plays a role. Better advertising and a stronger guarantee of public access to negotiations could empower citizens to watch the bargaining process, a matter of greater public concern during public debates over budget and policy issues.

Bargaining Transparency in State Legislation

In 2001 the Colorado General Assembly approved the "Collective Bargaining Sunshine Act,"⁹ requiring districts that participate in bargaining to make final approved agreements available to the public as follows:

- Posted on the district's website
- Filed with the State Board of Education
- Kept in the district office for personal public inspection
- Filed with the largest local public library for personal public inspection

While the final negotiated products of school district bargaining sessions have gained greater visibility, the process to forge the agreements remains almost completely unseen to the general public. Since 2001 two separate attempts have been made to mandate greater public access to school district-union negotiations. In 2004, House Bill 1242 sought to add local government collective bargaining negotiations to the public protections of the Open Meetings Act. The Colorado Association of School Boards, Colorado Association of School Executives and Colorado Press Association all testified in support of HB 1242. The legislation narrowly passed the lower chamber before succumbing to defeat on the senate floor.¹⁰

The following year Senate Bill 175, introduced as a “teachers’ bill of rights,” included a provision to open school district collective bargaining negotiations to concerned citizens and teachers.¹¹ The Democratic majority on the Senate Education Committee killed the bill on a 4-3 party-line vote.

Surveying Other States

A 2007 analysis by the Washington state-based Evergreen Freedom Foundation found that 11 states “allow the public some form of access to public sector collective bargaining sessions.”¹² Six of the 11 states guarantee public access to all negotiation meetings between government agencies and public employee union representatives:

- Florida
- Kansas
- Minnesota
- Montana
- Tennessee
- Texas

In Alaska, Idaho and Ohio, some or all minutes and recorded documents from negotiation sessions are explicitly available to public request. In Iowa (as in Colorado Springs 11), only the meeting at which “initial bargaining sessions” are presented is held before the public.¹³ Oregon requires public sector labor negotiations to be open “unless negotiators for both sides request that negotiations be conducted in executive session.”¹⁴

The Oregon exception gives too much latitude to inside interests to close the bargaining door. Seven of the eight Colorado school district bargaining agreements that declare open negotiations to be the default setting have similar clauses allowing the two parties to keep the public out. By all appearances, they do just that.

A Third Party at the Bargaining Table?

Collective bargaining in the public sector is significantly different from private sector bargaining. Public employee unions do not negotiate with owners who have a financial stake in operations and who have to compete in the marketplace, but with representatives of duly elected officials who oversee publicly collected tax funds. Furthermore, studies have documented the effective influence of union support to elect more candidates sympathetic to their views in low-turnout local school board elections.¹⁵

Since school district labor helps elect the board of directors with whom they negotiate, taxpaying citizens deserve greater representation at the bargaining table. Regardless of union influence in local elections, a local government agency should not make a general practice of meeting with any private group behind closed doors. Citizens need to know the bargaining room – as with any room where tax-funded contracts are negotiated – is kept open on their behalf. Education investigator Mike Antonucci captured the double-edged importance of opening school district-union negotiations:

If you open up negotiations, you change the dynamic entirely. The public becomes party to the bargaining. District negotiators are reminded they ostensibly represent the public, not just the administration. Unions are faced

with a question they would rather not contemplate: If we are bargaining *for* the teachers, who are we bargaining *against*?¹⁶

Support for bargaining transparency crosses traditional partisan and philosophical lines. Jane Hannaway and Andrew Rotherham, mainstream liberal education policy experts, urge local communities “to expand the stakeholders represented” by ensuring they “are able to observe and participate in the bargaining process.”¹⁷ Private school choice advocates Howard Fuller and George Mitchell likewise have called for legislative changes to ensure greater public access to school district collective bargaining negotiations. They see it as a way to empower parents and taxpayers and to level the playing field from being tilted toward insider interests.¹⁸

School District Officials’ Concerns

However, some school district officials with bargaining table experience are very hesitant about opening access to negotiation sessions. “Negotiations can be heated at times,” said Pueblo 60 human resources supervisor Carol Albo. “I feel that they need to remain closed.”¹⁹ From district officials’ standpoint, maintaining a productive, positive relationship with employee association leaders is a high priority.²⁰ Yet parents and other taxpaying citizens may have other, higher priorities. Without the potential to keep an eye on their elected officials and employee representatives as they bargain, citizens have every reason to believe their interests can and will be ignored.

Some district officials do have legitimate concerns about disruptions that might occur as a result of broader access to the negotiation process. Adams 12 human resources director and negotiator Mark Hinson fears that the public has limited understanding of the difference between initial proposals and final bargaining outcomes, and of the intricacies of the education system. He believes greater public involvement might inflame passions and lead to political grandstanding by the negotiating parties.²¹ But his counterpart in Poudre, Tom Garcia, notes that public observation has had “no negative effects” on his district’s employee negotiation process.²²

During recent instances in Rhode Island and Michigan, union leaders refused district calls for open negotiations by claiming it would lead to “public grandstanding” and would undermine “creative problem solving.”²³ At other times, resistance can come from both sides. In 2009, the Seattle group Community and Parents for Public Schools “demanded a seat at the collective bargaining table” to help foster a change in the district’s seniority-based teacher layoff process but was ultimately denied.²⁴ Such recorded instances of public demands to observe school collective bargaining negotiations nonetheless are rare.

Conclusion: Crafting an Open Negotiations Policy

Citizens cannot and should not be compelled to attend government bargaining negotiations, any more than citizens should be forced to vote in elections. Yet failure to participate does not negate the importance of the fundamental right. A transparent bargaining process helps to strengthen democratic consent in school district governance. More fundamentally, it is essential to the public’s right to know.

The decision of whether to impose a statewide standard of open school district negotiations should not be predicated on the level of expressed interest in attending meetings or accessing documents. Other Colorado school boards could follow Poudre’s lead and open negotiations on

their own. But the approach is less promising. Such decisions would be subject to existing bargaining dynamics that tend to favor internal interests and established points of view.

Colorado lawmakers should consider re-examining proposals to incorporate public sector bargaining sessions under the terms of open meetings law. Ideally, such an effort would include enhanced requirements to disclose the time and location of bargaining sessions – including on the school district website.

Opening up negotiation sessions to public *observation* does not have to entail opening them up to public *participation*. Policy makers ought to give individuals the opportunity to speak out about initial proposals, as well as at the board meeting before the final contract is adopted. But in all sessions, the doors should be left open for journalists and other citizens to observe silently and keep tabs on developments.

As a half-measure, policy makers could specify that bargaining records – including official proposals, meeting minutes and notes – be subject to the open records act for public inspection. This approach would further limit the potential for disruptive interference, while preserving the public’s basic right to be informed about the tax-funded negotiation process.

Collective bargaining sets only one layer of binding policies that affect many of Colorado’s public schools, but it does not merit a special level of secrecy. In addition to helping fulfill a more democratic process in local school governance, greater bargaining transparency holds the potential to improve negotiated policies. Ultimately, open bargaining could help achieve fairer and more responsible outcomes that align with the broader mission of public education.

Notes

¹ For a complete listing, see Colorado Department of Education, Colorado School District Collective Bargaining Agreements, <http://www.cde.state.co.us/cdefinance/sfCBA.htm>. Many other school districts have less formal “meet and confer” or memoranda agreements with employee groups.

² Findings are based on 12 (out of 42) responses to a survey of Colorado school districts’ collective bargaining practices conducted by the author between May and September 2009.

³ Education scholar and former teachers union negotiator Dr. Myron Lieberman argues that the best interest of school board negotiators is “to remove all provisions involving negotiating procedures from the contract.” See *Understanding the Teacher Union Contract: A Citizen’s Handbook* (New Brunswick, NJ: Transaction Publishers, 2000), pg. 125.

⁴ These clauses are significant. For example, in recent years the Greeley-Evans School District and Greeley Education Association routinely have “agreed on protocols to close negotiations sessions to the public.” During the last two years closed negotiations were a prerequisite for intervention by federal mediators. See Roger Fiedler, Weld County 6 Director of School/Community Relations, electronic mail to the author, March 16, 2010.

⁵ All eight districts were contacted multiple times. Englewood 1 and Salida R-32 J did not respond.

⁶ *Employee Agreement Between the Association of Classified Employees, The Poudre Association of School Executives, The Poudre Education Association and The Board of Education Poudre School District, 2009-2010*, Article 4.12 “Public Observation,” pg. 15,

http://www.psdschools.org/documentlibrary/downloads/Human_Resources/Documents/Employee_Agreement.pdf; Tom Garcia, executive director of human resources, Poudre School District R-1, electronic mail to the author, March 17, 2010, and April 6, 2010. Negotiations observers have included parents, community members, journalists and university students.

⁷ *Master Agreement between The Colorado Springs Education Association and The Board of Education School District No. 11, Colorado Springs, Colorado, July 1, 2009-June 30, 2011*, Article VI-A-7, pg. 15,

http://www.d11.org/HR/CSEA/Master_Agreement.pdf.

⁸ Richard Nagl, Colorado Springs District 11 legal counsel, telephone conversation with the author, March 31, 2010.

⁹ Colo. Rev. Statutes § 22-32-109.4.

¹⁰ The vote on 3rd reading in the Colorado House was 33-32. House Journal, 48th Day, February 23, 2004.

¹¹ SB 175 also would have required teacher associations to get individual permission before collecting a teacher's money to be used for political purposes.

¹² Michael Reitz, Evergreen Freedom Foundation, "Public Access to Public Sector Collective Bargaining," July 16, 2007, http://www.ewfa.org/main/article.php?article_id=2107.

¹³ Iowa Code Ann. § 20.17(3).

¹⁴ Or. Rev. Stat. § 192.660(3).

¹⁵ Terry M. Moe, "Union Power and the Education of Children," in *Collective Bargaining in Education*, ed. Jane Hannaway and Andrew J. Rotherham (Cambridge, MA: Harvard Education Press, 2006), pgs. 232-236.

¹⁶ Education Intelligence Agency Intercepts Web log, June 15, 2009, <http://www.eiaonline.com/intercepts/2009/06/15/closed-door-bargaining-and-the-union-padlock/>.

¹⁷ Hannaway and Rotherham, *Collective Bargaining in Education*, pg. 265.

¹⁸ Fuller and Mitchell, "A Culture of Complaint," *Education Next*, Summer 2006, pg. 22, http://educationnext.org/files/ednext20063_18.pdf.

¹⁹ Electronic mail to the author, March 9, 2010.

²⁰ Mark Hinson, executive director of human resources, Adams 12 Five Star Schools, telephone conversation with the author, March 17, 2010.

²¹ Telephone conversation with the author, March 17, 2010. Even some education reformers who advocate for greater public transparency and school board flexibility in collective bargaining negotiations concede that "productive negotiations require the confidence to float ideas without fear that they will appear in tomorrow's headlines." See Frederick M. Hess and Martin R. West, "Strike Phobia: School boards need to drive a harder bargain," *Education Next*, Summer 2006, pg. 46, http://educationnext.org/files/ednext20063_38.pdf.

²² Garcia, electronic mail to the author, April 8, 2010.

²³ Alisha Pina, "East Providence talks stall over open sessions," *Providence Journal*, October 27, 2008, http://www.projo.com/ri/eastprovidence/content/EPROV_CONTRACT_10-27-08_JCC2JK4_v8.34b509a.html#;

"Union nixes public bargaining," *Michigan Education Daily*, October 18, 2009, <http://www.educationreport.org/pubs/mer/article.aspx?id=11166>.

²⁴ Scott St. Clair, "Seniority-based layoffs at Seattle Schools may be crumbling," *Crosscut.com*, <http://crosscut.com/2009/06/10/seattle-schools/19051/>.

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