

## Lifting the Shroud of Secrecy From Public Employee Contracts

*The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.*

—Legislative Declaration, New York State Freedom of Information Law  
(Public Officers Law, Article 6, Section 84)

by Lise Bang-Jensen

The “people’s right to know” is a hollow concept when government can withhold vital information until it is too late for the people’s voice to be heard. Unfortunately, that is what happens all too frequently in New York State, when details of collective bargaining agreements with public employee unions are kept secret until it is too late for them to be debated or altered.

Multi-year deals on public employee wages and benefits typically account for much of the annual growth in local government and school district budgets. However, government officials routinely refuse to divulge important aspects of tentative contract agreements—including long-term fiscal impacts—until the contracts are ratified by both sides.

An “abject lack of transparency” on employee salaries and benefits, as found among Long Island school districts by a Suffolk County grand jury a few years ago, appears to be fairly common throughout New York State.

The resulting lack of public oversight on public-sector labor issues inevitably leads to more costly and less efficient government—in a state whose residents are already saddled with the nation’s heaviest state and local tax burden.

Indeed, as cited in this paper, some of the most extreme recent examples of official secrecy surrounding expensive new union contracts can be found in economically distressed communities that can ill afford the consequences.

With a recession looming, the financial stakes of continued secrecy surrounding union contracts will be higher than ever. The public’s right to know—and to hold officials accountable—can best be realized by mandating disclosure of important information about the details and potential financial consequences of proposed collective bargaining agreements *before* they are approved.

- ✓ ***Personnel costs are the largest expense category in local government and school district budgets.***
- ✓ ***Under the state Taylor Law, salaries and benefits for most public employees are set in union contracts.***
- ✓ ***Elected officials often keep contract details secret until after ratification — leaving taxpayers in the dark until it is too late to ask questions or demand changes.***

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### Sparks fly in Johnson City

The Village of Johnson City, just outside Binghamton, was once a thriving hub of the shoe manufacturing industry in upstate New York. Today, the manufacturing jobs have left and the local economy is struggling, but the village of 15,000 people retains an extensive municipal government infrastructure – including a 41-member professional fire department.

As of two years ago, the base salary for a starting firefighter in Johnson City was \$44,722, which was higher than the base pay for firefighters in New York City (then \$36,400) as well as neighboring Binghamton and Endicott.<sup>1</sup>

It was only after the village board approved a new contract with the firefighters' union, by a 3-2 margin last May 20, that village residents discovered it would raise the firefighters' already generous salaries by more than 33 percent over five years.

Angry citizens packed the next board meeting to demand an explanation.<sup>2</sup> But there was a bigger financial shock to come. On June 17, village officials disclosed they had erred when calculating the raises. The five-year increase will actually come to just over 41 percent, they said.<sup>3</sup>

On October 7, a trustee who opposed the contract revealed the village faces a "major shortfall" of \$750,000 and it doesn't have money to pay firefighter salaries after January 29, 2009.<sup>4</sup>

In an editorial published after village trustees ratified the deal, a local newspaper wondered: "What are these people thinking?"<sup>5</sup> Public disclosure at least would have provided an answer to that question.

### Fearing public "influence"

On the first day of the 2008-09 school year, 845 teachers at the Utica City School District were handed copies of a tentative four-year union contract, which they ratified September 15.<sup>6</sup> But the superintendent of schools refused to publicly disclose contract terms until *after* the Board of Education approved the deal, eight days later—despite objections from citizens and the news media.

In defending the secrecy, a board member explained: "If it's released, the *O-D* [Utica *Observer-Dispatch*] could write an editorial on what is right or wrong with the contract and influence board members' votes."<sup>7</sup> In fact, board members themselves received copies of the contractual memorandum of agreement only a day before they voted on it.<sup>8</sup>

At first glance, the four-year agreement looked relatively lean, with a total 5.6 percent base pay increase for the period ending June 30, 2011.<sup>9</sup> But including annual

step raises of 2.74 percent, the first-year raise for many teachers actually came to 4.64 percent.<sup>10</sup>

Even more significant, the contract guarantees lifetime health insurance for all teachers who retire after 10 years on the job. Previously, only teachers hired before 1978 qualified for this benefit.<sup>11</sup>

Utica school officials said the new retiree benefits will be partially financed with savings accrued by requiring teachers and retirees to contribute 10 percent toward health insurance. Previously, the school district paid 100 percent of costs. However, the day after the board ratified the contract, a district business official said the cost of retiree benefits still had not been calculated.

In other words, school officials either didn't know whether they had made a good deal—or they were inexplicably unwilling to demonstrate to the public that they did.<sup>12</sup>

As one Utica resident wondered: "Why such a rich contract in such a poor city when the economy is the way it is?"<sup>13</sup> If contract details were made public before the vote, taxpayers might have gotten an answer to that question.

### No peeking?

Johnson City and Utica are not atypical. Across the state, taxpayers encounter hurdles when seeking information about tentative contracts.

- After threatening an illegal strike, the teachers' union in the Pine Bush Central School District in Dutchess County agreed to a new contract in late May, but neither side would release details until the school board's ratification vote on June 10. It turned out the reported three-year deal would raise base salaries by 11.4 percent, on top of longevity step raises that average 2.2 percent a year. Teachers will contribute 8 percent of health insurance premiums, up from 5 percent.<sup>15</sup>
- In August, Governor David Paterson announced the state had reached a tentative contract with the Police Benevolent Association (PBA), which represents 3,600 troopers, officers and uniformed supervisors of the State Police. The agreement, extending from 2007 to 2011, calls for 14 percent in base pay hikes over four years.<sup>16</sup> In response to a FOIL request from the Empire Center, the Governor's Office of Employee Relations refused to release a full copy of the tentative contract on the ground that it could "impair" ongoing negotiations with a separate union representing State Police investigators. But investigators work side-by-side with troopers, and it is likely their union knew the contents of the PBA contract as soon as it was announced.

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***"What are these people thinking?" wondered a local newspaper editorial after the Village of Johnson City ratified a five-year deal to raise firefighters' salaries by 41%.***

- The 4,000-member Civil Service Employees Association (CSEA) Unit 9200 and the Westchester County government lacked a contract for three years before announcing a tentative agreement September 16, which the union celebrated with a public rally that day.<sup>17</sup> But a local newspaper had to file two FOIL requests before obtaining a copy of the new memorandum of agreement from the county on October 8—six days after ballots were mailed to union members. The document showed the pending contract called for salary increases of 22 percent over a six-year period.
- The board of Rondout Valley Central School District in Ulster County approved a five-year teachers' contract on June 10, but school officials afterwards required a local newspaper to file a FOIL request before they would release the contract itself. The deal, it turned out, provides for pay increases of nearly 22 percent over five years (retroactive to July 1, 2007) in exchange for the teachers' agreement to modestly increase their health insurance contributions to 10 percent from 7.5 percent.<sup>18</sup>
- Although the Fort Edward Union Free School District board ratified a teachers contract June 11, the Glens Falls *Post-Star* reported two weeks later, "the people paying for it—the Fort Edward taxpayers—have no idea what the terms are. They have no idea how much it will cost them or what they're getting out of it. That's because even though both sides have agreed to the terms, the board and the union haven't released it."<sup>19</sup> In early September, the district superintendent said the contract was being typed. He sent the newspaper the new memorandum of agreement listing 29 changes to previous contract. As of October 31—four-and-a-half months after ratification—the district had yet to comply with the FOIL request for the full contract.<sup>20</sup>
- In some cases, taxpayers aren't the only people left out of the loop. In November 2007, three of seven board members of the Oswego City School District Board of Education voted against a five-year teachers' contract providing 22.7 percent raises because they hadn't received adequate answers to their questions. "It was voted on by the union before we even saw it," complained a former board president. An attempt to table the vote was rejected.<sup>21</sup>

Across the state, practices vary on disclosure of tentative contracts. Some local governments impose total news blackouts, as did Johnson City and the Utica City School District. Others follow the practice of New York City, where the mayor typically joins union leaders in announcing tentative contracts settlements—although

the details are at times sketchy.

#### What the law says

The Freedom of Information Law (FOIL) presumes public access to information developed or possessed by government agencies. However, section 87(2)c permits agencies to withhold information if disclosure "would impair present or imminent contract awards or collective bargaining agreements." A 1995 advisory opinion from the Committee on Open Government describes the section 87(2)c exemption as follows:

"[It] is intended to ensure that government agencies are not placed at a disadvantage at the bargaining table and to ensure that there is a 'level playing field.' For instance, if a teachers' association requested records from a school district indicating the district's collective bargaining strategy ... disclosure would place the district at a disadvantage and the negotiations would be unfair and unbalanced."

In such a situation, there would be "an inequality of knowledge" between the two parties. But that changes once

the two sides reach a tentative agreement, at which point "it might be contended that since a copy of a tentative agreement is maintained by both the school district and the teachers' association, there is no inequality of knowledge regarding the content of that document and that, therefore, disclosure would not impair the negotiations."<sup>22</sup>

In effect, the language means that "once a contract goes to union rank-and-file members, negotiations are over," says Robert Freeman, executive director of the state Committee on Open Government.<sup>23</sup>

However, no state court has ruled on whether government entities can refuse to disclose details of tentative contracts. Nor apparently has any court sanctioned a municipality for releasing details of tentative contracts prior to ratification votes. The Court of Appeals, in a series of FOIL cases, repeatedly has ruled "the balance is presumptively struck in favor of disclosure."<sup>24</sup>

In New York, actual contract negotiations between public sector unions and government employers are held behind closed doors. But negotiations are subject to open-meetings laws in at least seven states—Florida, Kansas, Minnesota, Montana, Oregon, Tennessee and Texas. In at least four other states—Alaska, Idaho, Iowa and Ohio—the public is entitled to documents related to the negotiations.<sup>25</sup>

#### Long Island probe yields reform proposal

After a year-long probe of financial irregularities in local school districts, a Suffolk County grand jury issued

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***Rondout Valley school officials required a FOIL request before releasing details of a newly ratified teachers' contract raising pay 22% over five years.***

a report in 2006 citing “an abject lack of transparency regarding the issue for which school districts spend the overwhelming majority of their funds—salaries and benefits for their employees.”<sup>26</sup>

The grand jury’s remedy was a state law mandating that “copies of all proposed school district collective bargaining agreements, employment contracts or amendments to those contracts be placed on the school district web site, if existing, and within the local public libraries and school district offices, *at least one month prior to the board of education’s vote upon the contracts or amendments.*” [Emphasis added.]<sup>27</sup>

The Suffolk County grand jury recommendations offer a good starting point for broader reform of FOIL provisions affecting collective bargaining agreements. In the interest of promoting greater financial and managerial transparency, advance disclosure of tentative contracts should also include the following:

- the net financial impact of all provisions, including annualized and cumulative costs of proposed changes in salary schedules, benefits and work-rules, compared to a starting “base year” estimate of expenditures in each category;
- a breakdown of any savings attributed to union concessions or “givebacks,” with an explanation of the methodology used to produce these estimates;
- proposed salary increases on an annualized and cumulative percentage basis, with a separate breakdown of average percentage increases including step and longevity increments; and
- an estimate of the projected impact on taxes over the life of the contract -- assuming no increase in state or federal aid to cover contract costs.

No law currently bars the release of such details after negotiations conclude. Unfortunately, in the absence of an affirmative disclosure requirement, it appears that many officials around the state are inclined towards secrecy rather than transparency in such matters.

Amending the law in the manner outlined above will conform more fully to the original intent of New York’s FOIL statute by providing greater transparency and giving citizens a better-informed voice in the decision-making process.

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## Endnotes

<sup>1</sup> “JC takes heat over 33.2 percent pay raises,” *Binghamton Press & Sun-Bulletin*, May 25, 2008.

<sup>2</sup> “JC residents protest firefighters pact,” *ibid*, May 28, 2008.

<sup>3</sup> “Johnson City firefighter pay raise to exceed 41 percent,” *ibid*, June 18, 2008.

<sup>4</sup> “JC faces shortfall for firefighters’ pay,” *ibid*, Oct. 8, 2008.

<http://www.pressconnects.com/apps/pbcs.dll/article?AID=/20081008/NEWS01/810080359/1001>

<sup>5</sup> Editorial: Raises are more than JC can bear,” *ibid*, May 23, 2008.

<sup>6</sup> “Utica teachers approve contract with district,” *Utica Observer-Dispatch*, Sept 15, 2008.

<http://www.uticaod.com/news/x1780975696/Utica-teachers-OK-contract>

<sup>7</sup> “Skermont refuses to release details of teachers’ contract,” *ibid*, Sept. 17, 2008.

<http://www.uticaod.com/news/x993964834/Skermont-refuses-to-release-details-of-teachers-contract>

<sup>8</sup> “Board still won’t release teachers’ contract,” *ibid*, Sept. 23, 2008.

<sup>9</sup> “Board approves Utica teachers’ contract,” *ibid*, Sept. 24, 2008.

<http://www.uticaod.com/news/x418862322/Utica-Teachers-contract-approved>

<sup>10</sup> “New Utica teachers’ contract: Cost of retirees benefits unknown,” *ibid*, Sept. 25, 2008.

<http://www.uticaod.com/education/x680272414/New-Utica-teachers-contract-Cost-of-retirees-benefits-unknown>

<sup>11</sup> “Board approves Utica teachers’ contract,” *ibid*, Sept. 24, 2008.

<sup>12</sup> Utica expects to set aside \$8 million within a decade toward retiree benefits by earmarking the 10 percent that active employees will contribute toward health insurance. But the school district business official said that may not be enough to meet future costs. She is “thinking, hoping” it will. “New Utica teachers’ contract: Cost of retiree benefits unknown,” *ibid*.

<sup>13</sup> *Ibid*.

<sup>14</sup> “Pine Bush School District, teachers union make deal,” *Middletown Herald-Record*, May 28, 2008.

<http://recordonline.com/apps/pbcs.dll/article?AID=/20080528/NEWS/805280343/-1/NEWS>

<sup>15</sup> Minutes of School Board, Pine Bush Central School District, June 10, 2008.

<sup>16</sup> “Governor Paterson announces contract settlement with Troopers PBA,” Press Release, Office of Governor, Aug. 17, 2008.

<sup>17</sup> “CSEA, Westchester near contract after 3 years,” *Journal News*, Sept. 17, 2008.

<sup>18</sup> “Rondout Valley school board OKs teacher pay hikes,” *Kingston Daily Freeman*, July 1, 2008. [http://www.zwire.com/site/news.cfm?newsid=19817084&BRD=1769&PAG=461&dept\\_id=74958&rfti=6](http://www.zwire.com/site/news.cfm?newsid=19817084&BRD=1769&PAG=461&dept_id=74958&rfti=6)

<sup>19</sup> “Right To Know: Seeking Fort Edward’s new contract,” *Glens Falls Post-Star* (blog), July 7, 2008.

<http://www.poststar.com/blogs/?p=5527&cat=>

<sup>20</sup> “Right to Know: Fort Edward send old contract changes; no complete contract yet,” *ibid*, Oct. 9, 2008.

<http://www.poststar.com/blogs/?p=7271&cat=50>

<sup>21</sup> “OCTA contract approved...barely,” *Oswego Palladium Times*, Nov. 9, 2007.

<sup>22</sup> Advisory Opinion 8733, Committee on Open Government, NYS Department of State, March 16, 1995.

<http://www.dos.state.ny.us/coog/ftext/f8733.htm>

<sup>23</sup> Interview, October 10, 2008.

<sup>24</sup> The opinion quoted here is from *Church of Scientology of N.Y. v. State of New York*, 46 NY 2d 906, 908

<sup>25</sup> Michael Reitch, “When Unions Negotiate with Governments: What Should the Public Know and When Should They Know It?” *Labor Watch*, Capital Research Center, June 2008.

<http://www.capitalresearch.org/pubs/pubs.html?id=642>

<sup>26</sup> Suffolk County Court Special Grand Jury, Sept. 19, 2005 Term IE, CPL Section 190.85(1)(C), Grand Jury Report Dated: June 26, 2006, page 188.

<sup>27</sup> *Ibid*, page 195.

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