

IN THE SUPREME COURT OF THE STATE OF VERMONT

DOCKET NO. 2017-186

BOARD OF SCHOOL DIRECTORS OF
WASHINGTON NORTHEAST SUPERVISORY UNION

v.

CABOT TEACHERS' ASSOCIATION and
TWINFIELD EDUCATION ASSOCIATION

BRIEF OF AMICUS CURIAE
PROFESSIONAL FIRE FIGHTERS OF VERMONT, I.A.F.F., AFL-CIO

September 28, 2017

**Appeal from Opinion and Order
of the Vermont Labor Relations Board
Dismissing Unfair Labor Practice Charges
Docket No. 16-60**

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ARGUMENT

I. LONG-ESTABLISHED AND WELL-ACCEPTED LABOR POLICY UNDERSCORES THE NEED FOR COLLECTIVE BARGAINING IN THE PUBLIC SECTOR TO TAKE PLACE AWAY FROM THE HARSH GLARE OF PUBLIC SCRUTINY.

With the spate of both open meetings laws and public sector bargaining laws being passed nearly simultaneously in the late 1960s and, more so, in the early 1970s, state courts and boards of labor relations endured a flurry of charges and claims asking for a determination as to whether collective bargaining between a public body and a public employee union must be performed in public. By the mid-1970s, the various courts and boards to have heard the question had so plainly outlined the practical and policy reasons why negotiation sessions should be closed to the public that the Nevada Local Government Employee-Management Relations Board stated in its own opinion that “[t]he reasons for closed negotiation sessions are too numerous and too obvious to be restated here” *Washoe County Teachers Ass’n and Washoe County School District*, Case no. AL-045295, 1976 WL 385442 at *3 (Nev. Local Gvt. Emp.-Mgmt. Rel. Bd. May 21, 1976). Nevertheless, a review of the major practical and policy considerations is necessary to a proper understanding of the interplay between open meeting laws and public sector collective bargaining laws.

In this regard, even though bargaining in the private sector is nearly universally conducted in private, the National Labor Relations Board and the federal courts in review have addressed similar issues in cases involving a party’s insistence on having negotiation sessions recorded or transcribed by a court reporter. In the lead case on the matter, the 10th Circuit U.S. Court of Appeals said about the mere recording of such sessions that the NLRB “and numerous experts in the field of labor relations believe that the presence of a court reporter has a tendency to inhibit the free and open discussion necessary for conducting successful collective

bargaining.” *NLRB v. Bartlett-Collins, Co.*, 639 F2d 652, 656 (10th Cir. 1981), *cert den*, 452 US 961, 101 S.Ct. 3109 (1981). The court went on to explain that the mere existence of a recording device (1) “may cause parties to talk for the record rather than to advance toward an agreement”; (2) may formalize the bargaining, “sapping the spontaneity and flexibility often necessary to successful negotiations”; (3) may begin the bargaining “on a discordant note”; and (4) “may give notice that one party lacks confidence in the collective-bargaining process, anticipating litigation rather than agreement.” *Id.* See also *Local No. 455, Bakery, Confectionary and Tobacco Workers International Union, AFL-CIO (Nabisco Brands, Inc.)*, 272 NLRB 1362, 1364 (1984) (“Experience has taught that the presence of a stenographer or tape recorder does inhibit free collective bargaining,” and that “[b]oth sides talk for the record and not for the purpose of advancing negotiations towards eventual settlement.”).

As noted these concerns arise from the mere existence of a recording device in the room. The concerns would be exponentially amplified if the participants were literally performing for an audience in open meeting. The New Hampshire Supreme Court noted that, as early as 1974, there was “substantial authority in support of the . . . position that the delicate mechanisms of collective bargaining would be thrown awry if viewed prematurely by the public.” *Talbot v. Concord Union School Dist.*, 323 A.2d 912, 913 (N.H. 1974), *citing Bassett v. Braddock*, 262 So.2d 425 (Fla.1972); R. Smith, H. Edwards & R. Clark, Jr., *Labor Relations Law in the Public Sector* 569-594 (1974); Edwards, *The Emerging Duty to Bargain in the Public Sector*, 71 *Mich.L.Rev.* 885, 901-02 (1973); Wickham, *Let the Sun Shine In! Open-Meeting Legislation Can Be Our Key to Closed Doors in State and Local Government*, 68 *Nw.U.L.Rev.* 480, 491-92 (1973); R. Smith, L. Merrifield & D. Rothschild, *Collective Bargaining and Labor Arbitration* 36-44 (1970). The court noted the significant concern that “ bargaining in the public arena

would tend to prolong negotiations and damage the procedure of compromise inherent in collective bargaining.” *Id.* at 913-914 (internal quotation omitted). *See also* Richard C. Feiock & Jonathan P. West, Public Sector Bargaining in the Sunshine: Effects of Participation on Collective Bargaining, in *Alternative Dispute Resolution in the Public Sector* 44, 55 (Miriam K. Mills ed., 1991) (concluding, *inter alia*, that bargaining in public significantly slows down the negotiation process).

Indeed, scholarly studies performed around the time concluded that “(c)ollective bargaining negotiations cannot effectively be carried out if open to the public,” *e.g.*, Statutory Comment, Government in the Sunshine Act: A Danger of Overexposure, 14 *Harv.J.Legis.* 620, 623, 630 (1977), and that even an avowed advocate of open meeting laws had resigned himself to acknowledging “. . . the infeasibility of conducting collective bargaining negotiations in public,” noting that “[t]he give and take of compromise involves too much loss of face to expect the participants to bargain freely before outside observers.” Donald Wickham, Tennessee's Sunshine Law: A Need for Limited Shade and Clearer Focus, 42 *Tenn.L.Rev.* 557, 564-565 (1975).

The weight of evidence showed that the “presence of the public and the press at negotiating sessions would inhibit the free exchange of views and freeze negotiators into fixed positions from which they could not recede without loss of face.” *Talbot*, 323 A.2d at 914. There also exists the real possibility “the opening of such sessions to the public could result in the employment of professional negotiators, thus removing the local representatives from the bargaining process.” *Id.*, *citing* Mont. Rev. Code Ann. § 75-6127 (1971) (opening professional negotiating sessions, but closing preliminary deliberations of school board).

Perhaps the strongest language in favor of closed collective bargaining despite the

existence of open meetings laws appears in the Florida Supreme Court case of *Bassett v. Braddock*, 262 So.2d 425 (Fla. 1972), which recounts strong witness testimony and imbues its decision with Biblical analogies. Noting that any deal ultimately reached would have to be aired in open meeting and with a vote of the public body, the court stated: “The ‘sunshine’ of the statute is still afforded in the debate and adoption of the ultimate employment contract at a public meeting but with the constitutional polaroid filter from the damaging ‘ultra violet rays’ of preliminary skirmishing.” *Id.* at 426. And perhaps most boldly, the court analogized the process of collective bargaining to the work of the framers of the U.S. Constitution, citing the decision of those champions of representative democracy to hold all of their deliberations in secret, which necessarily “promoted free and candid debate within the convention, and vitally encouraged the shifts in voting, the great compromises, calculated ambiguities and deliberate lacunae that made possible in the end a masterful charter. . . .” *Id.* at 426 n. 4, *quoting* Freund, On Prior Restraint, Harvard Law School Bulletin (August 1971).

These commentators, boards, and courts have ultimately plumbed the reality that negotiators are less able to express themselves freely and to explore possibilities in a public setting. Negotiations require the freedom to be frank, even crude, at times, and inevitably, having these interchanges in public would interfere with the freewheeling nature of negotiations designed to reach an appropriate compromise. Some negotiators would posture for the crowd, while others would be afraid to explain an idea lest they be accused of weakness or grandstanding. Keeping these deliberations out of the public eye allows parties to talk about all the possibilities without fear that their discussions might be twisted or taken out of context.

For example, if a union were proposing a substantial wage increase, it might point to how much more demanding the job of its members is than some other jobs. Displayed in public, the

union negotiator would be flayed for putting down others. Employer negotiators might find themselves in the same bind, feeling as if they have to appease or appeal to the crowd rather than arrive at compromise positions. And both parties would share the common concern that a demonstrated willingness to entertain a compromise might be taken as a commitment to accept a concession in the party's original bargaining position.

For all of these reasons, as espoused in the policy considerations outlined in the decision of the Vermont Labor Relations Board, the Court must avoid a construction that requires overly strict adherence to the precepts of government in the sunshine at the expense of the plain public policy of the State of Vermont to encourage harmonious labor relations in the public sector.

II. PUBLIC SECTOR BARGAINING IS ROUTINELY FOUND TO BE AN EXCEPTION TO OPEN MEETING LAWS EXCEPT WHERE SPECIFICALLY REQUIRED BY STATE CONSTITUTION OR STATUTE OR WHERE A COURT GIVES BLIND CREDENCE TO THE BREADTH OF THE OPEN MEETING LAW WITHOUT CONSIDERING THE MEANING AND INTENT OF LABOR STATUTES.

In a representative democracy, the right of the people to view the workings of their government has come to be considered an important foundational principle. That said, several states have all expressed their own public policies through constitutional or statutory means to protect the right of the people to watch their representatives at work. Some such provisions plainly require collective bargaining to be open, and others plainly allow for collective bargaining to be closed. A complete list of state statutes appears in the Appendix to this brief for the Court's convenience.

In those states where the constitution or statutes do not compel a result and where the courts and labor agencies (with their subject-matter expertise) have entertained any real analysis regarding the legal and practical underpinnings of collective bargaining, the majority have determined that negotiations should not take place in open meetings. *See, e.g.*, cases cited *supra*

Part I. The jurisdictions that have required bargaining sessions to take place in open meeting have done so based almost entirely on the broad public policy inherent in open meeting laws and without any meaningful consideration of the act of collective bargaining. *See, e.g., International Ass'n of Firefighters, Local 2479 v. Thorpe*, 632 P.2d 408 (Okla. 1981) (relying on the inclusion of the phrases “task force” in the Open Meeting Law and the liberal construction of that law and failing in any way to discuss the meaning and intent of the public sector bargaining scheme); *Great Falls Tribune Co., Inc. v. Great Falls Public Schools*, 841 P.2d 502 (Mont. 1992) (noting that the court had been presented with arguments “as to the potential hazards of creating an uneven playing field in the statutorily provided collective bargaining arena” but holding itself bound to the strong language in the Montana constitution); *Carroll County Educ. Ass'n, Inc. v. Board of Educ. of Carroll County*, 448 A.2d 245 (Md. Ct. App. 1982) (noting but specifically ignoring the inherent problems in bargaining in public).

More compelling are the cases wherein the courts squarely address the competing interest set forth in the open meetings statutes and the collective bargaining statutes: For example, in *State ex rel. Bd. of Public Utilities of City of Springfield v. Crow*, 592 S.W.2d 285, 289-290 (Mo. Ct. App. 1979), the court noted the status of the open meeting law as a “statute of general application” but further noted that “the act admits of exceptions” and requires “the accommodation of differing interests.” The *Bassett* court similarly opined that the “public should not suffer a handicap at the expense of a purist view of open public meetings, so long as the ultimate debate and decisions are public and the ‘official acts’ and ‘formal action’ specified by the statute are taken in open ‘public meetings.’” 262 So.2d at 427.

In *Talbot v. Concord Union School District*, 323 A.2d at 913-914, the court recognized from the scant legislative history of the state’s open meeting law that there was nothing “to

indicate that the legislature specifically considered the impact of its provisions on public sector (collective) bargaining” and concluded that it was “ improbable that the legislature intended the law to apply in such a fashion as to destroy the very process it was attempting to open to the public.” *See also State ex rel. Bd. of Pub. Utilities of City of Springfield*, 592 S.W.2d at 291 (“[I]t is improbable that the General Assembly intended the Open Meetings Act to apply in such manner as to destroy the limited bargaining rights of public employees by exposing the public employees’ thought-processes, and those of the employer, to the public eye and ear.”)

Tying these principles together, the Iowa Supreme Court ultimately concluded, as this Court should:

In the light of the declared policy of the legislature to promote harmonious and co-operative relationships between government agencies and their employees, we are constrained to hold that such public policy would not be satisfied or fulfilled by permitting a school board to unilaterally determine that negotiating sessions should be either open or closed. A co-operative relationship between the two negotiating parties would be weakened or destroyed if we were to interpret [the open meeting law] as permitting the public employer to open negotiating meetings to the public against the wishes and will of the public employees’ organization.

Burlington Community School Dist. v. Public Employment Relations Bd., 268 N.W.2d 517, 523 (Iowa 1978).

CONCLUSION

WHEREFORE, for the reasons described herein, the Amicus Curiae Professional Firefighters of Vermont, I.A.F.F., AFL-CIO, respectfully requests that this honorable Court affirm the Order of the Vermont Labor Relations Board in Docket Number 16-60.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH
TYPE-VOLUME LIMITATION, TYPEFACE
REQUIREMENTS, AND TYPE STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Vt. R. App. P. 32(a)(7)(A)(i) because this brief contains 2,214 words, excluding the parts of the brief exempted by Vt. R. App. P. 32(a)(7)(B).

2. This brief complies with the typeface requirements of Vt. R. App. P. 32(a)(5) and the type style requirements of Vt. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 12 point type.

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**CERTIFICATE OF COMPLIANCE WITH
VIRUS-PROTECTION REQUIREMENTS**

The electronic version of this Brief filed in pdf format pursuant to Vt. R. App. P. 32(b) has been scanned for viruses and no virus has been detected.

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CERTIFICATE OF SERVICE

I hereby certify that this brief was served on Counsel for the Appellant, J. Scott Cameron and Patricia K. Turley, and Counsel for the Appellee, Rebecca McBroom, by first-class mail, postage prepaid, on September 28, 2017, and by email on September 29, 2017, at the following addresses:

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ADDENDUM

(SURVEY OF THE STATES)

| STATE | STATUTORY TEXT | EXPLANATION |
|--------------|--|--|
| Alabama | <p>Ala. Code § 36-25A-7</p> <p>(a) Executive sessions are not required by this chapter, but may be held by a governmental body only for the following purposes:</p> <p>.....</p> <p>(8) To discuss strategy in preparation for negotiations between the governmental body and a group of public employees. Provided, however, that prior to such discussions a person representing the interests of a governmental body involved in such negotiations advises the governmental body in writing or by oral declaration entered into the minutes that the discussions would have a detrimental effect upon the negotiating position of the governmental body if disclosed outside of an executive session.</p> | <p>Strategy sessions may be.</p> <p>Silent as to negotiations.</p> |

| STATE | STATUTORY TEXT | EXPLANATION |
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| Alaska | <p>Alaska Stat. Ann. § 44.62.310 (West) :</p> <p>(b) If permitted subjects are to be discussed at a meeting in executive session, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that are listed in (c) of this section shall be determined by a majority vote of the governmental body. The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Action may not be taken at an executive session, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.</p> <p>(c) The following subjects may be considered in an executive session:</p> <p>.....</p> <p>(4) matters involving consideration of government records that by law are not subject to public disclosure.</p> <p>Alaska Stat. Ann. § 23.40.235 (West): Before beginning bargaining, the school board of a city or borough school district or a regional educational attendance area shall provide opportunities for public comment on the issues to be addressed in the collective bargaining process. 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 AS 40.25.110-40.25.140.</p> | Unclear |

| STATE | STATUTORY TEXT | EXPLANATION |
|------------|---|---|
| Arizona | <p>Ariz. Rev. Stat. Ann. § 38-431.03: Upon a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:^z</p> <p style="text-align: center;">.</p> <p>5. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.</p> <p>1983 Ariz. Op. Att'y Gen. 18 (1983): We therefore conclude that negotiations between any employee organization and what constitutes a quorum of a group composed of two or more designated board representatives, whether such representatives are governing board members, must be held in an open meeting.</p> | <p>Strategy session may be closed.</p> <p>Attorney General opined that negotiations must be open.</p> |
| Arkansas | <p>No statutory obligation to bargain with a public employee union.</p> <p><i>City of Fort Smith v. Ark. State Council No. 38</i>, 433 S.W.2d 153, 155 (Ark.1968)</p> | N/A |
| California | <p>Cal. Gov't Code § 3549.1 (West): All the proceedings set forth in subdivisions (a) to (d), inclusive, are exempt from the provisions of Sections 35144 and 35145 of the Education Code, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2), and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), unless the parties mutually agree otherwise: (a) Any meeting and negotiating discussion between a public school employer and a recognized or certified employee organization.</p> | Closed unless the parties agree. |

| STATE | STATUTORY TEXT | EXPLANATION |
|-------------|--|--|
| Colorado | <p>Colo. Rev. Stat. Ann. § 24-6-402 (West)</p> <p>Executive session allowed for:</p> <p>(e)(I) Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators.</p> <p>(II) The provisions of subparagraph (I) of this paragraph (e) shall not apply to a meeting of the members of a board of education of a school district:</p> <p>(A) During which negotiations relating to collective bargaining, as defined in section 8-3-104(3), C.R.S., are discussed; or</p> <p>(B) During which negotiations for employment contracts, other than negotiations for an individual employee's contract, are discussed.</p> | Open as relates to school employees. |
| Connecticut | <p>Conn. Gen. Stat. Ann. § 1-200 (West):</p> <p>“Meeting” does not include: Any meeting of a personnel search committee for executive level employment candidates; any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business; strategy or negotiations with respect to collective bargaining; a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency; an administrative or staff meeting of a single-member public agency; and communication limited to notice of meetings of any public agency or the agendas thereof.</p> | Negotiations not subject to open meetings law. |

| STATE | STATUTORY TEXT | EXPLANATION |
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| Delaware | <p>Del. Code Ann. tit. 29, § 10004 (West):</p> <p>(b) A public body may call for an executive session closed to the public pursuant to subsections (c) and (e) of this section, but only for the following purposes:</p> <p>.....</p> <p>(6) Discussion of the content of documents, excluded from the definition of “public record” in § 10002 of this title where such discussion may disclose the contents of such documents;</p> | <p>Negotiations may be held in executive session because bargaining documents are not subject to FOIA.</p> <p>Del. Op. Att'y Gen. 01-IB03 (2001)</p> |
| Florida | <p>Fla. Stat. Ann. § 447.605 (West)</p> <p>(1) All discussions between the chief executive officer of the public employer, or his or her representative, and the legislative body or the public employer relative to collective bargaining shall be closed and exempt from the provisions of s. 286.011.</p> <p>(2) The collective bargaining negotiations between a chief executive officer, or his or her representative, and a bargaining agent shall be in compliance with the provisions of s. 286.011.</p> | <p>Strategy sessions are closed.</p> <p>Negotiations are open.</p> |

| STATE | STATUTORY TEXT | EXPLANATION |
|---------|--|---------------------------|
| Georgia | <p>Only firefighters have the right to engage in collective bargaining. Ga. Code Ann. § 20-2-989.10; Ga. Code Ann. § 25-5-4 (West)</p> <p>Ga. Code Ann. § 50-14-3 (West)</p> <p>[E]xecutive sessions will be permitted for:</p> <p>(2) Meetings when discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee or interviewing applicants for the position of the executive head of an agency. This exception shall not apply to the receipt of evidence or when hearing argument on personnel matters, including whether to impose disciplinary action or dismiss a public officer or employee or when considering or discussing matters of policy regarding the employment or hiring practices of the agency. The vote on any matter covered by this paragraph shall be taken in public and minutes of the meeting as provided in this chapter shall be made available. Meetings by an agency to discuss or take action on the filling of a vacancy in the membership of the agency itself shall at all times be open to the public as provided in this chapter;</p> | Unclear |
| Hawaii | <p>Haw. Rev. Stat. Ann. § 92-5 (West):</p> <p>(a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:</p> <p>.....</p> <p>3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;</p> | Closed meeting permitted. |

| STATE | STATUTORY TEXT | EXPLANATION |
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| Idaho | Idaho Code Ann. § 74-206 (West): (2) Labor negotiations may be conducted in executive session if either side requests closed meetings. Notwithstanding the provisions of section 74-204, Idaho Code, subsequent sessions of the negotiations may continue without further public notice. | Closed at the election of either party. |
| Illinois | 115 Ill. Comp. Stat. Ann. 5/18 (Teachers Labor Relations Act): § 18. Meetings. The provisions of the Open Meetings Act shall not apply to collective bargaining negotiations and grievance arbitrations conducted pursuant to this Act. 5 Ill. Comp. Stat. Ann. 315/24 (Public Employee Labor Relations Act): § 24. Meetings. The provisions of the Open Meetings Act shall not apply to collective bargaining negotiations and grievance arbitration conducted pursuant to this Act. | Open meeting law does not apply. |

| STATE | STATUTORY TEXT | EXPLANATION |
|---------|--|--|
| Indiana | <p>Ind. Code Ann. § 5-14-1.5-6.1 (West) :</p> <p>(b) Executive sessions may be held only in the following instances:</p> <p>.....</p> <p>(2) For discussion of strategy with respect to any of the following:</p> <p>(A) Collective bargaining.</p> <p>(B) Initiation of litigation or litigation that is either pending or has been threatened specifically in writing. As used in this clause, “litigation” includes any judicial action or administrative law proceeding under federal or state law.</p> <p>(C) The implementation of security systems.</p> <p>(D) The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.</p> <p>(E) School consolidation.</p> <p>However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.</p> | <p>Strategy session may be closed.</p> <p>Negotiations must be open.</p> |
| Iowa | <p>Iowa Code Ann. § 20.17 (West)”</p> <p>3. Negotiating sessions, strategy meetings of public employers, mediation, and the deliberative process of arbitrators shall be exempt from the provisions of chapter 21. However, the employee organization shall present its initial bargaining position to the public employer at the first bargaining session. The public employer shall present its initial bargaining position to the employee organization at the second bargaining session, which shall be held no later than two weeks following the first bargaining session. Both sessions shall be open to the public and subject to the provisions of chapter 21. Parties who by agreement are utilizing a cooperative alternative bargaining process may exchange their respective initial interest statements in lieu of initial bargaining positions at these open sessions. Hearings conducted by arbitrators shall be open to the public.</p> | <p>First two sessions open.</p> <p>Closed thereafter.</p> |

| STATE | STATUTORY TEXT | EXPLANATION |
|-----------|--|---|
| Kansas | <p>Kan. Stat. Ann. § 75-4319 (West):</p> <p>(b) Justifications for recess to a closed or executive meeting may only include the following, the need:</p> <p>.....</p> <p>(3) to discuss employer-employee negotiations whether or not in consultation with the representative or representatives of the public body or agency.</p> | <p>Negotiations may be held in executive session.</p> |
| Kentucky | <p>Ky. Rev. Stat. Ann. § 61.810 (West):</p> <p>(1) All meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times, except for the following:</p> <p>.....</p> <p>(e) Collective bargaining negotiations between public employers and their employees or their representatives;</p> | <p>Negotiations not subject to open meeting law.</p> |
| Louisiana | <p>La. Stat. Ann. § 42:17:</p> <p>A. A public body may hold an executive session pursuant to R.S. 42:16 for one or more of the following reasons:</p> <p>.....</p> <p>(2) Strategy sessions or negotiations with respect to collective bargaining, prospective litigation after formal written demand, or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public body.</p> | <p>Negotiations may be held in executive session.</p> |

| STATE | STATUTORY TEXT | EXPLANATION |
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| Maine | <p>Me. Rev. Stat. tit. 1, § 405: 6. Permitted deliberation. Deliberations on only the following matters may be conducted during an executive session: </p> <p>D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions.</p> | Closed unless both parties agree. |
| Maryland | <p>Md. Gen. Provis. §3-305: (b) Subject to subsection (d) of this section, a public body may meet in closed session or adjourn an open session to a closed session only to: (9) conduct collective bargaining negotiations or consider matters that relate to the negotiations.</p> | Negotiations may be conducted in executive session. |
| Massachusetts | <p>M.G.L. c. 30A, § 21: (a) A public body may meet in executive session only for the following purposes: </p> <p>(2) To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;</p> | Negotiations may be conducted in executive session. |
| Michigan | <p>Mich. Comp. Laws Ann. § 15.268 (West): Sec. 8. A public body may meet in a closed session only for the following purposes: </p> <p>(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.</p> | Closed at the election of either party. |

| STATE | STATUTORY TEXT | EXPLANATION |
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| Minnesota | <p>Minn. Stat. Ann. § 13D.03 (West): (b) The governing body of a public employer may by a majority vote in a public meeting decide to hold a closed meeting to consider strategy for labor negotiations, including negotiation strategies or developments or discussion and review of labor negotiation proposals, conducted pursuant to sections 179A.01 to 179A.25.</p> <p>Minn. Stat. Ann. § 179A.14 (West): Subd. 3. Public meetings. All negotiations, mediation sessions, and hearings between public employers and public employees or their respective representatives are public meetings except when otherwise provided by the commissioner.</p> | <p>Strategy sessions may be closed.</p> <p>Negotiations are open unless the Commissioner holds otherwise.</p> |
| Mississippi | Mississippi has no public employee bargaining rights. | N/A |
| Missouri | <p>Mo. Ann. Stat. § 610.021 (West): Except to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to the following: </p> <p>(9) Preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups.</p> | <p>Strategy sessions may be closed.</p> <p>Unclear as to negotiations.</p> |
| Montana | <p>Mont. Const. art. II, § 9:</p> <p>No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.</p> | Open to the public per strong constitutional language. |

| STATE | STATUTORY TEXT | EXPLANATION |
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| Nebraska | <p>Neb. Rev. Stat. Ann. § 84-1410 (West):</p> <p>(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:</p> <p>(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;</p> | <p>Strategy session may be held in executive session.</p> <p>Unclear as to negotiations.</p> |
| Nevada | <p>Nev. Rev. Stat. Ann. § 288.220 (West):</p> <p>The following proceedings, required by or pursuant to this chapter, are not subject to any provision of [Nevada Rev. Stat.] which requires a meeting to be open or public:</p> <p>1. Any negotiation or informal discussion between a local government employer and an employee organization or employees as individuals, whether conducted by the governing body or through a representative or representatives.</p> | Closed. |
| New Hampshire | <p>N.H. Rev. Stat. Ann. § 91-A:2:</p> <p>“Meeting” shall also not include:</p> <p>(a) Strategy or negotiations with respect to collective bargaining;</p> | <p>Strategy session may be closed.</p> <p>Statute silent as to negotiations, but the N.H. S. Ct. has ruled that negotiations are closed. <i>Talbot v. Concord Union School Dist.</i>, 323 A.2d 912, 913 (N.H. 1974).</p> |

| STATE | STATUTORY TEXT | EXPLANATION |
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| New Jersey | <p>N.J. Stat. Ann. § 10:4-12 (West):</p> <p>b. A public body may exclude the public only from that portion of a meeting at which the public body discusses any:</p> <p>.....</p> <p>(4) collective bargaining agreement, or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the negotiation of the terms and conditions thereof with employees or representatives of employees of the public body.</p> | Negotiations may be held in executive session. |
| New Mexico | <p>N.M. Stat. Ann. § 10-15-1 (West):</p> <p>H. The provisions of Subsections A, B and G of this section do not apply to:</p> <p>.....</p> <p>(5) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the policymaking body and a bargaining unit representing the employees of that policymaking body and collective bargaining sessions at which the policymaking body and the representatives of the collective bargaining unit are present;</p> | Negotiations are not subject to open meeting law. |
| New York | <p>N.Y. Pub. Off. Law § 105 (McKinney):</p> <p>1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:</p> <p>.....</p> <p>e. collective negotiations pursuant to article fourteen of the civil service law;</p> | Negotiations may be held in executive session. |
| North Carolina | Collective bargaining is prohibited by N.C. Gen. Stat. Ann. § 95-98 | N/A |

| STATE | STATUTORY TEXT | EXPLANATION |
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| North Dakota | <p>N.D. Cent. Code Ann. § 44-04-19.1 (West) 9. A governing body may hold an executive session under section 44-04-19.2 to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator regarding a pending claim, litigation, adversarial administrative proceedings, or contracts, which are currently being negotiated or for which negotiation is reasonably likely to occur in the immediate future. An executive session may be held under this subsection only when an open meeting would have an adverse fiscal effect on the bargaining or litigating position of the public entity. A record revealing negotiation strategy or instruction under this section is exempt. Drafts of contracts or agreements subject to negotiations are exempt but only for so long as release would have an adverse fiscal effect on the public entity, unless the records are otherwise exempt or confidential.</p> | <p>Strategy session may be held in executive session.</p> <p>Statute unclear as to negotiations but S. Ct. has ruled they should be open meetings. <i>Dickinson Ed. Ass'n v. Dickinson Pub. Sch. Dist. No. 1</i>, 252 N.W.2d 205 (N.D. 1977)</p> |
| Ohio | <p>Ohio Rev. Code Ann. § 4117.21 (West): Collective bargaining meetings between public employers and employee organizations are private, and are not subject to section 121.22 of the Revised Code.</p> | <p>Closed.</p> |
| Oklahoma | <p>Okla. Stat. Ann. tit. 25, § 307 (West): B. Executive sessions of public bodies will be permitted only for the purpose of: 2. Discussing negotiations concerning employees and representatives of employee groups;</p> | <p>Strategy sessions may be held in executive session.</p> <p>Statute silent as to bargaining. S. Ct. has held bargaining to be open when a quorum of the public body is present. <i>International Ass'n of Firefighters, Local 2479 v. Thorpe</i>, 632 P.2d 408 (Okla. 1981)</p> |

| STATE | STATUTORY TEXT | EXPLANATION |
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| Oregon | Or. Rev. Stat. Ann. § 192.660 (West): (3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640. | Open unless both sides ask it to be closed. |
| Pennsylvania | 65 Pa. Stat. and Cons. Stat. Ann. § 708 (West): (a) Purpose.--An agency may hold an executive session for one or more of the following reasons: (2) 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. | Negotiations may be held in executive session |
| Rhode Island | 42 R.I. Gen. Laws Ann. § 42-46-5 (West): (a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one or more of the following purposes: (2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation. | Strategy sessions may be held in executive session. Statute unclear at to negotiations but Atty. Gen. and trial court held negotiations are not a meeting within the meaning of the open meeting law. <i>Dias v. Edwards</i> , No. NC900038, 1990 WL 10000173, at *2 (R.I. Super. Mar. 26, 1990); <i>In re Portsmouth School Committee</i> , 2004 WL 3557539, at *1 (R.I.A.G. Apr. 30, 2004) |
| South Carolina | No right for public employees to engage in collective bargaining | |

| STATE | STATUTORY TEXT | EXPLANATION |
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| South Dakota | <p>S.D. Codified Laws § 1-25-2: Executive or closed meetings may be held for the sole purposes of:</p> <p>.....</p> <p>(4) Preparing for contract negotiations or negotiating with employees or employee representatives;</p> | <p>Negotiations may be held in executive session.</p> |
| Tennessee | <p>Tenn. Code Ann. § 8-44-201 (West): (a) Notwithstanding any other Tennessee law to the contrary, labor negotiations between representatives of public employee unions or associations and representatives of a state or local governmental entity shall be open to the public, whether or not the negotiations by the state or local governmental entity are under the direction of the legislative, executive or judicial branch of government.</p> | <p>Open.</p> |
| Texas | <p>Only fire and police allowed to collectively bargain, and only if the municipality allows it by referendum vote. Tex. Loc. Gov't Code Ann. § 174.051 <i>et seq.</i></p> <p>Tex. Loc. Gov't Code Ann. § 174.108 (West): 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.</p> | <p>Open.</p> |
| Utah | <p>Only firefighters may collectively bargain. Utah Code Ann. § 34-20a-1 <i>et seq.</i></p> <p>Utah Code Ann. § 52-4-205 (West): (1) A closed meeting described under Section 52-4-204 may only be held for: (b) strategy sessions to discuss collective bargaining;</p> | <p>Strategy session may be held in executive session.</p> <p>Unclear as to negotiations.</p> |

| STATE | STATUTORY TEXT | EXPLANATION |
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| Virginia | Public sector bargaining is prohibited. Va. Code Ann. § 40.1-57.2 (West) | N/A |
| Washington | <p>Wash. Rev. Code Ann. § 42.30.140 (West): Chapter 42 (Open Meeting Law) does not apply to:</p> <p>.....</p> <p>4)(a) Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.</p> | Open meeting law does not apply. |
| West Virginia | No public employee collective bargaining statute. | N/A |
| Wisconsin | <p>Wis. Stat. Ann. § 19.82 (West): (1) “Governmental body” means a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long-term care district under s. 46.2895; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV, or V of ch. 111.</p> | Open meeting law does not apply. |

| STATE | STATUTORY TEXT | EXPLANATION |
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| Wyoming | <p>Only firefighters may collectively bargain. Wyo. Stat. Ann. § 27-10-101 et seq.</p> <p>Wyo. Stat. Ann. § 16-4-405 (West): (a) A governing body of an agency may hold executive sessions not open to the public: (x) To consider accepting or tendering offers concerning wages, salaries, benefits and terms of employment during all negotiations;</p> | Unclear and no guidance from the courts. |