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COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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LINCOLN COUNTY,  
Appellant,

v.

TEAMSTERS LOCAL 690,  
Respondent/Cross-Appellant

And

PUBLIC EMPLOYEES RELATIONS COMMISSION,  
Respondent.

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APPEAL FROM THE SUPERIOR COURT  
OF SPOKANE COUNTY

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**BRIEF OF AMICUS CURIAE  
SPOKANE COUNTY**

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## **I. INTEREST OF AMICUS CURIAE**

Spokane County has passed a similar resolution that states it is the policy of Spokane County to have labor negotiations conducted in public, entitled, “In the Matter of Improving Transparency by Negotiating Collective Bargaining Agreements in a Manner Open to the Public.” CP 909-10.

## **II. ISSUE PRESENTED**

Whether, given Washington State’s strong, historical interest in open, transparent government, public policy allows a legislative authority to require labor negotiations be conducted in public in order to protect those interests?

## **III. STATEMENT OF THE CASE**

The facts of this case are discussed in detail in the briefs of the parties. Lincoln County passed Resolution 16-22, entitled “Improving Transparency by Negotiating Collective Bargaining Contracts in a Manner Open to the Public.” AR 560-61. The Teamsters union demanded that Lincoln County rescind the Resolution, which Lincoln County declined to do. AR 708-10. Eventually, during subsequent contract negotiations, the issue came to a head, with the Teamsters asking to bargain in private, and Lincoln County asking that bargaining take place in public. AR 728;

Lincoln County Decision 12844 (PECB, 2018), Finding of Fact No. 11; AR at 260.

Lincoln County filed a ULP against the Teamsters. AR 1122-24. The Teamsters filed a ULP against Lincoln County. AR 1097. PERC concluded both sides committed ULP's. See Lincoln County (Teamsters Local 690), Decision 12844 (PECB, 2018); AR at 260-61. Both sides appealed to the PERC Board, with the PERC Board finding both sides committed ULP's. Lincoln County (Teamsters Local 690), Decision 12844-4\_A (PECB, 2018); AR at 8. Both parties appealed this decision to Superior Court, which upheld the PERC Board. CP at 1052-57. Both parties then appealed the Superior Court decision. CP 1058, 1061, 1073.

#### **IV. ARGUMENT**

##### **Summary**

A local legislative authority has the authority, given its responsibility to manage the public's funds and business, to require that labor negotiations be held in public. The nationwide trend is towards allowing open, transparent negotiations and it is based on sound public policy – allowing the public to see how their tax dollars are spent on what is most often one of the single most expensive parts of local government, personnel costs.

**A. WASHINGTON STATE’S STRONG, HISTORICAL INTEREST IN OPEN GOVERNMENT ALLOWS A LEGISLATIVE AUTHORITY TO REQUIRE LABOR NEGOTIATIONS TO BE CONDUCTED IN PUBLIC IN ORDER TO PROTECT THOSE INTERESTS**

The Open Public Meetings Act (“OPMA”) has been a central tenet of Washington State government for nearly fifty years. It applies to state and local government agencies. Wash. Att’y Gen. Op. 1971 NO. 33 (1971). The legislative declaration, contained in RCW 42.30.010, neatly sums up its purpose. It states:

The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people’s business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

The legislature enacted the OPMA as part of a nationwide effort to make government affairs more accessible and transparent. LAWS OF 1971, 1st Ex. Sess., ch. 250. This is “some of the strongest language used in any legislation.” *Equitable Shipyards, Inc. v. State By & Through Dep’t of Transp.*, 93 Wn.2d 465, 482, 611 P.2d 396 (1980).

RCW 42.30.030 further emphasizes the importance of transparent government by stating “[a]ll meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.”

As stated in *Miller v. City of Tacoma*, 138 Wn.2d 318, 324, 979 P.2d 429 (1999), the OPMA is Washington’s comprehensive transparency statute. Enacted in 1971, the Act seeks “to ensure public bodies make decisions openly.” “[T]he purpose of the Act is to allow the public to view the decision-making process at all stages.” *Cathcart v. Andersen*, 85 Wn.2d 102, 107, 530 P.2d 313 (1975). In order to ensure this oversight of government entities, the OPMA requires that “[a]ll meetings ... be open and public.” RCW 42.30.030. This general rule is subject to a series of exceptions. RCW 42.30.110.” *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 434, 395 P.3d 1031 (2017).

“The OPMA broadly mandates transparency in Washington government. Its protections must be liberally construed and its exceptions narrowly construed.” *Id.* at 421.

The OPMA declares that the governing bodies of “all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public

agencies” are to take their actions and conduct their deliberations openly. RCW 42.30.010, .030. The OPMA’s purpose is to permit the public to observe the steps employed to reach a governmental decision. *Eugster v. City of Spokane*, 128 Wash.App. 1, 7, 114 P.3d 1200 (2005) (citing *Cathcart v. Andersen*, 85 Wash.2d 102, 107, 530 P.2d 313 (1975)), *review denied*, 156 Wash.2d 1014, 132 P.3d 146 (2006). The intended result is to ensure government accountability to the public by demonstrating that publicly funded agencies are functioning as intended. And the OPMA contains the same strongly-worded declaration of public policy as the PRA[.]

*West v. State, Washington Ass’n of Cty. Officials*, 162 Wn. App. 120, 131, 252 P.3d 406 (2011).

The trend is towards greater transparency in labor negotiations.

RCW 42.30.140(4) exempts:

[c]ollective 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.

However, as stated by PERC in this case, in Decision 12844-A-PECB at page 10, “[w]e are aware that open negotiations are becoming more common.” AR at 107. Open bargaining happens in Idaho, Oregon, Florida, Kansas, Minnesota, Montana, Tennessee and Texas. AR 348-94. It

also now takes place in Washington State in Ferry County, AR 208; Pullman School District, AR 335; and Kittitas County, AR 332.

Court decisions have reflected this trend. Over time, courts have expanded what is required to be disclosed despite the exception under RCW 42.30.140(4). For example, in *Am. Civil Liberties Union of Washington v. City of Seattle*, 121 Wn. App. 544, 557, 89 P.3d 295 (2004), the court stated:

Although the Legislatures decision to exempt collective bargaining negotiations from the OPMA suggests the material prepared for those negotiations could be protected from disclosure, absent express language in the statute, we may not so conclude. Because there is no express exemption in the OPMA protecting written collective bargaining materials, we hold they are not protected from disclosure by OPMA as an other statute under the Act.

More recently, in *Columbia Riverkeeper*, 188 Wn.2d 421, in a discussion on the “minimum price” exception for executive sessions, the court said it was “not permitted to frustrate these goals of transparency and popular sovereignty by approving expansive discussion in executive session of matters squarely in the public interest.” *Id.* at 438-39.

And even more recently, in *Serv. Employees Int’l Union Local 925 v. Univ. of Washington*, 193 Wn.2d 860, 447 P.3d 534, 537-38 (2019), the court found that emails relating to union organizing efforts were disclosable under the Public Records act, stating “[c]onsistent with the PRA’s strongly

worded mandate for broad disclosure of public records, we construe the statute's disclosure requirements liberally and its exemptions narrowly.”

(Internal quotation marks omitted.)

**B. THE LEGISLATIVE AUTHORITY HAS THE RESPONSIBILITY TO BOTH MANAGE PUBLIC FUNDS AND MANAGE COUNTY BUSINESS**

Pursuant to RCW 36.32.120(6), the legislative authority of the county is responsible for the “care of the county property and the management of the county funds and business.” Management is defined as the “judicious use of means to accomplish an end.” THE MERIAM WEBSTER DICTIONARY 434 (2016). By requiring labor negotiations to be conducted openly, the local legislative authority is complying with its state mandated authority to responsibly manage public funds. Having open labor negotiations is a judicious use of the local legislative authority's resources. It is a means to an end: shining light on one of the single largest expenses of government – personnel costs. RCW 36.32.120(6), a state statute, squarely gives the local legislative authority both the authority, and the responsibility, to decide how all of its *public* monies are spent.

The statute also gives the local legislative authority the responsibility to manage the *public's* business. Part of the *public's* business, and certainly part of a local legislative authority's management responsibilities, is engaging in labor negotiations. By requiring labor

negotiations to be conducted in public, the local legislative authority is again simply exercising its state mandated authority to responsibly manage the public's business. It comports with the central tenet of the OPMA that "[i]t is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly." RCW 42.30.010.

How is RCW 36.32.120(6) reconciled with the OPMA exception for labor negotiations under RCW 42.30.140.

RCW 42.30.140 states:

If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control: PROVIDED, That this chapter shall not apply to:

- (1) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary; or
- (2) That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group; or
- (3) Matters governed by chapter 34.05 RCW, the Administrative Procedure Act; or
- (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.

This statutory provision, specifically RCW 42.30.140(4), allows labor negotiations to be exempted from the requirements of the OPMA. However, it does not mandate it. It is still the local legislative authority's responsibility to manage the public's funds and business. Requiring transparent labor negotiations is within the local legislative authority's purview in its management role of public funds. Therefore, RCW 36.32.120(6) is easily reconciled with RCW 42.30.140.

Additionally, “[t]he meetings described in RCW 42.30.140 are not governed by the Open Public Meetings Act. They may, nevertheless, be open to the public based on the requirement of some other state statute or county ordinance or on a voluntary basis by the entity conducting the meeting.” Wash. Att’y Gen. Op. 1998 NO. 15 at \*8 (1998).

“Although not controlling, Attorney General opinions are given ‘considerable weight.’” *Bates v. City of Richland*, 112 Wn. App. 919, 933, 51 P.3d 816 (2002) (quoting *Everett Concrete Products, Inc. v. Dep’t of Labor & Indus.*, 109 Wn.2d 819, 828, 748 P.2d 1112 (1988)).

Here, a resolution was passed by the local legislative authority, Lincoln County, requiring labor negotiations to be conducted openly, in the interests of transparency, so taxpayers could see both how government works and how their tax dollars are spent. A resolution ordinarily has the same effect as an ordinance except in matters of legislation. *Ehrhardt v. City of Seattle*, 33 Wash. 664, 669, 74 P. 827 (1903); *State v. Superior Court of Pierce Cty.*, 44 Wash. 476, 87 P. 521 (1906); *Steenerson v. Fontaine*, 106 Minn. 225, 119 N.W. 400 (1908); *City of Crawfordsville v. Braden*, 130 Ind. 149, 28 N.E. 849 (1891); *McGavock v. City of Omaha*, 40 Neb. 64, 58 N.W. 543, 549 (1894); *Bd. of Educ. of Atchison v. De Kay*, 148 U.S. 591, 13 S. Ct. 706, 37 L. Ed. 573 (1893).

The local legislative authority, under either, or both, RCW 36.32.120(6), or a passed transparency resolution, has the ability to open labor negotiations to the public. Nothing in RCW 42.30.140 prohibits labor negotiations from being conducted in an open, public meeting.

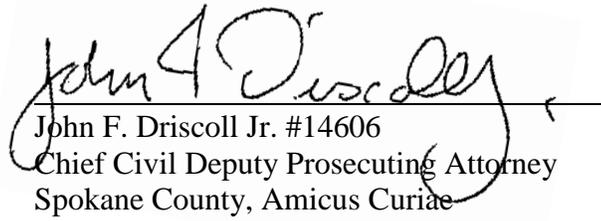
## V. CONCLUSION

Sound public policy, as well as the statutory authority to responsibly manage both public funds and public business, under RCW 36.32.120(6),

allows a local legislative authority to conduct labor negotiations in open, public meetings.

Dated this 12th day of February, 2020.

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A handwritten signature in black ink, reading "John F. Driscoll Jr.", is written over a horizontal line. The signature is cursive and extends above and below the line.

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No. 37054-2-III

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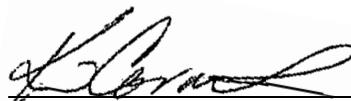
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