

Bill as Introduced

HB 379 - AS INTRODUCED

2009 SESSION

09-0699
01/03

HOUSE BILL

379

AN ACT

exempting certain meetings concerning collective bargaining from the right-to-know law.

SPONSORS:

Rep. Cote, Hills 23; Rep. P. Price, Hills 26; Sen. Lasky, Dist 13

COMMITTEE:

Judiciary

ANALYSIS

This bill allows a public body to go into nonpublic session regarding certain matters relating to collective bargaining by elected officials of a legislative body.

This bill is a request of the city of Nashua.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~(in brackets and struck through.)~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT exempting certain meetings concerning collective bargaining from the right-to-know law.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Subparagraph; Right-to-Know Law; Nonpublic Sessions. Amend RSA 91-A:3, II by
2 inserting after subparagraph (i) the following new subparagraph:

3 (j) Consideration of strategy or negotiations with respect to collective bargaining by
4 elected officials of a legislative body at any time prior to submission of the cost items of a collective
5 bargaining agreement.

6 2 Effective Date. This act shall take effect January 1, 2010.

Amendments

Rep. L. Weber. Ches. 2
September 28, 2009
2009-2390h
01/10

Amendment to HB 379

- 1 Amend the bill by replacing section 2 with the following:
- 2
- 3 2 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

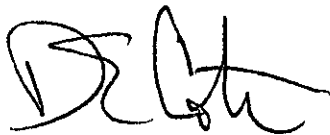
HOUSE COMMITTEE ON JUDICIARY

BILL NUMBER: HB 379

BILL TITLE: exempting certain meetings concerning collective bargaining from the right-to-know law.

DATE: Mar. 17, 2009

THE COMMITTEE HAS VOTED TO RETAIN THIS BILL.



David E. Cote, Chairman

Speakers

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 379

BILL TITLE: exempting certain meetings concerning collective bargaining from the right-to-know law.

DATE: JAN 29, 2009

LOB ROOM: 208 **Time Public Hearing Called to Order:** 2:00p

Time Adjourned: 2:20p

(please circle if present)

Committee Members: Reps. D. Cote, Wall, Potte, Hackel, P. Preston, G. Richardson, L. Weber, B. Browne, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFruscia, W. O'Brien, Hagan, L. Perkins, Silva and W. Smith

Bill Sponsors: Rep. Cote, Hills 23; Rep. P. Price, Hills 26; Sen. Lasky, Dist 13

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. David Cote; sponsor

Introduced bill and deferred questions to Donnalee Lozeau.

Donnalee Lozeau; Mayor of Nashua; Supported

Testimony began with a description of the budgeting process that Nashua follows. In the particular example she used, the teachers' union reached an agreement with the School Board after 4 to 5 years without a contract. The School Board then had to get the approval of the Board of Aldermen, which in turn had to have the approval of the Budget Committee. Because of this three-step process, the teachers' contract had been derailed for many years. It was finally settled, but the manner in which the agreement was reached prompted a suit by the Nashua Telegraph claiming that the Right-to-Know Law had been violated. She wants authority to meet under very limited circumstances with the union representing the teachers, the School Board and the Board of Aldermen at the same location, but not in the same room. In trying to work out a settlement, she would like to be able to have discussions with each group separately. She would also like to withhold the minutes of these meetings until after an agreement is reached, at which time they would become public. She also asked that

the effective date be sooner than January 1, 2010 to allow any new provisions in the law to be utilized in forthcoming contract negotiations.

The Mayor said she would provide a copy of the court order which settled the Nashua Telegraph's suit charging a violation of the Right-to-Know Law.

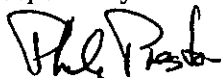
Rep. David Cote; sponsor

In the suit which found that Nashua violated the Right-to-Know Law, the plaintiff did not ask for invalidation of the action taken, but it did ask for legal fees.

Sen. Bette Lasky; co-sponsor

The bill should be written so that it remains within the parameters of the Right-to-Know Law. She also re-emphasized that the Teachers had been without a contract for five years.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Philip Preston". The signature is stylized and cursive.

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 379

BILL TITLE: exempting certain meetings concerning collective bargaining from the right-to-know law.

DATE: Jan 29 '09

LOB ROOM: 208

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Bill Sponsors: Rep. Cote, Hills 23; Rep. P. Price, Hills 26; Sen. Lasky, Dist 13

TESTIMONY

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Rep. Philip Preston, Clerk

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Sub-Committee Actions

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 379

BILL TITLE: exempting certain meetings concerning collective bargaining from the right-to-know law.

DATE: March 5, 2009

Subcommittee Members: Reps. Weber, Hackel, Richardson, DiFruscia, Silva

Comments and Recommendations:

Amendments:

| | |
|---------------|-----------------|
| Sponsor: Rep. | OLS Document #: |
| Sponsor: Rep. | OLS Document #: |
| Sponsor: Rep. | OLS Document #: |

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. RICHARDSON

Seconded by Rep. HACKEL

Vote: 5-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Lucy Weber
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 379

BILL TITLE: exempting certain meetings concerning collective bargaining from the right-to-know law.

DATE: 3/5/09

Subcommittee Members: Reps. Weber, Hachel, Richardson, diFruscia, Silva

Comments and Recommendations:

Amendments:

| | |
|---------------|-----------------|
| Sponsor: Rep. | OLS Document #: |
| Sponsor: Rep. | OLS Document #: |
| Sponsor: Rep. | OLS Document #: |

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Richardson

Seconded by Rep. Hachel

Vote: 5-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. 
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 379

BILL TITLE: exempting certain meetings concerning collective bargaining from the right-to-know law.

DATE: September 15, 2009

Subcommittee Members: Reps. Weber, Hackel, Richardson, DiFruscia, Silva, O'Brien, and Watrous.

Comments and Recommendations:

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Hackel

Seconded by Rep. Richardson

Vote: 4-2

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Lucy Weber
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 379

BILL TITLE: exempting certain meetings concerning collective bargaining from the right-to-know law.

DATE: September 15, 2009

Subcommittee Members: Reps. Weber, Hackel, Richardson, DiFruscia, Silva, O'Brien, and Watrous

Comments and Recommendations:

Amendments:

| | |
|---------------|-----------------|
| Sponsor: Rep. | OLS Document #: |
| Sponsor: Rep. | OLS Document #: |
| Sponsor: Rep. | OLS Document #: |

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Hackel

Seconded by Rep. Richardson

Vote: 4-2

Aye - Hackel, Richardson, Watrous, Weber
Nay - O'Brien, di Fruscia

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Judy Weber
Subcommittee Chairman/~~Clerk~~

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 379

BILL TITLE: exempting certain meetings concerning collective bargaining from the right-to-know law.

DATE: November 17, 2009

Subcommittee Members: Reps. Weber, Hackel, Richardson, DiFruscia, Silva, O'Brien, and Watrous

Comments and Recommendations:

Amendments:

Sponsor: Rep. Weber OLS Document #: 2009 2390h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Hackel

Seconded by Rep. Richardson

Vote: 3-2

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Weber
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 379

BILL TITLE: exempting certain meetings concerning collective bargaining from the right-to-know law.

DATE: November 17, 2009

Subcommittee Members: Reps. Weber, Hackel, Richardson, DiFruscia, Silva, O'Brien, and Watrous

Comments and Recommendations:

Amendments:

| | |
|----------------------------|-------------------------------------|
| Sponsor: Rep. <i>Weber</i> | OLS Document #: <i>2009-2390 h.</i> |
| Sponsor: Rep. | OLS Document #: |
| Sponsor: Rep. | OLS Document #: |

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. *Hackel*
Seconded by Rep. *Richardson*.
Vote: *3-2*.

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.
Seconded by Rep.
Vote:

Respectfully submitted,
Rep. *Weber*
Subcommittee Chairman/Clerk

Rep. L. Weber. Ches. 2
September 28, 2009
2009-2390h
01/10



Amendment to HB 379

- 1 Amend the bill by replacing section 2 with the following:
- 2
- 3 2 Effective Date. This act shall take effect 60 days after its passage.

Testimony

THE STATE OF NEW HAMPSHIRE**HILLSBOROUGH, SS.
SOUTHERN DISTRICT****SUPERIOR COURT
08-E-186**

TELEGRAPH PUBLISHING COMPANY

v.

CITY OF NASHUA & NASHUA SCHOOL DEPARTMENT

ORDER

This is a petition by the publisher of a daily newspaper in Nashua, seeking a determination by the Court that the Nashua Board of Alderman violated RSA 91-A, the so-called Right-to-Know Law, by meeting in closed session with the Nashua Board of Education. Petitioner also seeks an award of attorney's fees for litigating this matter. For the reasons set forth herein, the petition is GRANTED.

The parties appeared with counsel and the hearing proceeded on offers of proof. The parties also submitted affidavits of certain witnesses. The facts and the law appear largely uncontested. The contract between the Nashua Board of Education (BOE) and the Nashua Teacher's Union (Union) expired in 2006. The Union is the collective bargaining unit representing the teachers employed by the School District. The teachers have been working under the terms of the expired 2006 contract while a new contract was being negotiated. The BOE does not have authority to commit city funds to the performance of the contract. This authority rests solely with the BOA, who must approve the financial obligations under the contract. During the course of the negotiations between the BOE and the Union, three tentative agreements had been achieved. However, the cost items in all those agreements were disapproved by the BOA and the Mayor.

After protracted, unsuccessful negotiations, the Union announced its intent to strike on March 31, 2008, if an agreement on a new contract was not achieved by that date. In

an attempt to reach agreement on a contract and avoid a strike, the BOE and the Union engaged a mediator for the purpose of facilitating contract negotiations. A closed negotiating session with the mediator was held on Saturday, March 29, 2008. During and prior to the Saturday negotiating session, the Union informed the BOE that it would not negotiate another tentative agreement that was doomed to be rejected by the BOA and the Mayor. The Union demanded a commitment that if a tentative agreement was reached, it would be approved by the BOA and the Mayor. The BOE could not and did not make such a commitment.

The Union and the BOE agreed to meet for further negotiations with the mediator on Sunday, March 30, 2008. The BOE invited the Mayor and the BOA to a joint session with the BOE on Sunday, March 30, 2008. The avowed purpose of this meeting "was to update the BOA and the Mayor on the status of the negotiations, to discuss in general terms the strategy that the BOE intended to pursue through the remainder of the negotiations, and to get some sense from the BOA and the Mayor whether the BOE's negotiating strategy was one that the BOA and the Mayor could support if it resulted in a tentative agreement with the Union." Affidavit of John "Jack" Kelley, p.2.

At the joint meeting of the BOE and the BOA on Sunday, a quorum of the BOA, including its President, and the Mayor were present. At the request of a member of the BOA, the City attorney rendered a written opinion to the effect that this meeting would be subject to the requirements of RSA 91-A, and that, accordingly, it must be open to the public. Notwithstanding this opinion, the BOA, the Mayor and the BOE announced that under RSA 91-A, this meeting was not open to the public. Reporters, including a reporter for the Nashua Telegraph, and members of the public were not permitted to attend.

The BOA, the BOE, and the Mayor met for approximately 90 minutes. Neither the Union or the mediator were present. The BOA published summary minutes of the meeting

which summarizes the conduct of the meeting, as follows:

Discussion: Board of Education negotiator Tom Flygare reviewed the status of negotiations between the Board of Education and the Nashua Teacher's Union. The current proposals from each side were explained. The Board of Aldermen members asked various questions regarding the impact of these proposals. These questions included what would be needed for the supplemental appropriation, what would be the total cost of the contract, what impact would the contract have on the budget, and how would the contract be funded. These questions were answered by the Board of Education members, Mr. Flygare, Mr. Hottel, and Mr. Mealey.

The Board of Aldermen members were asked what parameters for the contract they might be able to support. Individual Aldermen expressed their opinions regarding this question. This information was requested because the Nashua Teacher's Union had expressed concern that the Union and the Board of Education would reach an agreement, but the Board of Aldermen may reject it. The Board of Education does not want to agree to something the Board of Aldermen cannot support.

A member of the BOA e-mailed the following description of the meeting to The Telegraph:

“. . . we did not dictate any terms. We were briefed on the status of the negotiations. I and other aldermen expressed keeping the budgets under the Spending Cap, with a supplemental appropriation under the cap this year and school budgets under the cap over the life of the contract. We expressed keeping to a mayoral policy for every union, namely no increase in the first year of the contract. Every aldermen [sic] expressed an opinion; a consensus of overall objectives was evident, but no specific terms were set.”

“All public proceedings shall be open to the public, and all persons shall be permitted to attend any meetings of those bodies or agencies.” RSA 91-A:2 II. “A meeting shall mean the convening of a quorum of the membership of a public body,” to discuss or act upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power.” RSA 91-A:2 I. A public body “includes” any board, commission, agency or authority, of any . . . municipal corporation.” RSA 91-A:1 I (d). A

"meeting" does not include, "strategy or negotiations with respect to collective bargaining." RSA 91-A:2 I (b). The petitioner claims that the meeting on Sunday, between the BOA and the BOE was a public proceeding, open to the public under RSA 91-A:2 II. The City and School Department argue that the meeting was not a public proceeding because it was specifically excluded from the statutory definition of "meeting" or "public proceeding" under the statute because it was simply "strategy or negotiations with respect to collective bargaining."

"To advance the purposes of the Right-to-Know Law [the court] construes provisions favoring disclosure broadly and exemptions narrowly." Lamy v. N.H. Pub. Utils. Comm'n, 152 N.H. 106, 108 (2005). "The party seeking non-disclosure has the burden of proof." N.H. Civil Liberties Union v. City of Manchester, 149 N.H. 437, 439 (2003). The court finds that the Respondents have failed to sustain their burden of proof that the meeting of the BOE and the BOA was not a public meeting under the Right-to-Know Law.

A quorum of the BOA was present and it met to discuss a matter over which it had supervision, control, jurisdiction, and advisory power. The BOA had no role in negotiating that contract, nor any strategic role in obtaining any particular terms or conditions of the contract. Its only role in the process was to approve or disapprove the financial obligations to be imposed on the City under the contract.

It is clear from the reading of the BOA's "minutes" and the e-mail of the alderman that the sole objective of the BOE in inviting the BOA to this meeting, and the sole objective of the BOA in attending the meeting, was to obtain in advance the BOA's tacit approval of the level of financial obligation that would be acceptable. In essence, this was a meeting

seeking to obtain the clandestine commitment of the BOA to a particular level of funding under the anticipated contract. Such a commitment under the Right-to-Know law must be done in the "light of day" in the public forum.

There are certainly alternative ways to communicate with the BOE regarding the matters of appropriate funding limits as applicable to teacher's union contract. Such effective communication has certainly been accomplished in the past without implicating the Right-to-Know Law. However, to accomplish that goal by means of a quorum of the BOA implicates the Right-to-Know Law and its mandates, which cannot be ignored no matter how well intentioned the BOA might be.

Therefore the court finds that by meeting with the BOE in this non-public session, the BOA has violated the express provisions and requirements of RSA 91-A. The court also finds that this action by the Telegraph was necessary in order to make the information communicated at that meeting available to the public and to ensure that such proceedings are open to the public in the future.

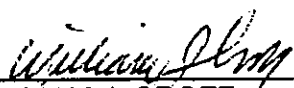
Therefore, the court orders as follows:

1. The BOA shall prepare detailed minutes of the meeting of March 30, 2008 with the BOE and such minutes shall be available for public inspection.
2. The Petitioner is awarded its reasonable attorney's fees incurred in prosecution of this petition.

So ordered.

April 29, 2008

WJG/tm


WILLIAM J. GROFF
Presiding Justice



OFFICE OF CORPORATION COUNSEL
CITY OF NASHUA

MEMORANDUM

TO: Alderman-at Large David Deane

CC: Mayor DonnaLee Lozeau
Board of Aldermen

FROM: James M. McNamee, Esq., Corporation Counsel

DATE: March 30, 2008

RE: **Board Of Aldermen Attendance At Teacher Negotiation Session**

The board of education and the teachers' union are engaged in mediation attempting to negotiate a successor collective bargaining agreement. The mediator has asked the board of aldermen and the mayor to meet at the mediation site, the Crowne Plaza Hotel, today at 1:00. As reported in today's newspaper, the hope is that the parties can reach a contract agreement before Monday's union-imposed strike deadline. The mediator is quoted as stating "hopefully we will have all the players here that will help us to that end."

You have asked whether the attendance of the board of aldermen today in response to that request is a public meeting under the right to know law, RSA 91-A. The answer is that the proposed gathering would constitute a meeting under that statute if a quorum of the board attends.

RSA 91-A:2 I provides, in part:

I. For the purpose of this section, a "meeting" shall mean the convening of a quorum of the membership of a public body, as provided in RSA 91-A:1-a, to discuss or act upon a matter or matters over which the public body has supervision, control, jurisdiction or advisory power. "Meeting" shall not include:

...

(b) Strategy or negotiations with respect to collective bargaining;

The key elements are:

- presence of a quorum;
- discussion; and
- subject matter over which the body has "supervision, control, jurisdiction or advisory power".

When a majority of aldermen attend a forum on a matter of public interest involving matters in the "supervision, control, jurisdiction or advisory power" of the board, and one or more aldermen participate in discussion, the elements of a "meeting" are fulfilled.

The mayor and board of aldermen have a significant role in approving or rejecting cost items of collective bargaining agreements as the legislative body under RSA 273-A. Appeal of Alton School District, 140 N.H. 303, 311 (1995). Since the purpose of attending the mediation session can only be to discuss those matters, it will certainly constitute a meeting if a quorum of the board is present for the discussion. Further, the exclusion of matters involving "strategy or negotiations with respect to collective bargaining" does not apply because the legislative body does not have a negotiating role in the collective bargaining process. Appeal of Derry Education Association, 138 N.H. 69, 71 (1993). Negotiation of collective bargaining agreements takes place between the union and the public employer. Appeal of Derry Education Association, 138 N.H. at 71; RSA 273-A:3 I.

THE STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS.
SOUTHERN DISTRICT**

**SUPERIOR COURT
08-E-186**

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After protracted, unsuccessful negotiations, the Union announced its intent to strike on March 31, 2008, if an agreement on a new contract was not achieved by that date. In

an attempt to reach agreement on a contract and avoid a strike, the BOE and the Union engaged a mediator for the purpose of facilitating contract negotiations. A closed negotiating session with the mediator was held on Saturday, March 29, 2008. During and prior to the Saturday negotiating session, the Union informed the BOE that it would not negotiate another tentative agreement that was doomed to be rejected by the BOA and the Mayor. The Union demanded a commitment that if a tentative agreement was reached, it would be approved by the BOA and the Mayor. The BOE could not and did not make such a commitment.

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The Board of Aldermen members were asked what parameters for the contract they might be able to support. Individual Aldermen expressed their opinions regarding this question. This information was requested because the Nashua Teacher's Union had expressed concern that the Union and the Board of Education would reach an agreement, but the Board of Aldermen may reject it. The Board of Education does not want to agree to something the Board of Aldermen cannot support.

A member of the BOA e-mailed the following description of the meeting to The Telegraph:

"... we did not dictate any terms. We were briefed on the status of the negotiations. I and other aldermen expressed keeping the budgets under the Spending Cap, with a supplemental appropriation under the cap this year and school budgets under the cap over the life of the contract. We expressed keeping to a mayoral policy for every union, namely no increase in the first year of the contract. Every aldermen [sic] expressed an opinion; a consensus of overall objectives was evident, but no specific terms were set."

"All public proceedings shall be open to the public, and all persons shall be permitted to attend any meetings of those bodies or agencies." RSA 91-A:2 II. "A meeting shall mean the convening of a quorum of the membership of a public body," to discuss or act upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power." RSA 91-A:2 I. A public body "includes" any board, commission, agency or authority, of any . . . municipal corporation." RSA 91-A:1 I (d). A

"meeting" does not include, "strategy or negotiations with respect to collective bargaining." RSA 91-A:2 I (b). The petitioner claims that the meeting on Sunday, between the BOA and the BOE was a public proceeding, open to the public under RSA 91-A:2 II. The City and School Department argue that the meeting was not a public proceeding because it was specifically excluded from the statutory definition of "meeting" or "public proceeding" under the statute because it was simply "strategy or negotiations with respect to collective bargaining."

"To advance the purposes of the Right-to-Know Law [the court] construes provisions favoring disclosure broadly and exemptions narrowly." Lamy v. N.H. Pub. Utils. Comm'n, 152 N.H. 106, 108 (2005). "The party seeking non-disclosure has the burden of proof." N.H. Civil Liberties Union v. City of Manchester, 149 N.H. 437, 439 (2003). The court finds that the Respondents have failed to sustain their burden of proof that the meeting of the BOE and the BOA was not a public meeting under the Right-to-Know Law.

A quorum of the BOA was present and it met to discuss a matter over which it had supervision, control, jurisdiction, and advisory power. The BOA had no role in negotiating that contract, nor any strategic role in obtaining any particular terms or conditions of the contract. Its only role in the process was to approve or disapprove the financial obligations to be imposed on the City under the contract.

It is clear from the reading of the BOA's "minutes" and the e-mail of the alderman that the sole objective of the BOE in inviting the BOA to this meeting, and the sole objective of the BOA in attending the meeting, was to obtain in advance the BOA's tacit approval of the level of financial obligation that would be acceptable. In essence, this was a meeting

seeking to obtain the clandestine commitment of the BOA to a particular level of funding under the anticipated contract. Such a commitment under the Right-to-Know law must be done in the "light of day" in the public forum.

There are certainly alternative ways to communicate with the BOE regarding the matters of appropriate funding limits as applicable to teacher's union contract. Such effective communication has certainly been accomplished in the past without implicating the Right-to-Know Law. However, to accomplish that goal by means of a quorum of the BOA implicates the Right-to-Know Law and its mandates, which cannot be ignored no matter how well intentioned the BOA might be.

Therefore the court finds that by meeting with the BOE in this non-public session, the BOA has violated the express provisions and requirements of RSA 91-A. The court also finds that this action by the Telegraph was necessary in order to make the information communicated at that meeting available to the public and to ensure that such proceedings are open to the public in the future.

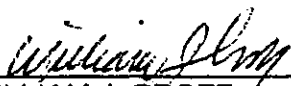
Therefore, the court orders as follows:

1. The BOA shall prepare detailed minutes of the meeting of March 30, 2008 with the BOE and such minutes shall be available for public inspection.
2. The Petitioner is awarded its reasonable attorney's fees incurred in prosecution of this petition.

So ordered.

April 29, 2008

WJG/tm


WILLIAM J. GROFF
Presiding Justice

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 379

BILL TITLE: exempting certain meetings concerning collective bargaining from the right-to-know law.

DATE: MAR 17, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study, RETAIN

Moved by Rep. WEBER

Seconded by Rep. THOMPSON

Vote: 20-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

~~REGULAR or CONSENT CALENDAR~~

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 379

BILL TITLE: exempting certain meetings concerning collective bargaining from the right-to-know law.

DATE: MAR 17, 2009

LOB ROOM: 208

Amendments:

| | |
|---------------|-----------------|
| Sponsor: Rep. | OLS Document #: |
| Sponsor: Rep. | OLS Document #: |
| Sponsor: Rep. | OLS Document #: |

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Retain

Moved by Rep. Weber

Seconded by Rep. Thompson

Vote: 20/0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

~~REGULAR or CONSENT CALENDAR~~ (Please circle one)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,


Rep. Philip Preston, Clerk

JUDICIARY

Bill #: HB 379 Title: Exempting certain meetings concerning collective bargaining from the right-to-know law.
 PH Date: 1/29/09 Exec Session Date: 3/17/09

Motion: ITL Amendment #: _____

| MEMBER | YEAS | NAYS |
|---------------------------|------|------|
| Cote, David E, Chairman | ✓ | |
| Wall, Janet G, V Chairman | ✓ | |
| Potter, Frances D | ✓ | |
| Hackel, Paul L | ✓ | |
| Preston, Philip, Clerk | ✓ | |
| Richardson, Gary B | ✓ | |
| Weber, Lucy M | ✓ | |
| Browne, Brendon S | ✓ | |
| Nixon, David L | ✓ | |
| Thompson, Robert B | ✓ | |
| Watrous, Rick H | ✓ | |
| Rowe, Robert H | ✓ | |
| Elliott, Nancy J | ✓ | |
| DiFruscia, Anthony R | ✓ | |
| Mead, Robert D | ✓ | |
| O'Brien, William L | ✓ | |
| Hagan, Joseph M | ✓ | |
| Perkins, Lawrence B | ✓ | |
| Silva, Peter L | ✓ | |
| Smith, William B | ✓ | |

TOTAL VOTE: 20
 Printed: 2/11/2009

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 379

BILL TITLE: exempting certain meetings concerning collective bargaining from the right-to-know law.

DATE: November 17, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep. Weber OLS Document #: 2009 2390h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP OTP/A ITL, Interim Study (Please circle one.)

Moved by Rep. Weber

Seconded by Rep. Hackel

Vote: 11-8 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 379

BILL TITLE: exempting certain meetings concerning collective bargaining from the right-to-know law.

DATE: November 17, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep. Weber, Hackel OLS Document #: 2009-2390h adopted by voice
Sponsor: Rep. ~~Webster~~ OLS Document #:
Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Weber

Seconded by Rep. Hackel

Vote: 11/8 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

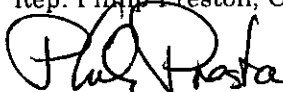
CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk



JUDICIARY

Bill #: HB 379 Title: exemption certain meetings re collective...

PH Date: / /

Exec Session Date: 11 / 17 / 09

Motion: OTP/A

Amendment #: 2009-2390h

| MEMBER | YEAS | NAYS |
|---|--------------|--------------|
| Cote, David E, Chairman | Y | |
| Wall, Janet G, V. Chairman | Y | |
| Potter, Frances D | Y | |
| Hackel, Paul L | Y | |
| Preston, Philip, Clerk | Y | |
| Richardson, Gary B | Y | |
| Weber, Lucy M | Y | |
| Browne, Brendon S | Y | |
| Nixon, David L | Y | N |
| Thompson, Robert B | Y | |
| Watrous, Rick H | Y | |
| Rowe, Robert H | | N |
| Elliott, Nancy J | | N |
| DiFruscia, Anthony R <i>abs</i> | | |
| Mead, Robert D | | N |
| O'Brien, William L | | N |
| Hagan, Joseph M | | N |
| Perkins, Lawrence B | Y | N |
| Silva, Peter L | | N |
| Walters, David <i>Bates, David</i> | | N |

TOTAL VOTE:

Printed: 2/11/2009

11

8

Committee Report

REGULAR CALENDAR

November 20, 2009

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on JUDICIARY to which
was referred HB379,**

**AN ACT exempting certain meetings concerning
collective bargaining from the right-to-know law.**

**Having considered the same, report the same with the
following amendment, and the recommendation that
the bill OUGHT TO PASS WITH AMENDMENT.**

Rep. Lucy M Weber

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee: **JUDICIARY**
Bill Number: **HB379**
Title: **exempting certain meetings concerning
collective bargaining from the right-to-know
law.**
Date: **November 20, 2009**
Consent Calendar: **NO**
Recommendation: **OUGHT TO PASS WITH AMENDMENT**

STATEMENT OF INTENT

This bill addresses a situation which occurred in Nashua, and which has the potential of occurring in other municipalities. The School Board would negotiate a new contract with the teachers. The contract would then have to go to the Board of Alderman to approve the actual funding. The problem occurred when the Board of Aldermen refused to approve funding. After several failed attempts to achieve a contract, the Mayor met with School Board negotiators and members of the Board of Aldermen to request guidance as to what level of funding the Board of Aldermen would approve. This meeting was subsequently held to have violated the public meeting requirement of the right-to-know law. Strategy or negotiations with respect to collective bargaining have long been an exception to the definition of a meeting. These sessions may be held with no notice at all to the public. It was the combination of the employer board with the legislative body which was not directly engaged in collective bargaining which violated the current law. The current bill would allow non-public consultation with the officials of the legislative body at any time prior to the submission of the cost items. By designating this type of meeting as a non-public session, the bill would require that the public has notice that this meeting is occurring, but allows the two boards to meet together to discuss strategy without revealing their bargaining position. The majority of the committee was persuaded that this struck an appropriate balance between the public's right to know and the need for confidentiality during the conduct of negotiations. The amendment simply changes the effective date.

Vote 11-8

Original: House Clerk
Cc: Committee Bill File

Rep. Lucy M Weber
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

HB379, exempting certain meetings concerning collective bargaining from the right-to-know law.
OUGHT TO PASS WITH AMENDMENT.

Rep. Lucy M Weber for the **Majority** of JUDICIARY. This bill addresses a situation which occurred in Nashua, and which has the potential of occurring in other municipalities. The School Board would negotiate a new contract with the teachers. The contract would then have to go to the Board of Alderman to approve the actual funding. The problem occurred when the Board of Aldermen refused to approve funding. After several failed attempts to achieve a contract, the Mayor met with School Board negotiators and members of the Board of Aldermen to request guidance as to what level of funding the Board of Aldermen would approve. This meeting was subsequently held to have violated the public meeting requirement of the right-to-know law. Strategy or negotiations with respect to collective bargaining have long been an exception to the definition of a meeting. These sessions may be held with no notice at all to the public. It was the combination of the employer board with the legislative body which was not directly engaged in collective bargaining which violated the current law. The current bill would allow non-public consultation with the officials of the legislative body at any time prior to the submission of the cost items. By designating this type of meeting as a non-public session, the bill would require that the public has notice that this meeting is occurring, but allows the two boards to meet together to discuss strategy without revealing their bargaining position. The majority of the committee was persuaded that this struck an appropriate balance between the public's right to know and the need for confidentiality during the conduct of negotiations. The amendment simply changes the effective date. **Vote 11-8.**

Original: House Clerk

Cc: Committee Bill File

Ebbs, Heather

From: David E. Cote [davidecote@comcast.net]
Sent: Wednesday, November 18, 2009 10:57 AM
To: Weber, Lucy
Cc: Ebbs, Heather
Subject: Re: Revised 379 blurb. APPROVED

Success. Heather, this is perfect as it is; I will paste it below:

Judiciary Committee
17 November 2009

HB 379—exempting certain meetings concerning collective bargaining from the right-to-law.

Vote: OTP/A 2009-2390h 11-8 Regular Calendar

Rep. Lucy McVitty Weber for Judiciary:

This bill addresses a situation which occurred in Nashua, and which has the potential of occurring in other municipalities. The School Board would negotiate a new contract with the teachers. The contract would then have to go to the Board of Alderman to approve the actual funding. The problem occurred when the Board of Aldermen refused to approve funding. After several failed attempts to achieve a contract, the Mayor met with School Board negotiators and members of the Board of Aldermen to request guidance as to what level of funding the Board of Aldermen would approve. This meeting was subsequently held to have violated the public meeting requirement of the right-to-know law. Strategy or negotiations with respect to collective bargaining have long been an exception to the definition of a meeting. These sessions may be held with no notice at all to the public. It was the combination of the employer board with the legislative body which was not directly engaged in collective bargaining which violated the current law. The current bill would allow non-public consultation with the officials of the legislative body at any time prior to the submission of the cost items. By designating this type of meeting as a non-public session, the bill would require that the public has notice that this meeting is occurring, but allows the two boards to meet together to discuss strategy without revealing their bargaining position. The majority of the committee was persuaded that this struck an appropriate balance between the public's right to know and the need for confidentiality during the conduct of negotiations. The amendment simply changes the effective date.

REGULAR CALENDAR

November 20, 2009

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on JUDICIARY to which
was referred HB379,**

**AN ACT exempting certain meetings concerning
collective bargaining from the right-to-know law.**

**Having considered the same, and being unable to agree
with the Majority, report with the following Resolution:**

RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. William L O'Brien

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee: **JUDICIARY**
Bill Number: **HB379**
Title: **exempting certain meetings concerning
collective bargaining from the right-to-know
law.**
Date: **November 20, 2009**
Consent Calendar: **NO**
Recommendation: **INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

Within the first several passages of the New Hampshire Constitution and prominently placed in its Bill of Rights is the fundamental right of New Hampshire citizens to have a "[g]overnment ... [that] should be open, accessible, accountable and responsive." NH CONST. Part 1, Art. 8. "To that end," this Constitutional passage continues, "the public's right of access to governmental proceedings and records shall not be unreasonably restricted." By responding to an episode unique to a single municipality, extending the confidentiality of collective bargaining negotiations beyond the negotiating public body, and allowing, without a compelling record, for additional government operations to be made secret and government records to become classified documents, HB 379 unreasonably restricts this essential right. Representative government withers when conducted behind closed doors, outside of public scrutiny, and insulated from community comment. It no longer is a government of the people, by the people, for the people; instead it is a government by the select few over their subjects. HB 379 unnecessarily moves us in that direction and should be rejected.

Rep. William L O'Brien
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

HB379, exempting certain meetings concerning collective bargaining from the right-to-know law.
INEXPEDIENT TO LEGISLATE.

Rep. William L O'Brien for the **Minority** of JUDICIARY. Within the first several passages of the New Hampshire Constitution and prominently placed in its Bill of Rights is the fundamental right of New Hampshire citizens to have a "[g]overnment ... [that] should be open, accessible, accountable and responsive." NH CONST. Part 1, Art. 8. "To that end," this Constitutional passage continues, "the public's right of access to governmental proceedings and records shall not be unreasonably restricted." By responding to an episode unique to a single municipality, extending the confidentiality of collective bargaining negotiations beyond the negotiating public body, and allowing, without a compelling record, for additional government operations to be made secret and government records to become classified documents, HB 379 unreasonably restricts this essential right. Representative government withers when conducted behind closed doors, outside of public scrutiny, and insulated from community comment. It no longer is a government of the people, by the people, for the people; instead it is a government by the select few over their subjects. HB 379 unnecessarily moves us in that direction and should be rejected.

Original: House Clerk

Cc: Committee Bill File

Minority Report on HB 379

Within the first several passages of the New Hampshire Constitution and prominently placed in its Bill of Rights is the fundamental right of New Hampshire citizens to have a “[g]overnment ... [that] *should be open, accessible, accountable and responsive.*” NH CONST. Part 1, Art. 8. “*To that end,*” this Constitutional passage continues, “*the public's right of access to governmental proceedings and records shall not be unreasonably restricted.*” By responding to an episode unique to a single municipality, extending the confidentiality of collective bargaining negotiations beyond the negotiating public body, and allowing, without a compelling record, for additional government operations to be made secret and government records to become classified documents, HB 379 unreasonably restricts this essential right. Representative government withers when conducted behind closed doors, outside of public scrutiny, and insulated from community comment. It no longer is a government of the people, by the people, for the people; instead it is a government by the select few over their subjects. HB 379 unnecessarily moves us in that direction and should be rejected.

Rep. William O'Brien