

## ASSEMBLY THIRD READING

AB 1564 (Ahrens)

As Amended May 18, 2026

Majority vote

**SUMMARY**

Prohibits a public employer from questioning an employee or employee representative regarding communications between the employee and employee representative, among other provisions.

**Major Provisions**

- 1) Prohibit a public employer from questioning any employee, a representative of a recognized employee organization or an exclusive representative regarding communications made in confidence between a public employee and the representative in connection with representation relating to any matter within the scope of the recognized employee organization's representation.
- 2) Establish that its provisions are intended to be consistent, and not in conflict, with *William S. Hart Union High School District* (2018), Public Employment Relations Board (PERB) Decision No. 2595.
- 3) Prohibit a public employer from compelling confidential communication disclosures to a third party relating to any matter within the scope of representation of the recognized employee organization's representation.
- 4) Do not apply to criminal investigation, and does not supersede existing law relating to investigations and interrogations of public safety officers.

**COMMENTS***A Core Function of Employee Organizations: Protecting Employee Rights Through Representation*

The communications that this bill seeks to protect occur, primarily, when an employee is filing a grievance or facing an adverse action against their employer. In these cases, the [labor organization] agent's role in representing an employee reflects one of the core functions of the labor organization [and of organized labor, as a whole] representing an employee in a dispute with their employer [...]. Should employees begin to question the confidentiality of their communications with [labor organization] agents, such fears would not only undermine the core functions of the [organization], but may provide a chilling effect with regards to employees coming forward with claims of sexual harassment, civil rights violations, or other instances of workplace misconduct.

Questioning a union agent about whether (or what) represented employees had communicated to the agent interferes with an employee's right to serve as a union agent and employee rights to confer with their union agent. A public employer's legitimate investigation into alleged wrongdoing cannot include quizzing a union agent (or employee) about the substance of their communication; thereby, deputizing the employee organization as the employer's agent for conducting disciplinary investigations.

*Should This Bill Advance and Be Enacted, California Would Not Be the First State To Do So*

Although this bill does not propose to establish a *per se* explicit communications evidentiary privilege similar to those that exist for the respective lawyer-client, physician-patient, psychotherapist-patient, sexual assault counselor-victim, domestic violence counselor-victim, and clergy-penitent relationships, other states, either by statute or court ruling, have effectuated a privilege for certain communications between a labor organization agent and a represented employee.

For example, in 2012, the Alaska Supreme Court recognized that a privilege between union agents and employees, similar to that between lawyers and their clients, was necessary to encourage employees to "communicate fully and frankly" with their union agents. (*Peterson v. State* (2012) 280 P. 3d. 559, 565.) The court noted that to force disclosure of such communication, particularly in the context of grievance discussions, would have a chilling effect on the employee's willingness to come forward and speak candidly with their agents. (*Peterson, id.*, at p. 563; pp. 565-567.) For the same reasons, Illinois and Maryland codified the privilege between employees and their union representatives. In Maryland, labor organizations and agents of labor organizations cannot be compelled to disclose the information that is given to them by an employee so long as that information relates to an employee grievance. (Section 9-124, Maryland Courts and Judicial Proceedings Code.) The Illinois provision extends even greater protection to the union agent and employee privilege. Under Illinois state law, the privilege between the union agent and employee extends to both civil and criminal proceedings...." (735, Illinois Compiled Statutes, 5/8-803.5) And, in Washington, an employee-union communications privilege from examination and disclosure exists.

*Related PERB Decisions*

In *California School Employees Assn. v. William S. Hart Union High School District* (2018), which is incorporated in this bill, the Administrative Law Judge found that an employer interfered with employee and union rights by asking a union steward about complaints received from bargaining unit members about another unit member. (PERB Decision No. 2595, *id.*)

In that case, and recall from earlier that the National Labor Relations Act (NLRA) and decisions of the National Labor Relations Board (NLRB) often provide persuasive precedent in interpreting state collective bargaining law, the PERB cited another one of its decisions where it stated that, "[it] is [...] beyond dispute that an employer's inquiries into discussions between employees and their union representatives have a tendency to chill the protected activities of both the employees and the representatives." (*County of Merced* (2014) PERB Decision No. 2361-M, pp. 7-8, 10.) Further, citing *Cook Paint & Varnish Co.* (1981) 258 NLRB 1230, 1232, the PERB's decision in *County of Merced, id.*, states, "[...] as the NLRB has explained, allowing an employer to compel disclosure of the substance of conversations between an employee and [their] union steward 'manifestly restrains employees in their willingness to candidly discuss matters with their chosen, statutory representatives,' and inhibit[s] stewards in obtaining the needed information from employees. Such conduct also interferes with protected rights more generally, because it 'cast(s) a chilling effect over all of [the] employees and their stewards who seek to candidly communicate with each other over matters' concerning their employment." (*Cook Paint.*)

It is further noted that the aforementioned PERB decisions are not solely those where it has similarly decided. For example, it adopted a three-part test of the NLRB for determining when

an employer's questions of an employee or union representative during a deposition interfere with protected labor rights of public employees (*Victor Valley Union High School District* (2022), PERB Decision No. 2822), and regarding certain safeguards when interviewing an employee in preparation for an arbitration hearing. (*City of Commerce* (2018) PERB Decision No. 2602, citing, *inter alia*, *Johnnie's Poultry Company* (1964) 146 NLRB 770, enf. den. (8th Cir. 1965) 344 F.2d 617.)

Please refer to the policy committee analysis for a full discussion of this bill.

### **According to the Author**

"Many employees reasonably believe that conversations with their union representatives about workplace issues are private and cannot be disclosed to their employer. However, current law does not expressly prohibit employers from compelling employees or their representatives to reveal those discussions. [This bill] aims to establish a clear standard of protecting confidential communications between employees and their union representatives. Doing so would create a safe and secure environment for employees to openly discuss their workplace rights, concerns, and representation without fear of employer interference."

### **Arguments in Support**

In part, the Peace Officers Research Association states that, "... this bill would recognize the confidentiality of.. [communications between represented employees and their union representatives about matters within the scope of union representation and] preclude public employers from interfering with union representation, which benefits every public sector union and public employee in California. [This bill] would also provide that communications between an employee and their employee representative would not be confidential if the representative was a witness or party to any of the events forming the basis of a potential administrative disciplinary or criminal investigation. This exception is limited to disciplinary investigations and criminal investigations and is consistent with the peace officer and firefighter bill of rights. This exception does not apply to representation in grievances and unfair practice cases. The bill does not create a privilege equal to attorney/client or doctor/patient privileges. No privilege would exist in a civil or criminal proceeding where someone other than the employing agency or its agents sought evidence regarding those communications. For example, if an employee brought a sexual harassment lawsuit, this prohibition against employer interrogations would not prevent the plaintiff from being able to force the union representative to testify to their communications. The bill also does not preclude public employers from questioning union representatives about things they personally observed as percipient witnesses when those observations are distinct from confidential communications with union members about union representation and union matters." Further, "[this bill] is modest and balanced. It prevents public agencies from interfering in union representation matters and communications in a host of circumstances, but it does not create a statutory privilege [and...] would merely constitute an unfair labor practice to be adjudicated by PERB."

In support of this bill, the California Association of Highway Patrolmen, the California Association of Psychiatric Technicians, the Orange County Employees Association, and Teamsters California offer similar statements regarding the need to protect union and represented employee communications.

## Arguments in Opposition

A coalition of local government representatives, i.e., cities, counties, special districts, recreation and park districts, rural counties, and urban counties, as well as education employers, i.e., small school districts, the University of California, school business officials, school administrators, and health care districts state, among other things, that prior similar bills have been "unsuccessful" or "vetoed," and this bill is not different. They further state that, "... to conduct proper investigations that uphold the public's trust, protect against the misuse of public funds, and ensure the safety and well-being of both public employees and the public at large, it is critical that a public employer has the ability to interview all individuals with relevant information to ascertain the facts and under the matter fully. This bill would increase costs for [each segment of California government] by creating incomplete investigations, since all appropriate employees with relevant information cannot be questioned." Specifically, as to costs, they state that this bill could lead to "unknown and unbudgeted costs... for dispute resolution, attorney fees," and "could force [public agencies] to, in some cases, update collective bargaining agreements and policies regarding workplace investigations and allowable communications between represented employees and their employer...."

Opponents express concerns that this bill is inconsistent with the PERB's decision in *William S. Hart UHSD, id.*, as that decision engaged in a "circumstantial analysis to determine whether employer questioning related to a disciplinary investigation was prohibited or not, while weighing the employee's and the employer's interests. The bright line standard in the opinion was narrow in scope..., and "this bill goes beyond that, forgoing any circumstantial analysis or weighing of interests, and exceeding the scope of any standards articulated by the decision...." They question "whether evidence exists that the PERB is denying the interests of employees on this issue, raising the question of whether a legislative solution is warranted."

Among other things, they articulate that this bill would create a "de facto prohibition against employers requesting a court to compel disclosure of purportedly confidential communications, which is the same outcome as if the communication was privileged in those circumstances, and this bill endangers workplace safety."

## FISCAL COMMENTS

According to the Assembly Committee on Appropriations, this bill would result in the following:

- 1) One-time costs of an unknown, but significant amount, potentially in the millions of dollars, to public agencies, including the state as an employer, to update collective bargaining agreements and related policies and trainings regarding allowable employer-employee communications, including policies surrounding workplace investigations (General Fund and special fund). For example, the California Community College (CCC) Chancellor's Office estimates one-time costs between \$936,000 and \$1.6 million (costs between \$13,000 and \$22,000 per district) to implement this prohibition across the CCC's 72 districts (Proposition 98 General Fund).
- 2) By limiting the type of information an employer may obtain, this bill may result in public agencies also incurring additional investigation costs to prepare for an administrative or civil proceeding. To the extent this bill's explicit prohibitions result in an increase or decrease in dispute resolution for grievances and litigation of unfair practice charges, public agencies may incur corresponding costs or savings.

- 3) Likely minor and absorbable costs to the PERB, as related grievances and charges are already brought before PERB for evaluation.

## VOTES

### **ASM PUBLIC EMPLOYMENT AND RETIREMENT: 6-0-1**

**YES:** McKinnor, Alanis, Boerner, Garcia, Nguyen, Michelle Rodriguez

**ABS, ABST OR NV:** Lackey

### **ASM APPROPRIATIONS: 11-0-4**

**YES:** Wicks, Aguiar-Curry, Calderon, Caloza, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache

**ABS, ABST OR NV:** Hoover, Dixon, Ta, Tangipa

## UPDATED

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