SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 340 (Ahrens)
Version: March 5, 2025
Hearing Date: July 15, 2025
Fiscal: Yes
Urgency: No
ME

SUBJECT

Employer-employee relations: confidential communications

DIGEST

This bill prohibits a public employer from questioning public employees and employee representatives regarding communications made in confidence between them in connection with representation relating to any matter within the scope of the recognized employee organization's representation. This bill also prohibits a public employer from compelling a public employee and an employee representative from disclosing their communications made in confidence to a third party. These prohibitions do not apply to criminal investigations and do not supersede provisions of law relating to the interrogation procedures of public safety officers under investigation.

EXECUTIVE SUMMARY

The inviolability of the employee-union representative relationship is essential to an employee's representation and to the guarding of an employee's rights to self-organization and collective bargaining. In the context of public employees, the Public Employment Relations Board (PERB) has found that communications between an employee and their employee representative are protected from disclosure to an employer in some circumstances. However, case law and statute so far has not provided an employee and employee representative with an evidentiary privilege, in which the communication cannot be compelled to be disclosed or used as evidence in a court proceeding, for their communications. This bill proposes to prohibit public employers from questioning their employees regarding communications between an employee and an employee representative regarding a matter within the scope of that representation and also prohibits a public employer from compelling a public employee and an employee representative to disclose to a third party, 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. This bill provides an exception to this prohibition that

specifies that such communications are not confidential in a criminal investigation. This bill is sponsored by the Peace Officers' Research Association of California, and is supported by a broad coalition of labor unions, including the California Professional Firefighters. It is opposed by several governmental entities and the California Chamber of Commerce. This bill passed out of the Senate Labor, Public Employment and Retirement Committee on a vote of 4 to 1.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes the Meyers-Milias-Brown Act of 1968 to establish collective bargaining rights for municipal, county, and local special district employers and employees. Provides that public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. (Gov. Code §§ 3500 et seq.)

2) Establishes the Public Employment Relations Board (PERB) and provides it with the powers to: determine and approve appropriate bargaining units; determine whether a particular item is within the scope of representation; arrange for and supervise representation elections by secret ballot; certify the results of elections; establish lists of persons to be available to serve as mediators, arbitrators, or factfinders; establish appropriate procedures for reviewing bargaining unit determinations; conduct studies relating to employer-employee relations; adopt rules and regulations; hold hearings, subpoena witnesses, administer oaths and take testimony or deposition of any person; to investigate unfair practice charges and take any action and make any determinations on such charges; bring an action in court to enforce its orders, rulings, and subpoenas; delegate its powers to any member of the board or person appointed by the board to perform its functions; decide contested matters regarding the certification or decertification of employee organizations; consider and decide issues relating to the rights, privileges, and duties of an employee organization; and to take any other action the board deems necessary to discharge its powers and duties. (Gov. Code § 3540 et seq.)

3) Makes it unlawful for governmental subdivisions, districts, public and quasi-public corporations, public agencies, and every town, city, county, city and county, and municipal corporation from doing any of the following:

    a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise interfere with their exercise of their labor rights;
    b) Deny an employee organization any labor rights;

   c) Refuse or fail to meet and negotiate in good faith with a recognized employee organization;
   d) Dominate or interfere with the formation or administration of an employee organization, contribute financial or other support to any employee organization, or encourage employees to join any organization in preference over another; and
   e) Refuse to participate in good faith in an impasse procedure. (Gov. Code § 3506.5.)
4) Makes it unlawful for the state to do any of the following:
   a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with their exercise of their labor rights;
   b) Deny an employee organization any labor rights;
   c) Refuse or fail to meet and confer in good faith with a recognized employee organization;
   d) Dominate or interfere with the formation or administration of an employee organization, contribute financial or other support to any employee organization, or encourage employees to join any organization in preference over another; and
   e) Refuse to participate in good faith in a mediation procedure. (Gov. Code § 3519.)

5) Makes it unlawful for Judicial Council to do any of the following:
   a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with their exercise of their labor rights;
   b) Deny an employee organization any labor rights;
   c) Refuse or fail to meet and confer in good faith with a recognized employee organization;
   d) Dominate or interfere with the formation or administration of an employee organization, contribute financial or other support to any employee organization, or encourage employees to join any organization in preference over another; and
   e) Refuse to participate in good faith in a mediation procedure. (Gov. Code § 3524.71.)

6) Makes it unlawful for a public school employer to do any of the following:
   a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with their exercise of their labor rights;
   b) Deny an employee organization any labor rights;
   c) Refuse or fail to meet and confer in good faith with an exclusive employee organization, or knowingly provide the exclusive representative with inaccurate information;

   d) Dominate or interfere with the formation or administration of an employee organization, contribute financial or other support to any employee organization, or encourage employees to join any organization in preference over another; and
   e) Refuse to participate in good faith in an impasse procedure. (Gov. Code § 3543.5.)

7) Makes it unlawful for an institution of higher education to do any of the following:
   a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise interfere with their exercise of their labor rights;
   b) Deny an employee organization any labor rights;
   c) Refuse or fail to meet and confer in good faith with an exclusive representative;
   d) Dominate or interfere with the formation or administration of an employee organization, contribute financial or other support to any employee organization, or encourage employees to join any organization in preference over another;
   e) Refuse to participate in good faith in an impasse procedure; and
   f) Consult with any academic, professional, or staff advisory group on a matter within the scope of representation for employees who are represented by an exclusive representative. (Gov. Code § 3571.)

8) Makes it unlawful for the San Francisco Bay Area Rapid Transit District to do any of the following:
   a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with their exercise of their labor rights;
   b) Deny an employee organization any labor rights;
   c) Refuse or fail to meet and confer in good faith with an exclusive representative, or knowingly provide an exclusive representative with inaccurate information;
   d) Dominate or interfere with the formation or administration of an employee organization, contribute financial or other support to any employee organization, or encourage employees to join any organization in preference over another; and
   e) Refuse to participate in good faith in mutually agreed upon impasse procedures. (Pub. Util. Code § 28858.)

9) Makes it unlawful for the Santa Cruz Metropolitan Transit District to do any of the following:
   a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with their exercise of their labor rights;

b) Deny an employee organization any labor rights;
c) Refuse or fail to meet and confer in good faith with an exclusive representative, or knowingly provide an exclusive representative with inaccurate information;
d) Dominate or interfere with the formation or administration of an employee organization, contribute financial or other support to any employee organization, or encourage employees to join any organization in preference over another; and
e) Refuse to participate in good faith in mutually agreed upon impasse procedures. (Pub. Util. Code § 98169.)

10) Makes it unlawful for a public transit district employer to do any of the following:
a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with their exercise of their labor rights;
b) Deny an employee organization any labor rights;
c) Refuse or fail to meet and confer in good faith with an exclusive representative;
d) Dominate or interfere with the formation or administration of an employee organization, contribute financial or other support to any employee organization, or encourage employees to join any organization in preference over another; and
e) Refuse to participate in good faith in an impasse procedure, as specified. (Pub. Util. Code § 99563.7.)

11) Makes it unlawful for the Sacramento Regional Transit District to do any of the following:
a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with their exercise of their labor rights;
b) Deny an employee organization any labor rights;
c) Refuse or fail to meet and confer in good faith with an exclusive representative;
d) Dominate or interfere with the formation or administration of an employee organization, contribute financial or other support to any employee organization, or encourage employees to join any organization in preference over another; and
e) Refuse to participate in good faith in mutually agreed upon impasse procedures. (Pub. Util. Code § 102406.)

This bill:

1) Prohibits a public employer from questioning a public 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) Provides that 1), above, is intended to be consistent with, and not in conflict with, William S. Hart Union High School District (2018) PERB Dec. No. 2595.

3) Prohibits a public employer from compelling a public employee, a representative of a recognized employee organization, or an exclusive representative to disclose to a third party, 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.

4) Provides that notwithstanding 1)-3), above, this bill does not apply to a criminal investigation and does not supersede Government Code Section 3303 which are provisions of law relating to the interrogation procedures of a public safety officer under investigation.

COMMENTS

1. Stated need for the bill

Many employees believe discussions about their jobs with their union representative are private and cannot be shared with their employer. However, the law does not stop employers from compelling employees or their representatives to share these conversations. AB 340 would address this issue by creating a standard that employee-union representative conversations are protected to create a safe space for employees to discuss their rights and concerns with their union representatives.

2. Evidentiary privileges and confidentiality protections

California and federal law recognizes in various contexts that the importance of certain relationships requires that those relationships and communications made pursuant to them be protected from forced disclosure. For example, for the attorney-client relationship, the law generally recognizes the need for the client to be free to speak candidly with their attorney, and thus rules of professional conduct and evidence preclude an attorney from disclosing or being required to disclose things that their client has told them in the course of representation. This protection typically takes two forms: a guarantee in the confidentiality of the communication, and a protection against compelled disclosure in a judicial proceeding.

The second form is what is called an evidentiary privilege, and it generally prohibits a court from compelling any person to disclose or testify about communications covered

by the privilege. Thus, an evidentiary privilege is a protection of the communications under the privilege being used against one of the parties to the privilege in court, thereby excluding the evidence contained in the communication from the proceeding. The exclusion is irrelevant to the reliability or importance of the privileged information, and is generally absolute. California has created a number of statutory evidentiary privileges, including: the attorney-client privilege; lawyer referral service-client privilege; spousal privilege; physician-patient privilege; clergyman-penitent privilege; sexual assault counselor-victim privilege; and the privilege against self-incrimination. (Ev. Code § 930 et seq.)

The differences between an evidentiary privilege and a guarantee of confidentiality are important. Privileges generally prevent the introduction of certain communications or testimony in court. Rules guaranteeing confidentiality, however, do not. Thus, while a court cannot compel a witness to testify about privileged information, it may compel testimony of confidential communications, in certain circumstances. Moreover, if the confidential information is obtained by a third-party in another way, it may be disclosed to another party and in court. Thus, a duty of confidentiality is far less broad and can be subject to various exceptions.

3. AB 340 prohibits public employers from questioning employees and employee representatives about their communications

AB 340 proposes to create a rule ensuring the confidentiality of communications between an employee and their employee representative. It would specifically prohibit a public employer from questioning an employee or their employee representative regarding communications made in confidence between an employee and an employee representative in connection with the representation. The bill also would provide that a public employer shall not compel a public employee, a representative of a recognized employee organization, or an exclusive representative to disclose to a third party, 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.

AB 340's prohibitions are not absolute. Rather, they apply narrowly: they only apply to communications made in confidence, between the employee and their representative, and the communication must be in connection to the union's representation. The bill does not prohibit other entities from questioning an employee or their representative about the confidential communications, such as a third-party or a court. Thus, a court may still require an employee or their employer to testify in court about their communications. Additionally, AB 340 provides an exception to its prohibition by expressly providing that the prohibitions in the bill do not apply to a criminal investigation. Under this exception, a public employer may still question the employee or their union representative, though arguably this only applies to questioning regarding the event underlying the criminal investigation.

By prohibiting an employer from questioning an employee or employee representative, AB 340 creates an unlawful employment practice for any public employer to violate that prohibition. Public employees covered by the Public Employment Relations Board's (PERB) jurisdiction would not be able to file a civil action in court for a violation of AB 340's provisions; their exclusive remedy would be before PERB. Thus, an aggrieved public employee covered by PERB could allege an unlawful employment practice with PERB, or raise it in any pending action before the board, when their employer attempts to question them contrary to the prohibitions created by AB 340. If an employee is discharged for refusing to answer an employer's questions that violate this section, the employee could also file an unlawful employment practice charge with PERB based on that discharge.

4. Judicial decisions regarding whether communications between an employee and union representative

The existence of confidentiality between an employee and their employee representative is not an entirely new concept. In *American Airlines, Inc. v. Superior Court* (2003) 114 Cal.App.4th 881, the court held that California law does not impliedly provide for an employee-union representative privilege, but that, instead, the creation of evidentiary privileges is "the province of the Legislature." (*American Airlines, Inc. v. Superior Court* (2003) 114 Cal.App 4th 881, 890.) Yet that case only dealt with the question of whether an evidentiary privilege existed, and not with the question of whether an employer can compel an employee to answer questions about communications between an employee and their union representative. In *Cook Paint v. Varnish Co.*, the National Labor Relations Board (NLRB) recognized that allowing an employer to compel disclosure "manifestly restrains employees in their willingness to candidly discuss matters with their chosen, statutory representatives" and "inhibits [union] stewards in obtaining needed information from employees" for their representation. (*Cook Paint v. Varnish Co.* (1981) 258 N.L.R.B. 1230, 1232.) Thus, the NLRB found that, when an employer compels disclosure of conversations between an employee and their union steward, it interferes with the employee's right to engage in concerted activities and collectively bargain. (*Id.*)

While *Cook Paint* related to the National Labor Relations Act (NLRA) and not state labor law, its reasoning has also been applied in the context of public employees in California as well. In *California School Employees Association v. William S. Hart Union High School District*, PERB cited to *Cook Paint* to find that a public school district impermissibly questioned a union representative about the substance of conversations she had with employee members of the bargaining unit under the Educational Employment Relations Act. (*California School Employees Association v. William S. Hart Union High School District* (2018) PERB Decision No. 2595, p. 7.) In that case, PERB determined that the harm to employees' protected labor rights outweighed the interest the employer had to investigate an alleged improper relationship between an employee and the union representative. In another case, PERB 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 the protected labor rights of public employees under PERB-administered statutes. (*Victor Valley Teachers Association v. Victor Valley Union High School District* (2022) PERB Decision No. 2822.) The standard adopted by PERB in that case provides that questioning in a deposition may be permissible if: the questioning is relevant; the questioning does not have an illegal objective; and if the employer's interest in obtaining the information outweighs the employees' protected rights. (*Id.*, p. 11.)

These PERB cases recognize the importance of the employee-employee representative relationship, as well as the risk that the questioning of an employee or employee representative about communications between the employee and representative pose to an employee's rights to engage in self-organization and collective bargaining. However, they do not create an evidentiary privilege for employee-employee representative communications, and they also do not create a strict rule of confidentiality. Instead, they allow an employer to question an employee or employee representative in a variety of instances, based on the employer's need for the information and a balancing test between that need and the employee's rights.

AB 340 provides a more robust guarantee of confidentiality. However, it also includes an exception for the purpose of ensuring that an employer can still question the employee or employee representative during a criminal investigation.

5. Arguments in support

According to the Peace Officers Research Association of California, which is the sponsor of AB 340:

> This bill would codify existing decisions of the California Public Employment Relations Board which prohibit public employers from coercing union representatives and interfering in the representation of union members by questioning union representatives and members regarding communications made in confidence between an employee and an employee representative in connection with representation relating to any matter within the scope of the recognized employee organization's representation. The prohibition on such questioning is limited to public employers, so it would not affect criminal investigations conducted by separate and independent third parties, but employers could not compel disclosure of communications or order disclosure to third parties connected to or acting on behalf of the public employer.
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> This bill amends collective bargaining statutes to make clear that public employers and those acting on their behalf commit an unfair labor practice by questioning union members or their labor representatives about communications between represented employees and their union representatives about matters

within the scope of union representation. In short, this bill would recognize the confidentiality of those communications and preclude public employers from interfering with union representation, which benefits every public sector union and public employee in California.

The 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.

Our 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. In fact, the prohibited conduct would merely constitute an unfair labor practice to be adjudicated by PERB.

6. Arguments in opposition

A coalition of public employers, including the League of California Cities, California State Association of Counties, California School Boards Association, and others write the following in opposition to AB 340:

[. . .] In order 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 understand the matter fully. AB 340 would increase investigation and litigation costs for the state as well as local governments and schools by creating incomplete investigations, since all appropriate employees with relevant information cannot be questioned. Costs and risks may also

increase as conduct challenged as unlawful under the bill's provisions is adjudicated before the Public Employment Relations Board (PERB). For schools, this is a drain of Proposition 98 funding.

Inconsistent with PERB Decision
AB 340 states that its prohibition on employer questioning is intended to be consistent with, and not in conflict with, William S. Hart Union High School District (2018) PERB Dec. No. 2595. This is problematic for two reasons. First, the bill is inconsistent with that PERB decision. That decision engaged in a circumstantial analysis to determine whether employer questioning was prohibited or not, while weighing the employee's and the employer's interests. AB 340 goes far beyond that, forgoing any circumstantial analysis or weighing of interests. It categorically prohibits questioning of confidential employee Representative communications, except for narrow, limited exceptions. Second, we are not aware of evidence that PERB is denying the interests of employees on this issue, raising the question of whether a legislative solution is warranted.

Expansion of New One-Sided Standard
AB 340 would create a de facto prohibition on 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. This will have a significant impact on judicial and administrative proceedings.

Endangers Workplace Safety
AB 340 interferes with the ability to interview witnesses because it would prohibit public agencies from questioning any employee or "representative of a recognized employee organization, or an exclusive representative" about communications between an employee and a "representative of a recognized employee organization, or an exclusive representative." While AB 340 includes a narrow exception for criminal investigations, and provides that it does not supersede Gov. Code 3303, many necessary investigations are still subject to the bill's limitations, putting safety at risk.

This bill would hinder employees who wish to voluntarily report an incident or testify in front of necessary misconduct investigations since an employer would be prohibited from certain lines of questioning. It would also limit the ability of public employers to carry out the requirements of recently enacted law, Senate Bill 553 (Cortese, 2023), which includes conducting investigations into workplace safety, harassment, and other allegations. As of January 1, 2025, SB 553 allows collective bargaining representatives standing to seek temporary restraining orders (TRO) in connection with workplace violence. AB 340 will create a problematic scenario wherein a TRO may be obtained but an employer could not fully investigate the underlying facts. AB 340 lacks guardrails to

prevent potential conflicts of interest that could arise during employee safety issues.

Specific to local educational agencies, TROs are being sought by teachers and classroom aides against students with a disability, who may not have full control of their motor skills or have a cognitive impairment. School employers shared that their ability to gather details and intercede results in alternatives to a TRO that are more productive for their staff and students. Otherwise, school employers may be exposed to greater liability as they try to adhere to contractual agreements for a student's Individualized Educational Plan.

Administrative investigations are also critical tools for public agency employers when protecting minors under the supervision and care of their employees. As it relates to preventing childhood sexual assault and misconduct, perpetrators are not often caught in the act at a school site or facility but rather discovered through investigations conducted by the employer through either building evidence for what may lead to a criminal investigation or removing an employee before misconduct may occur. The current liability statewide for school employers alone is approximately $3 billion dollars and districts need every tool available to prevent future misconduct.

AB 340, as drafted, would tie the hands of school employers in seeking better options for student educational outcomes and taking proactive steps for general safety.

Making matters worse, employers may not even know they are acting contrary to AB 340's restrictions by communicating with staff, because only the employee or the representative would know or could decide when a communication was made "in confidence." This could affect day-to-day activities and critical government operations.

SUPPORT

Peace Officers' Research Association of California (sponsor)
Association of California State Employees with Disabilities
California Association of Highway Patrolmen
California Professional Firefighters
California School Employees Association, AFL-CIO
California Teachers Association
CFT-A Union of Educators & Classified Professionals, AFT, AFL-CIO
Faculty Association of California Community Colleges
Professional Engineers in California Government
SEIU California

OPPOSITION

Association of California Healthcare Districts
Association of California School Administrators
California Association of Joint Powers
California Association of Recreation and Park Districts
California Association of School Business Officials
California Chamber of Commerce
California Contract Cities Association
California County Superintendents
California Hospital Association
California School Boards Association
California Special Districts Association
California State Association of Counties
City of Cupertino
City of Norwalk
Community College League of California
County of Fresno
Desert Water Agency
El Dorado Irrigation District
League of California Cities
Orange County Fire Authority
Public Risk Innovation, Solutions, and Management
Rural County Representatives of California
School Employers Association of California
Schools Excess Liability Fund
Small School Districts' Association
University of California
Urban Counties of California
Valley Industry and Commerce Association

RELATED LEGISLATION

Pending Legislation: AB 1109 (Kalra, 2025) establishes an evidentiary privilege from disclosure for confidential communications between a union agent and a represented employee or represented former employee, as provided. This bill is currently in the Senate Appropriations Committee.

Prior Legislation:

AB 2421 (Low, 2024) would have prohibited specified public employers from questioning employees and employee representatives about communications between employees and employee representatives related to the representative's representation, with an exception. AB 2421 died on suspense in the Senate Appropriations Committee.

AB 418 (Kalra, 2019) would have established an evidentiary privilege from disclosure for communications between a union agent and a represented employee or represented former employee. AB 418 died on the Senate inactive file.

AB 3121 (Kalra, 2018) would have established an evidentiary privilege from disclosure for communications between a union agent and a represented employee or represented former employee. AB 3121 died on the Senate inactive file.

AB 729 (Hernández, 2013) would have provided a union agent, as defined, and a represented employee or represented former employee a privilege of refusing to disclose any confidential communication between the employee or former employee and the union agent while the union agent is acting in their representative capacity, except as specified. AB 729 was vetoed by Governor Edmund G. Brown Jr. who wrote the following in his veto message: "I don't believe it is appropriate to put communications with a union agent on equal footing with communications with one's spouse, priest, physician or attorney. Moreover, this bill could compromise the ability of employers to conduct investigations into workplace safety, harassment and other allegations."

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 1)
Assembly Floor (Ayes 65, Noes 1)
Assembly Appropriations Committee (Ayes 11, Noes 0)
Assembly Public Employment and Retirement Committee (Ayes 6, Noes 0)

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