

AMENDED IN SENATE JUNE 17, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 2421

Introduced by Assembly Member Low

February 13, 2024

An act to amend Sections 3506.5, 3519, 3524.71, 3543.5, and 3571 of the Government Code, and to amend ~~Section 28858~~ *Sections 28858, 98169, 99563.7, and 102406* of the Public Utilities Code, relating to employer-employee relations.

LEGISLATIVE COUNSEL’S DIGEST

AB 2421, as amended, Low. Employer-employee relations: confidential communications.

Existing law that governs the labor relations of public employees and employers, including the Meyers-Milias-Brown Act, the Ralph C. Dills Act, *and provisions relating to judicial employees, public schools, provisions relating to higher education, and provisions relating to the the San Francisco Bay Area Rapid Transit District, the Santa Cruz Metropolitan Transit District, the Sacramento Regional Transit District, and other public transit employees*, prohibits employers from taking certain actions relating to employee ~~organization, including organizations~~. *This includes* imposing or threatening to impose reprisals on employees, discriminating or threatening to discriminate against employees, or otherwise interfering with, restraining, or coercing employees because of their exercise of their guaranteed rights. Those ~~provisions of existing law~~ further prohibit denying to employee organizations the rights guaranteed to them by existing law.

This bill would also prohibit a local public agency employer, a state employer, *a judicial employer*, a public school employer, a higher

education employer, or the district from questioning any employee or employee representative 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 bill would provide that communications between an employee and their employee representative would not be confidential if, at any time, the representative was a witness or party to any of the events forming the basis of a potential administrative disciplinary or criminal investigation.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
2 (a) It is the intent of the Legislature, in enacting this act, to
3 ~~establish an employee-union representative privilege in the context~~
4 ~~of California public employment. prohibit public employers from~~
5 ~~questioning any employee or employee representative regarding~~
6 ~~communications made in confidence between an employee and an~~
7 ~~employee representative in connection with representation relating~~
8 ~~to any matter within the scope of the recognized employee~~
9 ~~organization's representation.~~
10 (b) ~~As with the attorney-client privilege, there~~ There is a strong
11 ~~interest in encouraging an employee accused of wrongdoing to~~
12 ~~union members to communicate fully and frankly with his their~~
13 ~~union representative, in order to receive accurate advice about the~~
14 ~~disciplinary process. information and advice.~~ The expectation of
15 confidentiality is critical to the employee-union representative
16 ~~privilege. representation.~~ Without confidentiality, union members
17 would be hesitant to be fully forthcoming with their representatives,
18 detrimentally impacting a union representative's ability to advise
19 and represent union members with questions or ~~problems.~~ *problems*
20 *within the scope of representation.*
21 (c) ~~This employee-labor organization representative privilege~~
22 ~~is intended to extend to communications made in confidence, in~~
23 ~~connection with representation relating to concerted activities,~~
24 ~~including, but not limited to, anticipated or ongoing disciplinary~~
25 ~~proceedings, between an employee and their recognized labor~~
26 ~~organization representative, and where the representative is acting~~

1 ~~in their official representative capacity. confidentiality does not~~
2 ~~extend to criminal investigations.~~

3 (d) ~~This privilege does not extend to criminal investigations,~~
4 ~~but does prohibit the employing agency from compelling any~~
5 ~~disclosures, including to third parties. act does not create an~~
6 ~~evidentiary privilege. However, confidentiality protections prohibit~~
7 ~~public employers, their agents, and those acting on their behalf~~
8 ~~from compelling the disclosure of confidential communications,~~
9 ~~including to third parties.~~

10 (e) ~~It is the intent of the legislature to supersede American~~
11 ~~Airlines, Inc. v. Superior Court, 114 Cal.App.4th 881 (2003).~~

12 SEC. 2. Section 3506.5 of the Government Code is amended
13 to read:

14 3506.5. A public agency shall not do any of the following:

15 (a) Impose or threaten to impose reprisals on employees, to
16 discriminate or threaten to discriminate against employees, or
17 otherwise to interfere with, restrain, or coerce employees because
18 of their exercise of rights guaranteed by this chapter.

19 (b) Deny to employee organizations the rights guaranteed to
20 them by this chapter.

21 (c) Question any employee or employee representative regarding
22 communications made in confidence between an employee and
23 an employee representative in connection with representation
24 relating to any matter within the scope of the recognized employee
25 organization's representation. *Communications between an*
26 *employee and their employee representative shall not be*
27 *confidential if, at any time, the representative was a witness or*
28 *party to any of the events forming the basis of a potential*
29 *administrative disciplinary or criminal investigation. This*
30 *subdivision does not supersede Section 3303.*

31 (d) Refuse or fail to meet and negotiate in good faith with a
32 recognized employee organization. For purposes of this
33 subdivision, knowingly providing a recognized employee
34 organization with inaccurate information regarding the financial
35 resources of the public employer, whether or not in response to a
36 request for information, constitutes a refusal or failure to meet and
37 negotiate in good faith.

38 (e) Dominate or interfere with the formation or administration
39 of any employee organization, contribute financial or other support

1 to any employee organization, or in any way encourage employees
2 to join any organization in preference to another.

3 (f) Refuse to participate in good faith in an applicable impasse
4 procedure.

5 SEC. 3. Section 3519 of the Government Code is amended to
6 read:

7 3519. It shall be unlawful for the state to do any of the
8 following:

9 (a) Impose or threaten to impose reprisals on employees, to
10 discriminate or threaten to discriminate against employees, or
11 otherwise to interfere with, restrain, or coerce employees because
12 of their exercise of rights guaranteed by this chapter. For purposes
13 of this subdivision, “employee” includes an applicant for
14 employment or reemployment.

15 (b) Deny to employee organizations rights guaranteed to them
16 by this chapter.

17 (c) Question any employee or employee representative regarding
18 communications made in confidence between an employee and
19 an employee representative in connection with representation
20 relating to any matter within the scope of the recognized employee
21 organization’s representation. *Communications between an*
22 *employee and their employee representative shall not be*
23 *confidential if, at any time, the representative was a witness or*
24 *party to any of the events forming the basis of a potential*
25 *administrative disciplinary or criminal investigation. This*
26 *subdivision does not supersede Section 3303.*

27 (d) Refuse or fail to meet and confer in good faith with a
28 recognized employee organization.

29 (e) Dominate or interfere with the formation or administration
30 of any employee organization, or contribute financial or other
31 support to it, or in any way encourage employees to join any
32 organization in preference to another.

33 (f) Refuse to participate in good faith in the mediation procedure
34 set forth in Section 3518.

35 SEC. 4. Section 3524.71 of the Government Code is amended
36 to read:

37 3524.71. It shall be unlawful for the Judicial Council to do any
38 of the following:

39 (a) Impose or threaten to impose reprisals on employees, to
40 discriminate or threaten to discriminate against employees, or

1 otherwise to interfere with, restrain, or coerce employees because
2 of their exercise of rights guaranteed by this chapter. For purposes
3 of this subdivision, “employee” includes an applicant for
4 employment or reemployment.

5 (b) Deny to employee organizations rights guaranteed to them
6 by this chapter.

7 (c) *Question any employee or employee representative regarding*
8 *communications made in confidence between an employee and an*
9 *employee representative in connection with representation relating*
10 *to any matter within the scope of the recognized employee*
11 *organization’s representation. Communications between an*
12 *employee and their employee representative shall not be*
13 *confidential if, at any time, the representative was a witness or*
14 *party to any of the events forming the basis of a potential*
15 *administrative disciplinary or criminal investigation. This*
16 *subdivision does not supersede Section 3303.*

17 ~~(e)~~

18 (d) Refuse or fail to meet and confer in good faith with a
19 recognized employee organization.

20 ~~(d)~~

21 (e) Dominate or interfere with the formation or administration
22 of any employee organization, or contribute financial or other
23 support to it, or in any way encourage employees to join any
24 organization in preference to another.

25 ~~(e)~~

26 (f) Refuse to participate in good faith in the mediation procedure
27 set forth in Section 3524.68.

28 ~~SEC. 4.~~

29 SEC. 5. Section 3543.5 of the Government Code is amended
30 to read:

31 3543.5. It is unlawful for a public school employer to do any
32 of the following:

33 (a) Impose or threaten to impose reprisals on employees, to
34 discriminate or threaten to discriminate against employees, or
35 otherwise to interfere with, restrain, or coerce employees because
36 of their exercise of rights guaranteed by this chapter. For purposes
37 of this subdivision, “employee” includes an applicant for
38 employment or reemployment.

39 (b) Deny to employee organizations rights guaranteed to them
40 by this chapter.

(c) Question any employee or employee representative 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. *Communications between an employee and their employee representative shall not be confidential if, at any time, the representative was a witness or party to any of the events forming the basis of a potential administrative disciplinary or criminal investigation. This subdivision does not supersede Section 3303.*

(d) Refuse or fail to meet and negotiate in good faith with an exclusive representative. Knowingly providing an exclusive representative with inaccurate information, whether or not in response to a request for information, regarding the financial resources of the public school employer constitutes a refusal or failure to meet and negotiate in good faith.

(e) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(f) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

~~SEC. 5.~~

SEC. 6. Section 3571 of the Government Code is amended to read:

3571. It shall be unlawful for the higher education employer 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 to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Question any employee or employee representative 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. *Communications between an*

1 *employee and their employee representative shall not be*
2 *confidential if, at any time, the representative was a witness or*
3 *party to any of the events forming the basis of a potential*
4 *administrative disciplinary or criminal investigation. This*
5 *subdivision does not supersede Section 3303.*

6 (d) Refuse or fail to engage in meeting and conferring with an
7 exclusive representative.

8 (e) Dominate or interfere with the formation or administration
9 of any employee organization, or contribute financial or other
10 support to it, or in any way encourage employees to join any
11 organization in preference to another. However, subject to rules
12 and regulations adopted by the board pursuant to Section 3563, an
13 employer shall not be prohibited from permitting employees to
14 engage in meeting and conferring or consulting during working
15 hours without loss of pay or benefits.

16 (f) Refuse to participate in good faith in the impasse procedure
17 set forth in Article 9 (commencing with Section 3590).

18 (g) Consult with any academic, professional, or staff advisory
19 group on any matter within the scope of representation for
20 employees who are represented by an exclusive representative, or
21 for whom an employee organization has filed a request for
22 recognition or certification as an exclusive representative until
23 such time as the request is withdrawn or an election has been held
24 in which “no representative” received a majority of the votes cast.
25 This subdivision is not intended to diminish the prohibition of
26 unfair practices contained in subdivision (d). For the purposes of
27 this subdivision, the term “academic” shall not be deemed to
28 include the academic senates.

29 ~~SEC. 6.~~

30 *SEC. 7.* Section 28858 of the Public Utilities Code is amended
31 to read:

32 28858. It is unlawful for the district to do any of the following:

33 (a) Impose or threaten to impose reprisals on employees, to
34 discriminate or threaten to discriminate against employees, or
35 otherwise to interfere with, restrain, or coerce employees because
36 of their exercise of rights guaranteed to them by this chapter. As
37 used in this subdivision, “employee” includes an applicant for
38 employment or reemployment with the district.

39 (b) Deny employee organizations rights guaranteed to them by
40 this chapter.

(c) Question any employee or employee representative 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. *Communications between an employee and their employee representative shall not be confidential if, at any time, the representative was a witness or party to any of the events forming the basis of a potential administrative disciplinary or criminal investigation. This subdivision does not supersede Section 3303 of the Government Code.*

(d) Refuse or fail to meet and negotiate in good faith with an exclusive representative. Knowingly providing an exclusive representative with inaccurate information, whether or not it is in response to a request for information, constitutes a refusal or failure of the district to meet and negotiate in good faith with the exclusive representative.

(e) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any employee organization in preference to another.

(f) Refuse to participate in good faith in mutually agreed upon impasse procedures.

SEC. 8. *Section 98169 of the Public Utilities Code is amended to read:*

98169. It is unlawful for the district 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 to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed to them by this chapter. As used in this subdivision, "employee" includes an applicant for employment or reemployment with the district.

(b) Deny employee organizations rights guaranteed to them by this chapter.

(c) *Question any employee or employee representative 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. Communications between an employee and their employee representative shall not be*

1 *confidential if, at any time, the representative was a witness or*
2 *party to any of the events forming the basis of a potential*
3 *administrative disciplinary or criminal investigation. This*
4 *subdivision does not supersede Section 3303 of the Government*
5 *Code.*

6 ~~(e)~~

7 *(d) Refuse or fail to meet and negotiate in good faith with an*
8 *exclusive representative. Knowingly providing an exclusive*
9 *representative with inaccurate information, whether or not it is in*
10 *response to a request for information, constitutes a refusal or failure*
11 *of the district to meet and negotiate in good faith with the exclusive*
12 *representative.*

13 ~~(d)~~

14 *(e) Dominate or interfere with the formation or administration*
15 *of any employee organization, or contribute financial or other*
16 *support to it, or in any way encourage employees to join any*
17 *employee organization in preference to another.*

18 ~~(e)~~

19 *(f) Refuse to participate in good faith in mutually agreed upon*
20 *impasse procedures.*

21 *SEC. 9. Section 99563.7 of the Public Utilities Code is amended*
22 *to read:*

23 *99563.7. It shall be unlawful for the transit district employer*
24 *to do any of the following:*

25 *(a) Impose or threaten to impose reprisals on employees, to*
26 *discriminate or threaten to discriminate against employees, or*
27 *otherwise to interfere with, restrain, or coerce employees because*
28 *of their exercise of rights guaranteed by this chapter. For purposes*
29 *of this subdivision, "employee" includes an applicant for*
30 *employment or reemployment.*

31 *(b) Deny to employee organizations rights guaranteed to them*
32 *by this chapter.*

33 *(c) Question any employee or employee representative regarding*
34 *communications made in confidence between an employee and an*
35 *employee representative in connection with representation relating*
36 *to any matter within the scope of the recognized employee*
37 *organization's representation. Communications between an*
38 *employee and their employee representative shall not be*
39 *confidential if, at any time, the representative was a witness or*
40 *party to any of the events forming the basis of a potential*

1 *administrative disciplinary or criminal investigation. This*
2 *subdivision does not supersede Section 3303 of the Government*
3 *Code.*

4 ~~(e)~~

5 *(d) Refuse or fail to meet and confer with an exclusive*
6 *representative.*

7 ~~(d)~~

8 *(e) Dominate or interfere with the formation or administration*
9 *of any employee organization, or contribute financial or other*
10 *support to it, or in any way encourage employees to join any*
11 *organization in preference to another. However, subject to rules*
12 *and regulations adopted by the board pursuant to Section 99561,*
13 *an employer shall not be prohibited from permitting employees to*
14 *engage in meeting and conferring or consulting during working*
15 *hours without loss of pay or benefits.*

16 ~~(e)~~

17 *(f) Refuse to participate in good faith in the impasse procedure*
18 *set forth in Article 9 (commencing with Section 99568).*

19 *SEC. 10. Section 102406 of the Public Utilities Code is*
20 *amended to read:*

21 *102406. It is unlawful for the district to do any of the following:*

22 *(a) Impose or threaten to impose reprisals on employees, to*
23 *discriminate or threaten to discriminate against employees, or*
24 *otherwise to interfere with, restrain, or coerce employees because*
25 *of their exercise of rights guaranteed to them by this chapter. As*
26 *used in this subdivision, "employee" includes an applicant for*
27 *employment or reemployment with the district.*

28 *(b) Deny employee organizations rights guaranteed to them by*
29 *this chapter.*

30 *(c) Question any employee or employee representative regarding*
31 *communications made in confidence between an employee and an*
32 *employee representative in connection with representation relating*
33 *to any matter within the scope of the recognized employee*
34 *organization's representation. Communications between an*
35 *employee and their employee representative shall not be*
36 *confidential if, at any time, the representative was a witness or*
37 *party to any of the events forming the basis of a potential*
38 *administrative disciplinary or criminal investigation. This*
39 *subdivision does not supersede Section 3303 of the Government*
40 *Code.*

1 ~~(e)~~

2 ~~(d)~~ Refuse or fail to meet and negotiate in good faith with an
3 exclusive representative. Knowingly providing an exclusive
4 representative with inaccurate information, whether or not it is in
5 response to a request for information, constitutes a refusal or failure
6 of the district to meet and negotiate in good faith with the exclusive
7 representative.

8 ~~(d)~~

9 ~~(e)~~ Dominate or interfere with the formation or administration
10 of any employee organization, or contribute financial or other
11 support to it, or in any way encourage employees to join any
12 employee organization in preference to another.

13 ~~(e)~~

14 ~~(f)~~ Refuse to participate in good faith in mutually agreed upon
15 impasse procedures.