WEST VIRGINIA CODE: §6C-2-8

§6C-2-8. Employee organizations may not be compelled to disclose certain communications; exceptions.

(a) Except as otherwise provided in this section, an employee organization or an agent of an employee organization may not be compelled to disclose any communication or information the employee organization or agent received or acquired in confidence from a public employee, while the employee organization or agent was acting in a representative capacity concerning a public employee grievance or an investigation of a potential public employee grievance, regardless of whether the public employee is a member of the employee organization: *Provided*, That the confidentiality established under this section does not apply to written communications between the employee and the employee organization.

(b) (1) The confidentiality established under this section applies only to the extent that the communication or information is germane to a grievance or potential grievance of the employee.

(2) The confidentiality established under this subsection continues after termination of:

(A) The employee's employment; or

(B) The representative relationship of the employee organization or its agent with the public employee.

(3) The confidentiality established under this subsection protects the communication or information received or acquired by the employee organization or its agent, but does not protect the employee from being compelled to disclose, to the extent provided by law, the facts underlying the communication or information.

(c) The protection for confidential communications provided by this section only extends to proceedings under the public employees grievance procedure. Nothing in this section may be construed to extend the confidentiality to circuit court, appellate proceedings, or other proceedings outside of the public employees grievance procedure.

(d) An employee organization or its agent shall disclose to the employer as soon as possible a communication or information described in subsection (a) of this section to the extent the employee organization or its agent reasonably believes:

(1) It is necessary to prevent certain death or substantial bodily harm;

(2) It is necessary to prevent the employee from committing a crime, fraud, or any act that is reasonably certain to result in substantial injury to the financial interests or property of another or to rectify or mitigate the action after it has occurred;

WVLegislature

(3) The communication or information constitutes an admission that the employee has committed a crime; or

(4) It is necessary to comply with a court order or other law.

(e) An employee organization or its agent may disclose a communication or information described in subsection (a) of this section in order to:

(1) Secure legal advice about the compliance of the employee organization or its agent with a court order or other law;

(2) Establish a claim or defense on behalf of the employee organization or its agent in a controversy between the employee and the employee organization or its agent;

(3) Establish a defense to a criminal charge or civil claim against the employee organization or its agent based on conduct in which the employee was involved; or

(4) Respond to allegations in any proceeding concerning the performance of professional duties by the employee organization or its agent on behalf of the employee.

(f) An employee organization or its agent may disclose a communication or information described in subsection (a) of this section, without regard to whether the disclosure is made within the public employees grievance procedure, in the following circumstances:

(1) The employee organization has obtained the express written or oral consent of the employee;

(2) The employee has, by other act or conduct, waived the confidentiality of the communication or information; or

(3) The employee is deceased or has been adjudicated incompetent by a court of competent jurisdiction and the employee organization has obtained the written or oral consent of the personal representative of the employee's estate or of the employee's guardian.

(g) If there is a conflict between the application of this section and any federal or state labor law, the provisions of the federal or other state law shall control.

WV Legislature