

## Federal Law Now Recognizes the Employee-Union Representative Privilege

By [E. Jason Tremblay](#)



In a case of first impression, the Northern District of Illinois recently held in *Bell v. Village of Streamwood* ([Case No. 10 C 3263](#)) that an employee-union representative privilege exists as a matter of federal common law. In so holding, the Court reasoned that a union representative's role is not unlike that of an attorney, and that there is a strong interest in encouraging an employee accused of wrongdoing to communicate fully and frankly with his or her union representative. Therefore, the Court held that the employee-union representative privilege would extend to communications made: (1) in confidence; (2) in connection with "representative" services relating to anticipated or ongoing disciplinary proceedings; (3) between an employee and his or her union representative; (4) where the union representative is acting in his or her official representative capacity. Moreover, similar to the attorney-client privilege, the employee-union representative privilege is somewhat limited in that it only extends to the communications, not to the underlying facts and issues.

To date, and until this decision, the privilege did not exist under federal common law. Since federal courts addressing federal issues are not bound by state privilege laws, the decision effectively creates a new privilege under federal law and now makes it consistent with Illinois law that already recognizes the union agent-union member privilege pursuant to statute.

Should you have any questions regarding the effect of this new decision, or any other employment-related questions, please contact [E. Jason Tremblay](#) at (312) 876-6676 or your Arnstein & Lehr LLP employment and labor law attorney.