

**ASSEMBLY BILL**

**No. 1571**

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**Introduced by Assembly Member Shelley**

February 23, 2001

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An act to amend Sections 68806 and 69141 of, and to add Article 1.5 (commencing with Section 68816.1) to Chapter 3 of, and to add Article 3 (commencing with Section 69161.1) to Chapter 4 of, Title 8 of, the Government Code, relating to court employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1571, as introduced, Shelley. Court employees: Supreme Court and courts of appeal.

Existing law provides for the appointment of employees of the Supreme Court and courts of appeal at their pleasure, respectively, and provides for the employing court to determine the duties and pay of those employees, except as specified.

This bill would eliminate the provision that employees of the Supreme Court and courts of appeal serve at their pleasure, respectively, and would provide for the formation of employee organizations and for collective bargaining thereby with the Supreme Court and courts of appeal, respectively, as specified.

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. Section 68806 of the Government Code is  
2 amended to read:

1 68806. The Supreme Court may appoint and employ ~~during~~  
 2 ~~its pleasure~~ such phonographic reporters, assistants, secretaries,  
 3 librarians, marshals, and other employees as it deems necessary for  
 4 the performance of the duties and exercise of the powers conferred  
 5 by law upon it and its members. The marshals shall have the  
 6 powers of a peace officer in all parts of this state, as defined in  
 7 Section 830.36 of the Penal Code. Except as in this chapter  
 8 otherwise provided, the Supreme Court shall determine the duties  
 9 and fix and pay the compensation of all those officers and  
 10 employees.

11 SEC. 2. Article 1.5 (commencing with Section 68816.1) is  
 12 added to Chapter 3 of Title 8 of the Government Code, to read:

13  
 14 Article 1.5. Employee Organizations

15  
 16 68816.1. For purposes of this article, the following  
 17 definitions shall apply:

18 (a) "Employee organization" means any organization that  
 19 includes Supreme Court employees and has as one of its primary  
 20 purposes representing those employees in their relations with the  
 21 Supreme Court.

22 (b) "Mediation" means effort by an impartial third party to  
 23 assist in reconciling a dispute regarding wages, hours, and other  
 24 terms and conditions of employment between representatives of  
 25 the Supreme Court and the recognized employee organization or  
 26 recognized employee organizations through interpretation,  
 27 suggestion, and advice.

28 (c) "Meet and confer in good faith" means that the Supreme  
 29 Court or representatives as it may designate, and representatives  
 30 of recognized employee organizations, shall have the mutual  
 31 obligation personally to meet and confer promptly upon request by  
 32 either party and continue for a reasonable period of time in order  
 33 to exchange freely information, opinions, and proposals, and to  
 34 endeavor to reach agreement on matters within the scope of  
 35 representation. The process should include adequate time for the  
 36 resolution of impasses where specific procedures for resolution  
 37 are contained in this article, local rule, regulation, or ordinance, or  
 38 when the procedures are utilized by mutual consent.

39 (d) "Recognized employee organization" means an employee  
 40 organization which has been formally acknowledged by the



1 Supreme Court as an employee organization that represents  
2 employees of the Supreme Court.

3 (e) “Supreme Court employee” means a person who is both of  
4 the following:

5 (1) Paid from the Supreme Court’s budget, regardless of the  
6 funding source. For the purpose of this paragraph, “Supreme  
7 Court’s budget” means funds from which the Chief Justice, or his  
8 or her designee, has authority to control, authorize, and direct  
9 expenditures, including, but not limited to, all grant funds and  
10 Supreme Court operations funds.

11 (2) Subject to the Supreme Court’s right to control the manner  
12 and means of his or her work because of the Supreme Court’s  
13 authority to hire, supervise, discipline, and terminate employment.  
14 For purposes of this paragraph only, the “Supreme Court”  
15 includes the Justices of the Supreme Court or their appointees who  
16 are vested with or delegated the authority to hire, supervise,  
17 discipline, and terminate.

18 (f) A person is a “Supreme Court employee” if and only if both  
19 paragraphs (1) and (2) of subdivision (e) are true irrespective of  
20 job classification or whether the functions performed by that  
21 person are identified in the internal policies or job classifications  
22 of the Supreme Court. The phrase “Supreme Court employee”  
23 includes those subordinate judicial officers who satisfy paragraphs  
24 (1) and (2) of subdivision (e). The phrase “Supreme Court  
25 employee” does not include temporary employees hired through  
26 agencies, individuals hired by the Supreme Court pursuant to an  
27 independent contractor agreement, individuals for whom the  
28 Supreme Court reports income to the Internal Revenue Service on  
29 a Form 1099 and does not withhold employment taxes, and judges  
30 whether elected or appointed.

31 68816.2. Except as otherwise expressly provided in this  
32 article, the enactment of this article shall not be a cause for the  
33 modification or elimination of any existing wages, hours, or terms  
34 and conditions of employment of Supreme Court employees.  
35 However, the enactment of this article shall not prevent the  
36 modification or elimination of existing wages, hours, or terms and  
37 conditions of employment through the meet and confer in good  
38 faith process or, in those situations in which the employees are  
39 either exempted from representation, or are not represented by a



1 recognized employee organization, through appropriate  
2 procedures.

3 68816.3. (a) Except as provided in subdivision (b), January  
4 1, 2002, shall be the implementation date of this article.

5 (b) Representatives of the Supreme Court and representatives  
6 of recognized employee organizations may mutually agree to an  
7 implementation date of this article later than January 1, 2002.

8 68816.4. It is the purpose of this article to promote full  
9 communication between the Supreme Court and its employees by  
10 providing a reasonable method of resolving disputes regarding  
11 wages, hours, and other terms and conditions of employment  
12 between the Supreme Court and a recognized employee  
13 organization. It is also the purpose of this article to promote the  
14 improvement of personnel management and employer-employee  
15 relations within the Supreme Court in the State of California by  
16 providing a uniform basis for recognizing the right of Supreme  
17 Court employees to join an organization of their own choice and  
18 be represented by those organizations in their employment  
19 relations with the Supreme Court. It is also the purpose of this  
20 article to extend to Supreme Court employees the right, and to  
21 require the Supreme Court, to meet and confer in good faith over  
22 matters within the scope of representation, consistent with the  
23 procedures set forth in this article.

24 68816.5. Except as otherwise provided by the Legislature,  
25 Supreme Court employees shall have the right to form, join, and  
26 participate in the activities of employee organizations of their own  
27 choosing for the purpose of representation on all matters of  
28 employer-employee relations. Supreme Court employees also  
29 shall have the right to refuse to join or participate in the activities  
30 of employee organizations and shall have the right to represent  
31 themselves individually in their employment relations with the  
32 Supreme Court.

33 68816.6. (a) Notwithstanding any other provision of law,  
34 rule, or regulation, an agency shop agreement may be negotiated  
35 between the Supreme Court and a recognized employee  
36 organization which has been recognized as the exclusive or  
37 majority bargaining agent pursuant to reasonable rules and  
38 regulations, and enactments, in accordance with this article. As  
39 used in this article, “agency shop” means an arrangement that  
40 requires an employee, as a condition of continued employment,



1 either to join the recognized employee organization, or to pay the  
2 organization a service fee in an amount not to exceed the standard  
3 initiation fee, periodic dues, and general assessments of that  
4 organization for the duration of the agreement or a period of three  
5 years from the effective date of the agreement, whichever comes  
6 first. However, any employee who is a member of a bona fide  
7 religion, body, or sect which has historically held conscientious  
8 objections to joining or financially supporting a recognized  
9 employee organization shall not be required to join or financially  
10 support any recognized employee organization as a condition of  
11 employment. Such an employee may be required, in lieu of  
12 periodic dues, initiation fees, or agency shop fees to pay sums  
13 equal to those dues, initiation fees, or agency shop fees to a  
14 nonreligious, nonlabor charitable organization fund exempt from  
15 taxation under Section 501(c)(3) of the Internal Revenue Code,  
16 chosen by the employee from a list of at least three such funds,  
17 designated in a memorandum of understanding or agreement  
18 between the Supreme Court and the recognized employee  
19 organization, or if the memorandum of understanding or  
20 agreement fails to designate such funds, then to any such fund  
21 chosen by the employee. Proof of those payments shall be made  
22 on a monthly basis to the Supreme Court as a condition of  
23 continued exemption from the requirement of financial support to  
24 the recognized employee organization.

25 (b) An agency shop provision in a memorandum of  
26 understanding or agreement which is in effect may be rescinded by  
27 a majority vote of all the employees in the unit covered by the  
28 memorandum of understanding or agreement, provided that (1) a  
29 request for such a vote is supported by a petition containing the  
30 signatures of at least 30 percent of the employees in the unit; (2)  
31 the vote is by secret ballot; and (3) the vote may be taken at anytime  
32 during the term of such memorandum of understanding or  
33 agreement, but in no event shall there be more than one vote taken  
34 during that term.

35 (c) In addition to the procedure prescribed in subdivision (a),  
36 an agency shop arrangement between the Supreme Court and a  
37 recognized employee organization shall be placed in effect upon  
38 (1) a signed petition of at least 30 percent of the employees in the  
39 applicable bargaining unit requesting an agency shop agreement  
40 and an election to implement an agency fee arrangement, and (2)



1 the approval of a majority of employees who cast ballots and vote  
2 in favor of the agency shop agreement. This subdivision shall only  
3 be applicable in the event the court and representatives of the  
4 recognized employee organization, through the meet and confer  
5 process, establish a provision in a negotiated memorandum of  
6 understanding or agreement that the employee organization shall  
7 hold harmless the court and defend and indemnify the court  
8 regarding the application of any agency shop requirements or  
9 provisions, including, but not limited to, improper deduction of  
10 fees, maintenance of records, and improper reporting. This  
11 subdivision shall be applicable January 1, 2002.

12 (d) Notwithstanding subdivisions (a), (b), and (c), the Supreme  
13 Court and the recognized employee organization may negotiate,  
14 and by mutual agreement provide for, an alternative procedure or  
15 procedures regarding a vote on any agency shop agreement.

16 (e) An agency shop agreement shall not apply to management,  
17 confidential, or supervisory employees.

18 (f) Every recognized employee organization which has agreed  
19 to an agency shop provision, or is a party to an agency shop  
20 arrangement, shall keep an adequate itemized record of its  
21 financial transactions and shall make available annually, to the  
22 Supreme Court with which the agency shop provision was  
23 negotiated, and to the employees who are members of the  
24 organization, within 60 days after the end of its fiscal year, a  
25 detailed written financial report thereof in the form of a balance  
26 sheet and an operating statement, certified as to accuracy by its  
27 president and treasurer or corresponding principal officer, or by a  
28 certified public accountant. An employee organization required to  
29 file financial reports under the federal Labor-Management  
30 Reporting and Disclosure Act of 1959 (Griffin-Landrum Act)  
31 covering employees governed by this article or required to file  
32 financial reports under Section 3546.5, may satisfy the financial  
33 reporting requirement of this section by providing the Supreme  
34 Court with a copy of those financial reports.

35 68816.7. If the Supreme Court is party to any memorandum  
36 of understanding or agreement with any bargaining unit that  
37 includes court employees that provides for an agency shop  
38 provision as of the implementation date of this article, the Supreme  
39 Court and employee organization representing the Supreme Court  
40 employees shall be obligated to honor the terms of the agency shop



1 provision, including indemnification provisions, if any, for the  
2 duration of the memorandum of understanding or agreement. The  
3 implementation of this article shall not be a cause for a new agency  
4 shop election.

5 68816.8. A recognized employee organization shall have the  
6 right to represent members in their employment relations with the  
7 Supreme Court as to matters covered by this article. An employee  
8 organization may establish reasonable restrictions regarding who  
9 may join and may make reasonable provisions for the dismissal of  
10 individuals from membership. Nothing in this article shall prohibit  
11 any employee from appearing on his or her own behalf regarding  
12 employment relations with the Supreme Court.

13 68816.9. (a) The scope of representation shall include all  
14 matters relating to employment conditions and  
15 employer-employee relations, including, but not limited to,  
16 wages, hours, and other terms and conditions of employment.  
17 However, the scope of representation shall not include  
18 consideration of the merits, necessity, or organization of any  
19 service or activity provided by law or executive order.

20 (b) In view of the unique and special responsibilities of the  
21 Supreme Court in the administration of justice, decisions  
22 regarding the following matters shall not be included within the  
23 scope of representation:

24 (1) The merits and administration of the Supreme Court  
25 system.

26 (2) Design, construction, and location of court facilities.

27 (3) Delivery of court services.

28 (4) Hours of operation of the Supreme Court and Supreme  
29 Court system.

30 (c) The impact from matters designated in subdivision (b) shall  
31 be included within the scope of representation as those matters  
32 affect wages, hours, and terms and conditions of employment of  
33 Supreme Court employees. The Supreme Court shall be required  
34 to meet and confer in good faith with respect to that impact.

35 (d) The Supreme Court shall continue to have the right to  
36 determine assignments and transfers of Supreme Court  
37 employees; provided that the process, procedures, and criteria for  
38 assignments and transfers shall be included within the scope of  
39 representation.



1 68816.10. (a) Except in cases of emergency as provided in  
2 this section, the Supreme Court shall give reasonable written  
3 notice to each recognized employee organization affected by any  
4 rule, practice, or policy directly relating to matters within the  
5 scope of representation proposed to be adopted by the Supreme  
6 Court and shall give each such recognized employee organization  
7 the opportunity to meet with the Supreme Court.

8 (b) In cases of emergency when the Supreme Court determines  
9 that any rule, policy, or procedure must be adopted immediately  
10 without prior notice or meeting with a recognized employee  
11 organization, the Supreme Court shall provide such notice and  
12 opportunity to meet at the earliest practicable time following the  
13 adoption of the rule, policy, or procedure.

14 68816.11. (a) The Supreme Court, or those representatives as  
15 it may designate, shall meet and confer in good faith regarding  
16 wages, hours, and other terms and conditions of employment  
17 within the scope of representation with representatives of the  
18 recognized employee organizations and shall consider fully the  
19 presentations as are made by the recognized employee  
20 organization on behalf of its members prior to arriving at a  
21 determination of policy or course of action.

22 68816.12. If agreement is reached by the representatives of  
23 the Supreme Court and a recognized employee organization, they  
24 shall jointly prepare a written memorandum of the agreement or  
25 understanding, which shall not be binding, and present it to the  
26 Supreme Court or its designee for determination.

27 68816.13. If after a reasonable period of time, representatives  
28 of the Supreme Court and the recognized employee organization  
29 fail to reach agreement, the Supreme Court and the recognized  
30 employee organization together may agree upon the appointment  
31 of a mediator mutually agreeable to the parties.

32 Costs of mediation, if any, shall be divided one-half to the  
33 Supreme Court and one-half to the recognized employee  
34 organization.

35 68816.14. The Supreme Court shall allow a reasonable  
36 number of Supreme Court employee representatives of a  
37 recognized employee organization reasonable time off, without  
38 loss of compensation or other benefits, when formally meeting and  
39 conferring with representatives of the Supreme Court on matters  
40 within the scope of representation.



1 68816.15. The Supreme Court and employee organizations  
2 shall not interfere with, intimidate, restrain, coerce, or  
3 discriminate against court employees because of their exercise of  
4 their rights under Section 66816.5.

5 68816.16. (a) The Supreme Court may adopt reasonable  
6 rules and regulations, after consultation in good faith with  
7 representatives of an employee organization or organizations, for  
8 the administration of employer-employee relations under this  
9 article. These rules and regulations may include provisions for any  
10 of the following:

11 (1) Verifying that an organization does in fact represent  
12 employees of the Supreme Court.

13 (2) Verifying the official status of employee organization  
14 officers and representatives.

15 (3) Recognition of employee organizations.

16 (4) Exclusive recognition of employee organizations formally  
17 recognized pursuant to a vote of the employees of the Supreme  
18 Court or an appropriate unit thereof, subject to the right of an  
19 employee to represent himself or herself as provided in Section  
20 68816.5.

21 (5) Additional procedures for the resolution of disputes  
22 involving wages, hours, and other terms and conditions of  
23 employment.

24 (6) Access of employee organization officers and  
25 representatives to work locations.

26 (7) Use of official bulletin boards and other means of  
27 communication by employee organizations.

28 (8) Furnishing nonconfidential information pertaining to  
29 employment relations to employee organizations.

30 (9) Such other matters as are necessary to carry out the  
31 purposes of this article.

32 (b) Exclusive recognition of employee organizations formally  
33 recognized as majority representatives pursuant to a vote of the  
34 employees may be revoked by a majority vote of the employees  
35 only after a period of not less than 12 months following the date  
36 of recognition.

37 (c) No Supreme Court shall unreasonably withhold recognition  
38 of employee organizations.



1 (d) Pursuant to the obligation to meet and confer in good faith,  
2 the Supreme Court shall establish procedures to determine the  
3 appropriateness of any bargaining unit of court employees.  
4 68816.17. In the absence of local procedures for resolving  
5 disputes on the appropriateness of a unit of representation, upon  
6 the request of any of the parties, the dispute shall be submitted to  
7 the Division of Conciliation of the Department of Industrial  
8 Relations for the mediation or for recommendation for resolving  
9 the dispute.  
10 68816.18. (a) For purposes of this article, professional  
11 employees shall not be denied the right to be represented  
12 separately from nonprofessional employees by a professional  
13 employee organization consisting of those professional  
14 employees. In the event of a dispute on the appropriateness of a  
15 unit of representation for professional employees, upon request of  
16 any of the parties, the dispute shall be submitted to the Division of  
17 Conciliation of the Department of Industrial Relations for  
18 mediation or for recommendation for resolving the dispute.  
19 (b) For the purpose of this section, “professional employees”  
20 means employees engaged in work requiring specialized  
21 knowledge and skills attained through completion of a recognized  
22 course of instruction, including, but not limited to, attorneys.  
23 68816.19. For purposes of this article, in addition to those  
24 rules and regulations that the Supreme Court may adopt pursuant  
25 to, and in the same manner as set forth in, Section 68816.18, the  
26 Supreme Court may adopt reasonable rules and regulations  
27 providing for designation of the management and confidential  
28 employees of the Supreme Court and restricting those employees  
29 from representing any employee organization which represents  
30 other employees of the Supreme Court, on matters within the  
31 scope of representation. Except as specifically provided otherwise  
32 in this article, this section does not otherwise limit the right of  
33 employees to be members of, and to hold office in, an employee  
34 organization.  
35 68816.20. A Supreme Court employee shall have the right to  
36 authorize a dues deduction from his or her salary or wages in the  
37 same manner provided to public agency employees pursuant to  
38 Section 1157.1, 1157.2, 1157.3, 1157.4, 1157.5, or 1157.7.  
39 68816.21. (a) The Supreme Court shall adopt a procedure to  
40 be used as a preliminary step before petitioning the superior court



1 for relief pursuant to subdivision (c). The procedure may be  
2 mediation or arbitration for review of the decision of the hearing  
3 officer in evidentiary due process hearings. The establishment of  
4 the procedure shall be subject to the obligation to meet and confer  
5 in good faith. However, nothing in this section shall prohibit a  
6 party from seeking provisional relief, such as a stay, in any case in  
7 which such provisional relief would otherwise be appropriate.

8 (b) If the Supreme Court and a recognized employee  
9 organization reach an impasse regarding development of a  
10 procedure required pursuant to subdivision (a), the Supreme Court  
11 shall adopt nonbinding arbitration for review of the decision of the  
12 hearing officer in evidentiary due process or hearings.

13 (c) Notwithstanding Sections 1085 and 1103 of the Code of  
14 Civil Procedure requiring the issuance of a writ to an inferior  
15 tribunal, any agreements reached pursuant to negotiations held  
16 pursuant to this article are binding on the parties and may be  
17 enforced by petitioning the superior court for relief pursuant to  
18 Section 1085 or 1103 of the Code of Civil Procedure.

19 (d) Notwithstanding Sections 1085 and 1103 of the Code of  
20 Civil Procedure requiring the issuance of a writ to an inferior  
21 tribunal, in the event that the Supreme Court, a Supreme Court  
22 employee, or an employee organization believes there has been a  
23 violation of this article, that party may petition the superior court  
24 for relief.

25 (e) The Judicial Council shall adopt rules of court to implement  
26 the hearing and appeal process. The rules of court shall provide a  
27 mechanism for the establishment of a panel of court of appeal  
28 justices who shall be qualified to hear such matters, as specified in  
29 the rules of court, from which a single justice shall be assigned to  
30 hear the matter in the superior court. The rules of court shall  
31 provide that such matters shall be heard in the superior court and  
32 the court of appeal on an expedited basis, and to the extent  
33 permitted by law or rule of court, shall provide that any justice  
34 assigned to hear the matter in the superior court shall not be from  
35 the court of appeal district in which the action is filed, and shall  
36 provide that appeals in these matters shall be heard in the court of  
37 appeal district of the justice assigned to hear the matters in the  
38 superior court.

39 (f) A complete alternative to the procedure outlined in  
40 subdivisions (c) and (d) may be provided for by mutual agreement



1 between the Supreme Court and representatives of a recognized  
2 employee organization.

3 68816.22. The enactment of this article shall not be construed  
4 as making Section 923 of the Labor Code applicable to Supreme  
5 Court employees.

6 68816.23. The Supreme Court and Supreme Court employees  
7 are not covered by Chapter 10 (commencing with Section 3500)  
8 of Division 4 of Title 1, or any subsequent changes to that chapter  
9 except as provided in this article. However, where the language of  
10 this article is the same or substantially the same as that contained  
11 in Chapter 10 (commencing with Section 3500) of Division 4 of  
12 Title 1, it shall be interpreted and applied in accordance with the  
13 judicial interpretations of the same language.

14 SEC. 3. Section 69141 of the Government Code is amended  
15 to read:

16 69141. Each court of appeal may appoint and employ ~~during~~  
17 ~~its pleasure~~ a clerk, and such phonographic reporters, assistants,  
18 secretaries, librarians, and other employees as it deems necessary  
19 for the performance of the duties and exercise of the powers  
20 conferred by law upon it and its members. Except as otherwise  
21 provided in this chapter, each such court may determine the duties  
22 and, subject to subdivision (b) of Section 19825 of the  
23 Government Code, fix and pay the compensation of all such  
24 officers and employees.

25 All salaries and expenses incurred under this section shall be  
26 paid from the funds appropriated for the use of such courts, when  
27 approved by order of the courts.

28 SEC. 4. Article 3 (commencing with Section 69161.1) is  
29 added to Chapter 4 of Title 8 of the Government Code, to read:

30

31 Article 3. Employee Organizations

32

33 69161.1. For purposes of this article, the following  
34 definitions shall apply:

35 (a) "Employee organization" means any organization that  
36 includes court of appeal employees and has as one of its primary  
37 purposes representing those employees in their relations with the  
38 court of appeal.

39 (b) "Mediation" means effort by an impartial third party to  
40 assist in reconciling a dispute regarding wages, hours, and other



1 terms and conditions of employment between representatives of  
2 the court of appeal and the recognized employee organization or  
3 recognized employee organizations through interpretation,  
4 suggestion, and advice.

5 (c) “Meet and confer in good faith” means that the court of  
6 appeal or representatives as it may designate, and representatives  
7 of recognized employee organizations, shall have the mutual  
8 obligation personally to meet and confer promptly upon request by  
9 either party and continue for a reasonable period of time in order  
10 to exchange freely information, opinions, and proposals, and to  
11 endeavor to reach agreement on matters within the scope of  
12 representation. The process should include adequate time for the  
13 resolution of impasses where specific procedures for resolution  
14 are contained in this article, local rule, regulation, or ordinance, or  
15 when the procedures are utilized by mutual consent.

16 (d) “Recognized employee organization” means an employee  
17 organization which has been formally acknowledged by the court  
18 of appeal as an employee organization that represents employees  
19 of the court of appeal.

20 (e) “Court of appeal employee” means a person who is both of  
21 the following:

22 (1) Paid from the court of appeal’s budget, regardless of the  
23 funding source. For the purpose of this paragraph, “court of  
24 appeal’s budget” means funds from which a presiding justice, or  
25 his or her designee, has authority to control, authorize, and direct  
26 expenditures, including, but not limited to, all grant funds and  
27 court of appeal operations funds.

28 (2) Subject to the court of appeal’s right to control the manner  
29 and means of his or her work because of the court of appeal’s  
30 authority to hire, supervise, discipline, and terminate employment.  
31 For purposes of this paragraph only, the “court of appeal” includes  
32 the judges of the court of appeal or their appointees who are vested  
33 with or delegated the authority to hire, supervise, discipline, and  
34 terminate.

35 (f) A person is a “court of appeal employee” if and only if both  
36 paragraphs (1) and (2) of subdivision (e) are true irrespective of  
37 job classification or whether the functions performed by that  
38 person are identified in the internal policies or job classifications  
39 of the court of appeal. The phrase “court of appeal employee”  
40 includes those subordinate judicial officers who satisfy paragraphs



1 (1) and (2) of subdivision (e). The phrase “court of appeal  
2 employee” does not include temporary employees hired through  
3 agencies, individuals hired by the court of appeal pursuant to an  
4 independent contractor agreement, individuals for whom the court  
5 of appeal reports income to the Internal Revenue Service on a  
6 Form 1099 and does not withhold employment taxes, and judges  
7 whether elected or appointed.

8 69161.2. Except as otherwise expressly provided in this  
9 article, the enactment of this article shall not be a cause for the  
10 modification or elimination of any existing wages, hours, or terms  
11 and conditions of employment of court of appeal employees.  
12 However, the enactment of this article shall not prevent the  
13 modification or elimination of existing wages, hours, or terms and  
14 conditions of employment through the meet and confer in good  
15 faith process or, in those situations in which the employees are  
16 either exempted from representation, or are not represented.

17 69161.3. (a) Except as provided in subdivision (b), January  
18 1, 2002, shall be the implementation date of this article.

19 (b) Representatives of the court of appeal and representatives  
20 of recognized employee organizations may mutually agree to an  
21 implementation date of this article later than January 1, 2002.

22 69161.4. It is the purpose of this article to promote full  
23 communication between the courts of appeal and their employees  
24 by providing a reasonable method of resolving disputes regarding  
25 wages, hours, and other terms and conditions of employment  
26 between courts of appeal and a recognized employee organization.  
27 It is also the purpose of this article to promote the improvement of  
28 personnel management and employer-employee relations within  
29 the courts of appeal in the State of California by providing a  
30 uniform basis for recognizing the right of court of appeal  
31 employees to join an organization of their own choice and be  
32 represented by those organizations in their employment relations  
33 with courts of appeal. It is also the purpose of this article to extend  
34 to court of appeal employees the right, and to require courts of  
35 appeal, to meet and confer in good faith over matters within the  
36 scope of representation, consistent with the procedures set forth in  
37 this article.

38 69161.5. Except as otherwise provided by the Legislature,  
39 court of appeal employees shall have the right to form, join, and  
40 participate in the activities of employee organizations of their own



1 choosing for the purpose of representation on all matters of  
2 employer-employee relations. Court of appeal employees also  
3 shall have the right to refuse to join or participate in the activities  
4 of employee organizations and shall have the right to represent  
5 themselves individually in their employment relations with the  
6 court of appeal.

7 69161.6. (a) Notwithstanding any other provision of law,  
8 rule, or regulation, an agency shop agreement may be negotiated  
9 between a court of appeal and a recognized employee organization  
10 which has been recognized as the exclusive or majority bargaining  
11 agent pursuant to reasonable rules and regulations, and  
12 enactments, in accordance with this article. As used in this article,  
13 “agency shop” means an arrangement that requires an employee,  
14 as a condition of continued employment, either to join the  
15 recognized employee organization, or to pay the organization a  
16 service fee in an amount not to exceed the standard initiation fee,  
17 periodic dues, and general assessments of that organization for the  
18 duration of the agreement or a period of three years from the  
19 effective date of the agreement, whichever comes first. However,  
20 any employee who is a member of a bona fide religion, body, or  
21 sect which has historically held conscientious objections to joining  
22 or financially supporting a recognized employee organization  
23 shall not be required to join or financially support any recognized  
24 employee organization as a condition of employment. Such an  
25 employee may be required, in lieu of periodic dues, initiation fees,  
26 or agency shop fees to pay sums equal to those dues, initiation fees,  
27 or agency shop fees to a nonreligious, nonlabor charitable  
28 organization fund exempt from taxation under Section 501(c)(3)  
29 of the Internal Revenue Code, chosen by the employee from a list  
30 of at least three such funds, designated in a memorandum of  
31 understanding or agreement between courts of appeal and the  
32 recognized employee organization, or if the memorandum of  
33 understanding or agreement fails to designate such funds, then to  
34 any such fund chosen by the employee. Proof of those payments  
35 shall be made on a monthly basis to courts of appeal as a condition  
36 of continued exemption from the requirement of financial support  
37 to the recognized employee organization.

38 (b) An agency shop provision in a memorandum of  
39 understanding or agreement which is in effect may be rescinded by  
40 a majority vote of all the employees in the unit covered by the



1 memorandum of understanding or agreement, provided that (1) a  
2 request for such a vote is supported by a petition containing the  
3 signatures of at least 30 percent of the employees in the unit; (2)  
4 the vote is by secret ballot; and (3) the vote may be taken at anytime  
5 during the term of such memorandum of understanding or  
6 agreement, but in no event shall there be more than one vote taken  
7 during that term.

8 (c) In addition to the procedure prescribed in subdivision (a),  
9 an agency shop arrangement between the court of appeal and a  
10 recognized employee organization shall be placed in effect upon  
11 (1) a signed petition of at least 30 percent of the employees in the  
12 applicable bargaining unit requesting an agency shop agreement  
13 and an election to implement an agency fee arrangement, and (2)  
14 the approval of a majority of employees who cast ballots and vote  
15 in favor of the agency shop agreement. This subdivision shall only  
16 be applicable in the event the courts and representatives of the  
17 recognized employee organization, through the meet and confer  
18 process, establish a provision in a negotiated memorandum of  
19 understanding or agreement that the employee organization shall  
20 hold harmless the court and defend and indemnify the court  
21 regarding the application of any agency shop requirements or  
22 provisions, including, but not limited to, improper deduction of  
23 fees, maintenance of records, and improper reporting. This  
24 subdivision shall be applicable January 1, 2002.

25 (d) Notwithstanding subdivisions (a), (b), and (c), courts of  
26 appeal and recognized employee organizations may negotiate, and  
27 by mutual agreement provide for, an alternative procedure or  
28 procedures regarding a vote on any agency shop agreement.

29 (e) An agency shop agreement shall not apply to management,  
30 confidential, or supervisory employees.

31 (f) Every recognized employee organization which has agreed  
32 to an agency shop provision, or is a party to an agency shop  
33 arrangement, shall keep an adequate itemized record of its  
34 financial transactions and shall make available annually, to courts  
35 of appeal with which the agency shop provision was negotiated,  
36 and to the employees who are members of the organization, within  
37 60 days after the end of its fiscal year, a detailed written financial  
38 report thereof in the form of a balance sheet and an operating  
39 statement, certified as to accuracy by its president and treasurer or  
40 corresponding principal officer, or by a certified public



1 accountant. An employee organization required to file financial  
2 reports under the federal Labor-Management Disclosure Act of  
3 1959 covering employees governed by this article or required to  
4 file financial reports under Section 3546.5, may satisfy the  
5 financial reporting requirement of this section by providing courts  
6 of appeal with a copy of those financial reports.

7 69161.7. If the court of appeal is party to any memorandum  
8 of understanding or agreement with any bargaining unit that  
9 includes court employees that provides for an agency shop  
10 provision as of the implementation date of this article, the courts  
11 of appeal and employee organization representing court of appeal  
12 employees shall be obligated to honor the terms of the agency shop  
13 provision, including indemnification provisions, if any, for the  
14 duration of the memorandum of understanding or agreement. The  
15 implementation of this article shall not be a cause for a new agency  
16 shop election.

17 69161.8. Recognized employee organizations shall have the  
18 right to represent members in their employment relations with  
19 courts of appeal as to matters covered by this article. Employee  
20 organizations may establish reasonable restrictions regarding who  
21 may join and may make reasonable provisions for the dismissal of  
22 individuals from membership. Nothing in this article shall prohibit  
23 any employee from appearing on his or her own behalf regarding  
24 employment relations with courts of appeal.

25 69161.9. (a) The scope of representation shall include all  
26 matters relating to employment conditions and  
27 employer-employee relations, including, but not limited to,  
28 wages, hours, and other terms and conditions of employment.  
29 However, the scope of representation shall not include  
30 consideration of the merits, necessity, or organization of any  
31 service or activity provided by law or executive order.

32 (b) In view of the unique and special responsibilities of the  
33 courts of appeal in the administration of justice, decisions  
34 regarding the following matters shall not be included within the  
35 scope of representation:

- 36 (1) The merits and administration of courts of appeal system.
- 37 (2) Design, construction, and location of court facilities.
- 38 (3) Delivery of court services.
- 39 (4) Hours of operation of each courts of appeal system.



1 (c) The impact from matters designated in subdivision (b) shall  
2 be included within the scope of representation as those matters  
3 affect wages, hours, and terms and conditions of employment of  
4 court of appeal employees. Courts of appeal shall be required to  
5 meet and confer in good faith with respect to that impact.

6 (d) The court of appeal shall continue to have the right to  
7 determine assignments and transfers of their employees; provided  
8 that the process, procedures, and criteria for assignments and  
9 transfers shall be included within the scope of representation.

10 69161.10. (a) Except in cases of emergency as provided in  
11 this section, the court of appeal shall give reasonable written notice  
12 to each recognized employee organization affected by any rule,  
13 practice, or policy directly relating to matters within the scope of  
14 representation proposed to be adopted by courts of appeal and shall  
15 give each such recognized employee organization the opportunity  
16 to meet with the court of appeal.

17 (b) In cases of emergency when the court of appeal determines  
18 that any rule, policy, or procedure must be adopted immediately  
19 without prior notice or meeting with a recognized employee  
20 organization, the court of appeal shall provide such notice and  
21 opportunity to meet at the earliest practicable time following the  
22 adoption of the rule, policy, or procedure.

23 69161.11. (a) The court of appeal, or those representatives as  
24 it may designate, shall meet and confer in good faith regarding  
25 wages, hours, and other terms and conditions of employment  
26 within the scope of representation with representatives of the  
27 recognized employee organizations and shall consider fully the  
28 presentations as are made by the recognized employee  
29 organization on behalf of its members prior to arriving at a  
30 determination of policy or course of action.

31 69161.12. If agreement is reached by the representatives of  
32 the court of appeal and a recognized employee organization, they  
33 shall jointly prepare a written memorandum of the agreement or  
34 understanding, which shall not be binding, and present it to the  
35 court of appeal or its designee for determination.

36 69161.13. If after a reasonable period of time, representatives  
37 of the court of appeal and the recognized employee organization  
38 fail to reach agreement, the court of appeal and the recognized  
39 employee organization together may agree upon the appointment  
40 of a mediator mutually agreeable to the parties.



1 Costs of mediation, if any, shall be divided one-half to the court  
2 of appeal and one-half to the recognized employee organization or  
3 recognized employee organizations.

4 69161.14. The courts of appeal shall allow a reasonable  
5 number of court of appeal employee representatives of a  
6 recognized employee organization reasonable time off, without  
7 loss of compensation or other benefits, when formally meeting and  
8 conferring with representatives of courts of appeal on matters  
9 within the scope of representation.

10 69161.15. Courts of appeal and employee organizations shall  
11 not interfere with, intimidate, restrain, coerce, or discriminate  
12 against court employees because of their exercise of their rights  
13 under Section 69161.2.

14 69161.16. (a) A court of appeal may adopt reasonable rules  
15 and regulations, after consultation in good faith with  
16 representatives of an employee organization or organizations, for  
17 the administration of employer-employee relations under this  
18 article. These rules and regulations may include provisions for any  
19 of the following:

20 (1) Verifying that an organization does in fact represent  
21 employees of courts of appeal.

22 (2) Verifying the official status of employee organization  
23 officers and representatives.

24 (3) Recognition of employee organizations.

25 (4) Exclusive recognition of employee organizations formally  
26 recognized pursuant to a vote of the employees of courts of appeal  
27 or an appropriate unit thereof, subject to the right of an employee  
28 to represent himself or herself as provided in Section 69161.5.

29 (5) Additional procedures for the resolution of disputes  
30 involving wages, hours, and other terms and conditions of  
31 employment.

32 (6) Access of employee organization officers and  
33 representatives to work locations.

34 (7) Use of official bulletin boards and other means of  
35 communication by employee organizations.

36 (8) Furnishing nonconfidential information pertaining to  
37 employment relations to employee organizations.

38 (9) Such other matters as are necessary to carry out the  
39 purposes of this article.



1 (b) Exclusive recognition of employee organizations formally  
2 recognized as majority representatives pursuant to a vote of the  
3 employees may be revoked by a majority vote of the employees  
4 only after a period of not less than 12 months following the date  
5 of recognition.

6 (c) No court of appeal shall unreasonably withhold recognition  
7 of employee organizations.

8 (d) Pursuant to the obligation to meet and confer in good faith,  
9 the court of appeal shall establish procedures to determine the  
10 appropriateness of any bargaining unit of court employees.

11 69161.17. In the absence of local procedures for resolving  
12 disputes on the appropriateness of a unit of representation, upon  
13 the request of any of the parties, the dispute shall be submitted to  
14 the Division of Conciliation of the Department of Industrial  
15 Relations for the mediation or for recommendation for resolving  
16 the dispute.

17 69161.18. (a) For purposes of this article, professional  
18 employees shall not be denied the right to be represented  
19 separately from nonprofessional employees by a professional  
20 employee organization consisting of those professional  
21 employees. In the event of a dispute on the appropriateness of a  
22 unit of representation for professional employees, upon request of  
23 any of the parties, the dispute shall be submitted to the Division of  
24 Conciliation of the Department of Industrial Relations for  
25 mediation or for recommendation for resolving the dispute.

26 (b) For the purpose of this section, “professional employees”  
27 means employees engaged in work requiring specialized  
28 knowledge and skills attained through completion of a recognized  
29 course of instruction, including, but not limited to, attorneys.

30 69161.19. For purposes of this article, in addition to those  
31 rules and regulations that courts of appeal may adopt pursuant to,  
32 and in the same manner as set forth in, Section 69161.18, any court  
33 of appeal may adopt reasonable rules and regulations providing for  
34 designation of the management and confidential employees of  
35 courts of appeal and restricting those employees from representing  
36 any employee organization which represents other employees of  
37 the court of appeal, on matters within the scope of representation.  
38 Except as specifically provided otherwise in this article, this  
39 section does not otherwise limit the right of employees to be  
40 members of, and to hold office in, an employee organization.



1 69161.20. A court of appeal employee shall have the right to  
2 authorize a dues deduction from his or her salary or wages in the  
3 same manner provided to public agency employees pursuant to  
4 Section 1157.1, 1157.2, 1157.3, 1157.4, 1157.5, or 1157.7.

5 69161.21. (a) Each court of appeal shall adopt a procedure to  
6 be used as a preliminary step before petitioning the superior court  
7 for relief pursuant to subdivision (c). The procedure may be  
8 mediation or arbitration for review of the decision of the hearing  
9 officer in evidentiary due process hearings. The establishment of  
10 the procedure shall be subject to the obligation to meet and confer  
11 in good faith. However, nothing in this section shall prohibit a  
12 party from seeking provisional relief, such as a stay, in any case in  
13 which such provisional relief would otherwise be appropriate.

14 (b) If a court of appeal and a recognized employee organization  
15 reach an impasse regarding development of a procedure required  
16 pursuant to subdivision (a), the court of appeal shall adopt  
17 nonbinding arbitration for review of the decision of the hearing  
18 officer in evidentiary due process or hearings.

19 (c) Notwithstanding Sections 1085 and 1103 of the Code of  
20 Civil Procedure requiring the issuance of a writ to an inferior  
21 tribunal, any agreements reached pursuant to negotiations held  
22 pursuant to this article are binding on the parties and may be  
23 enforced by petitioning the superior court for relief pursuant to  
24 Section 1085 or 1103 of the Code of Civil Procedure.

25 (d) Notwithstanding Sections 1085 and 1103 of the Code of  
26 Civil Procedure requiring the issuance of a writ to an inferior  
27 tribunal, in the event that a court of appeal, a court of appeal  
28 employee, or an employee organization believes there has been a  
29 violation of this article, that party may petition the superior court  
30 for relief.

31 (e) The Judicial Council shall adopt rules of court to implement  
32 this hearing and appeal process. The rules of court shall provide  
33 a mechanism for the establishment of a panel of court of appeal  
34 justices who are not parties to the hearing and appeal, and who  
35 shall be qualified to hear such matters, as specified in the rules of  
36 court, from which a single justice shall be assigned to hear the  
37 matter in the superior court. The rules of court shall provide that  
38 such matters shall be heard in the superior court and the court of  
39 appeal on an expedited basis, and to the extent permitted by law  
40 or rule of court, shall provide that any justice assigned to hear the



1 matter in the superior court shall not be from the court of appeal  
2 district in which the action is filed, and shall provide that appeals  
3 in these matters shall be heard in the court of appeal district of the  
4 justice assigned to hear the matters in the superior court.

5 (f) A complete alternative to the procedure outlined in  
6 subdivisions (c) and (d) may be provided for by mutual agreement  
7 between courts of appeal and representatives of a recognized  
8 employee organization.

9 69161.22. The enactment of this article shall not be construed  
10 as making Section 923 of the Labor Code applicable to court of  
11 appeal employees.

12 69161.23. Courts of appeal and court of appeal employees are  
13 not covered by Chapter 10 (commencing with Section 3500) of  
14 Division 4 of Title 1, or any subsequent changes to that chapter  
15 except as provided in this article. However, where the language of  
16 this article is the same or substantially the same as that contained  
17 in Chapter 10 (commencing with Section 3500) of Division 4 of  
18 Title 1, it shall be interpreted and applied in accordance with the  
19 judicial interpretations of the same language.

