

VERMONT LABOR RELATIONS BOARD

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| VERMONT STATE EMPLOYEES' |) | |
| ASSOCIATION PETITION FOR |) | |
| ELECTION OF COLLECTIVE |) | DOCKET NO. 14-30 |
| REPRESENTATIVE (RE: CHITTENDEN |) | |
| COUNTY STATE'S ATTORNEY |) | |
| EMPLOYEES) |) | |

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| VERMONT STATE EMPLOYEES' |) | |
| ASSOCIATION PETITION FOR |) | |
| ELECTION OF COLLECTIVE |) | DOCKET NO. 14-31 |
| REPRESENTATIVE (RE: ESSEX |) | |
| COUNTY STATE'S ATTORNEY |) | |
| EMPLOYEES) |) | |

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| VERMONT STATE EMPLOYEES' |) | |
| ASSOCIATION PETITION FOR |) | |
| ELECTION OF COLLECTIVE |) | DOCKET NO. 14-32 |
| REPRESENTATIVE (RE: FRANKLIN |) | |
| COUNTY STATE'S ATTORNEY |) | |
| EMPLOYEES) |) | |

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| VERMONT STATE EMPLOYEES' |) | |
| ASSOCIATION PETITION FOR |) | |
| ELECTION OF COLLECTIVE |) | DOCKET NO. 14-33 |
| REPRESENTATIVE (RE: ORANGE |) | |
| COUNTY STATE'S ATTORNEY |) | |
| EMPLOYEES) |) | |

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| VERMONT STATE EMPLOYEES' |) | |
| ASSOCIATION PETITION FOR |) | |
| ELECTION OF COLLECTIVE |) | DOCKET NO. 14-34 |
| REPRESENTATIVE (RE: RUTLAND |) | |
| COUNTY STATE'S ATTORNEY |) | |
| EMPLOYEES) |) | |

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| VERMONT STATE EMPLOYEES' |) | |
| ASSOCIATION PETITION FOR |) | |
| ELECTION OF COLLECTIVE |) | DOCKET NO. 14-35 |
| REPRESENTATIVE (RE: WINDSOR |) | |
| COUNTY STATE'S ATTORNEY |) | |
| EMPLOYEES) |) | |

VERMONT STATE EMPLOYEES')
ASSOCIATION PETITION FOR)
ELECTION OF COLLECTIVE) DOCKET NO. 14-48
REPRESENTATIVE (RE: ADDISON)
COUNTY STATE'S ATTORNEY)
EMPLOYEES))

VERMONT STATE EMPLOYEES')
ASSOCIATION PETITION FOR)
ELECTION OF COLLECTIVE) DOCKET NO. 14-49
REPRESENTATIVE (RE: WINDHAM)
COUNTY STATE'S ATTORNEY)
EMPLOYEES))

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

The Vermont State Employees' Association ("VSEA") filed six Petitions for Election of Collective Bargaining Representative on April 14, 2014, under the Vermont Municipal Employee Relations Act ("MERA"). Therein, VSEA seeks to represent deputy state's attorneys, victim advocates, administrative secretaries and secretaries of State's Attorney Offices in Chittenden County, Essex County, Franklin County, Orange County, Rutland County and Windsor County (Docket Nos. 14-30, 14-31, 14-32, 14-33, 14-34 and 14-35).

In response to the petitions, State's Attorneys of Franklin, Windsor and Orange Counties took the position that the employees proposed by VSEA to be included in the bargaining units in their respective counties are not employees covered by MERA. The Chittenden County State's Attorney responded that he agreed to Chittenden County employees voting in a consent election under MERA to decide whether they wished to be represented by VSEA. The Essex County State's Attorney responded that he elected to voluntarily recognize VSEA as the representative of the Essex County employees, but he did not indicate his position whether the employees were

covered by MERA. The Rutland County State's Attorney responded that he deferred the question whether the employees in his office were covered by MERA to the Labor Relations Board.

VSEA filed two additional Petitions for Election of Collective Bargaining Representative on May 19, 2014, under MERA. Therein, VSEA seeks to represent deputy state's attorneys, victim advocates, administrative secretaries and secretaries of State's Attorney Offices in Addison County and Windham County (Docket Nos. 14-48, 14-49). In response to the petitions, the State's Attorneys of Addison and Windham Counties took the position that the employees proposed by VSEA to be included in the bargaining units in their respective counties are not employees covered by MERA.

By memorandum of June 23, 2014, the Labor Relations Board requested that the parties in these cases file a memorandum of law in support of their respective positions concerning whether MERA applies to employees covered by these election petitions prior to an evidentiary hearing and oral argument before the Board on this issue. The Board further requested that the parties indicate whether: 1) they had any objection to consolidating these matters for hearing and argument; and 2) whether they had any objection to limiting the August 21 hearing and oral argument to the question whether MERA applies to employees covered by these election petitions, and deferring any unit determination and other issues if necessary to subsequent proceedings.

VSEA and the State's Attorney of Chittenden County; and the State's Attorneys of Franklin County, Orange County, Windsor County, Addison County and Windsor County filed memoranda of law by July 21, 2014. The Essex County State's Attorney, Rutland County State's Attorney and the Vermont Department of State's Attorneys and Sheriffs did not file memoranda of law. No party which filed a memorandum of law objected to consolidating these matters for

hearing and argument; and they did not object to the August 21 hearing and oral argument being limited to the question whether MERA applies to employees covered by these election petitions, and deferring any unit determination and other issues if necessary to subsequent proceedings.

The Labor Relations Board conducted an evidentiary hearing and oral argument on August 21, 2014, in the Labor Relations Board hearing room on the question whether MERA applies to employees covered by these election petitions before Chairperson Richard Park and Members James Kiehle and Gary Karnedy. VSEA Acting General Counsel Alfred Gordon O'Connell and VSEA Staff Attorney Justin St. James represented VSEA. Attorney Joseph Farnham represented the State's Attorneys of Franklin, Orange, Windsor, Addison and Windham Counties. Attorney John Franco represented the Chittenden County State's Attorney. The Essex County State's Attorney, the Rutland County State's Attorney, and the Vermont Department of State's Attorneys and Sheriffs elected to not be represented at the hearing and argument.

The Labor Relations Board provided the parties with the opportunity to file post-hearing briefs. All parties represented at the August 21 hearing and argument filed post-hearing briefs on September 8 and 9, 2014.

FINDINGS OF FACT

1. The Vermont Constitution provides in pertinent part as follows:

Ch. II, § 13 - . . . "In establishing representative districts, which shall afford equality of representation, the General Assembly shall seek to maintain geographical compactness and contiguity and to adhere to boundaries of counties and other existing political subdivisions."

Ch. II, § 50 - . . . "State's Attorneys shall be elected by the voters of their respective districts as established by law. . ."

2. Vermont statutes provide in pertinent part as follows:

Classification of State Personnel (Title 3, Chapter 13) – 3 V.S.A. § 311 (a) – “The classified service to which this chapter shall apply shall include all positions and categories of employment by the state, except as otherwise provided by law”

State Employees Labor Relations Act

- **3 V.S.A. § 901** – “It is the purpose and policy of this chapter to prescribe the legitimate rights of both state employees and the state of Vermont. . . .”
- **3 V.S.A. § 902(4)** – “‘Employee’ means a State employee as defined by subdivision (5) of this section except as the context requires otherwise.”
- **3 V.S.A. § 902(5)** – “ ‘State employee’ means any individual employed on a permanent or limited status basis by the State of Vermont . . . but excluding an individual: (A) Exempt or excluded from the State classified service under the provisions of section 311 of this title, except that the State police in the Department of Public Safety, and employees of the Defender General, excluding attorneys contracted to provide legal services are included within the meaning of “State employee”; . . . (E) Employed by any other person who is not an employer as defined in subdivision (7) of this section; . . .
- **3 V.S.A. § 902(7)** – “ ‘Employer’ means the State of Vermont, excluding the Legislative and Judiciary departments, represented by the Governor or the Governor’s designee, the Office of the Defender General represented by the Defender General or the Defender General’s designee, and Vermont State Colleges, represented by the Chancellor or the Chancellor’s designee and the University of Vermont, represented by the President or the President’s designee.”

Victim Advocates, 13 V.S.A. §5306 – “In order to carry out the provisions of the victims assistance program, state’s attorneys are authorized to hire victim advocates who shall serve at their pleasure.”

Vermont Elections Law (Title 17), § 2103. Definitions. “As used in this title, unless the context or a specific definition requires a different reading: . . . (24) “Political subdivision” means any county, municipality (including cities, towns, and villages), school district, fire district, water, sewer, or utility district, ward, and any consolidation of the foregoing entities authorized under the laws of this state. . . .”

Municipal Employee Relations Act

- **21 V.S.A. §1721 Purpose** – “This chapter shall be known as the Vermont Municipal Employee Relations Act. It is the purpose and policy of this chapter to prescribe the legitimate rights of both municipal employees and municipal employers in their relations with each other; to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other; to protect the rights of individual employees to self-organization; to allow individuals to form, join or assist employee organizations and to bargain collectively”
- **21 V.S.A. §1722 Definitions** – “As used in this chapter: . . . (3) ‘Bargaining unit’ means a group of employees recognized by the municipal employer or certified by

the Board as appropriate for exclusive representation by an employee organization for purposes of collective bargaining.

(4) ‘Collective bargaining’ or ‘bargaining collectively’ means the process of negotiating in good faith the wages, hours or conditions of employment between a municipal employer and the exclusive bargaining agent of employees with the intent to arrive at an agreement which, when reached, shall be reduced to writing.

... (7) ‘Employee’ means a municipal employee as defined in this section.

...

(11) ‘Managerial prerogative’ means any nonbargainable matters of inherent managerial policy.

(12) ‘Municipal employee’ means any employee of a municipal employer, . . .

(13) ‘Municipal employer’ means a city, town, village, fire district, lighting district, consolidated water district, housing authority, union municipal district, or any of the political subdivisions of the State of Vermont which employs five or more employees as defined in this section.

...

(17) ‘Wages, hours and other conditions of employment’ means any condition of employment directing the economic circumstances, health, safety or convenience of employees but excluding matters of managerial prerogative as defined in this section.

...

- **21 V.S.A. §1725 Collective bargaining procedure** – (a) For the purpose of collective bargaining, the representatives of the municipal employer and the bargaining unit shall meet at any reasonable time and shall bargain in good faith with respect to wages, hours and conditions of employment, and shall execute a written contract incorporating any agreement reached; provided, however, neither party shall be compelled to agree to a proposal nor to make a concession, nor to bargain over any issue of managerial prerogative.

...

Municipal and County Government (Title 24), County Officers; Powers and Duties (Chapter 5), State’s Attorney (Subchapter 7)

- **§361. General duties (a)** – “A state’s attorney shall prosecute for offenses committed within his or her county, and all matters and causes cognizable by the Supreme and Superior Courts on behalf of the State, file information and prepare bills of indictment, deliver executions in favor of the State to an officer for collection immediately after final judgment, taking duplicate receipts therefore, one of which shall be sent to the Commissioner of Finance and Management, and take measures to collect fines and other demands or sums of money due to the State or county. . .”
- **§363. Deputy state’s attorneys** – “A states’ attorney may appoint as many deputy state’s attorneys as necessary for the proper and efficient performance of his or her office, and with the approval of the Governor, fix their pay not to exceed that of the state’s attorney making the appointment, and may remove them at pleasure. . . Deputy state’s attorneys shall be reimbursed for their necessary expenses incurred in connection with their official duties when

approved by the state's attorneys and the Commissioner of Finance and Management. . .

- **§367. Department of State's Attorneys and Sheriffs** – “(a) There is established a Department of State's Attorneys and Sheriffs which shall consist of the 14 state's attorneys and 14 sheriffs. The state's attorneys shall elect an Executive Committee of five state's attorneys from among their members. The members of the Executive Committee shall serve for terms of two years. There shall be one general appropriation for the Department of State's Attorneys and Sheriffs.
(b) The Executive Committee and the Executive Committee of the Vermont Sheriff's Association shall appoint an Executive Director who shall serve at the pleasure of the Committees. The Executive Director shall be an exempt employee.
(c) The Executive Director shall prepare and submit all budgetary and financial materials and forms which are required of the head of a department of State government with respect to all State funds appropriated for all of the Vermont state's attorneys and sheriffs. At the beginning of each fiscal year, the Executive Director, with the approval of the Executive Committee, shall establish allocations for each of the state's attorneys' offices from the state's attorneys' appropriation. Thereafter, the Executive Director shall exercise budgetary control over these allocations and the general appropriation for state's attorneys. . . He or she shall provide centralized support services for the state's attorneys and sheriffs with respect to budgetary planning, training, and office management, and perform such other duties as the Executive Committee directs. The Executive Director may employ clerical staff as needed to carry out the functions of the Department.
(d)(1) If an individual state's attorney is aggrieved by a decision of the Executive Director pertaining to an expenditure or proposed expenditure by the state's attorney, the question shall be decided by the Executive Committee. The decision of the Committee shall be final.”

. . .

Taxation and Finance (Title 32), Chapter 15 (Salaries and Fees), §1185 – “(a) In settlement of their accounts the Commissioner of Finance and Management shall allow State's attorneys their expenses for secretarial assistance, office expenses including rent, supplies, equipment, maintenance, legal forms and stationery, telephone service, professional liability insurance, the expense of printing briefs in cases in which the State's Attorney has represented the State, books, advance copies of the Vermont reports, advertising, dues and subscriptions, tuitions, and stipends for professional training and their necessary expense when away from home on official business.

(b) Secretaries shall be hired by and shall serve at the pleasure of the State's Attorney. Secretaries shall be State employees paid by the State, and shall receive those benefits available to other classified State employees who are similarly situated but they shall not be subject to the rules provided for under 3 V.S.A. chapter 13. The compensation of each Secretary shall be determined by the Commissioner of Human Resources with the approval of the Governor. In fixing compensation, there shall be taken into consideration,

among other things, the volume of work requiring the services of the Secretary and whether the services are on a full- or part-time basis.”

3. The Executive Director of the Vermont Department of State’s Attorneys and Sheriffs oversees the administration, budget, information technology and many human resource services for the fourteen State’s Attorney offices, and oversees the budget and many human resource services for the fourteen Sheriff offices. The Executive Director also is involved in the legislative process: monitoring and providing input on legislation, testifying on legislation, and generally acting as an advocate for the 14 State’s Attorney and Sheriff offices. The Executive Director further administers the annual training program for State’s Attorney offices. The State’s Attorney Executive Committee, composed of five State’s Attorneys, and the Sheriffs’ Executive Committee hire and oversee the Executive Director (VSEA Exhibits 3, 7).

4. There are three employees in the Department of State’s Attorneys and Sheriffs working under the supervision of the Executive Director performing information technology, human resources and administrative services for State’s Attorney and Sheriff offices. Among the duties performed by the employee performing human resource services is administering payroll and tracking leave balances for the State’s Attorney offices. Also, there is a fourth employee working under the Executive Director, a “floating” attorney paid by the State who performs research and works on cases in State’s Attorney offices.

5. The Executive Director is responsible for drafting a budget to fund the operations of the Department of State’s Attorney and Sheriffs and State’s Attorney offices. Included in the proposed budget are wages and benefits for the deputy state’s attorneys, victim advocates, administrative secretaries and secretaries working in the State’s Attorney offices. The budget documents admitted into evidence indicate that the employees whom VSEA is petitioning to represent are listed as exempt employees excluded from the classified service. The budget also

covers operating expenses for the State's Attorney offices. He presents a proposed budget for the Governor's approval through the State Department of Finance and Management. The budget then is presented to the Vermont General Assembly as part of the entire State government budget. The Executive Director may disagree with the budget proposed by the Governor. The budget approved by the legislature is provided to the Department of State's Attorneys and Sheriffs as a lump sum, and then is divided among the counties. This is the primary funding source for the State's Attorney offices. The Center for Crime Victim Services also contributes substantial funding to State's Attorney offices to support the victim advocates and deputy state's attorneys providing crime victim services (VSEA Exhibits 1, 2).

6. The Fiscal Year 2015 budget submission by the Department for State's Attorneys and Sheriffs included a request for "on call" compensation for deputy state's attorneys. The Department sought funding of \$200,000, and ultimately received a \$25,000 appropriation from the legislature (VSEA Exhibit 2).

7. If a deputy state's attorney wishes to retain and pay an expert witness for a case, the expense of the expert witness must be approved by the Executive Director.

8. The annual training program administered by the Executive Director for the State's Attorney offices generally is a minimum of two days to provide attorneys in all the offices with sufficient continuing legal education credits. Deputy state's attorneys and victim advocates participate in the training. The training content and retaining of trainers is done primarily by the Executive Director.

9. The Executive Director periodically communicates by email with deputy state's attorneys and victim advocates on various issues.

10. The Executive Director is not involved in the daily operations of State's Attorney offices. He does not get involved in working conditions, hours of work or assignments of employees in these offices.

11. State's Attorneys have the sole authority to hire and discharge the deputy state's attorneys, victim advocates and secretaries whom work in their offices. They may consult with the Executive Director over potential dismissals of employees but retain the ultimate authority whether to discharge employees.

12. There were 27 employees working under Chittenden County State's Attorney T.J. Donovan when he first became State's Attorney in 2007. He did not dismiss any of the 27 employees upon assuming office. When Marc Brierre became State's Attorney in Rutland County in 2009, he retained all the employees then working in the Rutland State's Attorney office.

13. State's Attorneys may change the caseloads and assignments of deputy state's attorneys working in their office.

14. State's Attorneys do not establish the pay of deputy state's attorneys. The funding of deputy state's attorney wages is through the State government appropriations process. The pay of deputy state's attorneys is established through the State of Vermont Attorney Pay Plan. It is a step pay plan in which attorneys generally are paid at the lowest step of the pay plan when hired, and then progress through the steps at anniversary dates of hire. Paragraph 10 of the "Conditions and Operations" section of the Pay Plan provides:

No Vested Interest: The terms and conditions of this Pay Plan notwithstanding, all participants in this Plan serve exclusively at the pleasure of the applicable Department Head/Appointing Authority and without vested interest in, nor expectation of, any right to continuation of either position or salary. Promotion, meritorious increases or bonuses, demotion, reduction in salary, suspension with or without pay, and dismissal shall remain at the pleasure of that Department Head/Appointing Authority.

(Franklin, et al, Exhibit 1; emphasis in original)

15. State's Attorneys can appeal to the Executive Director of the Vermont Department of State's Attorneys and Sheriffs to hire deputy state's attorneys at higher steps based on experience. If the State's Attorney disagrees with the decision of the Executive Director, the State's Attorney may appeal the decision to the Executive Committee of the Department of State's Attorneys. There have been a few instances in smaller counties where deputy state's attorneys have been hired at higher steps, but generally deputy state's attorneys throughout the state are paid at the lowest steps of the pay plan when hired.

16. Secretaries working in State's Attorney offices are state employees who are paid by the State. State's Attorneys do not establish the wages of the secretaries. Secretaries provide administrative and secretarial support to the State's Attorneys (VSEA Exhibit 4).

17. Victim advocates are paid through funding by the Center for Crime Victim Services, some of which are federal funds. State's Attorneys do not establish the wages of the victim advocates. Victim advocates are treated like classified State employees for purposes of pay. They generally receive the wage increases provided for in the State-VSEA collective bargaining agreement even though they are not covered by these agreements. Victim advocates are supervised by the State's Attorney in the office to which they are assigned.

18. Deputy state's attorneys, victim advocates and secretaries in State's Attorney offices are eligible to receive health insurance benefits through State of Vermont health plans. Also, they receive retirement benefits from the State through defined benefit or defined contribution plans.

19. Prior to the 2008 recession, deputy state's attorneys generally received the same wage increases as employees covered by the State-VSEA collective bargaining agreements even

though they were not represented by the VSEA. Following the beginning of the recession in 2008, the pay of deputy state's attorneys with salaries above \$60,000 was reduced by 5%. If their salaries were below \$60,000, their pay was reduced by 3%. This decision was made by the Governor Douglas administration. State employees covered by collective bargaining agreements did not realize such reductions at this time.

20. The jurisdiction of each State's Attorney extends just to his or her own county. If a deputy state's attorney from one county is assigned to work on a case in another country, they generally are deputized in that county. State's Attorneys do not generally share deputies based on workload or their expertise.

OPINION

The issue before the Labor Relations Board is whether the Municipal Employee Relations Act ("MERA") applies to the deputy state's attorneys, victim advocates, administrative secretaries and secretaries in the eight State's Attorneys covered by the eight election petitions filed by VSEA.

VSEA's position has evolved in these matters since it filed petitions in April and May to represent employees under MERA in separate bargaining units in eight State's Attorney offices. VSEA now asserts that the Board should order that an election be conducted under MERA among all unit-eligible employees as a single statewide bargaining unit to determine whether a majority of these employees wish to be represented by VSEA. VSEA contends that the Board must find that the Department of State's Attorneys and Sheriffs is a municipal employer within the meaning of MERA. VSEA maintains that the Department, in combination with the fourteen

State's Attorney offices, acts as a single employer, forming a single integrated enterprise under MERA that employs the employees who are the subject of the eight petitions before us.

Alternatively, VSEA maintains that the Board must find that a joint employer relationship exists between the Department and the individual offices of State's Attorneys due to the shared control over important employment conditions between the entities. If the Board determines that the employment relationship exists only at the local level, VSEA contends that it is the offices and not the individual State's Attorneys themselves that act in an employer capacity toward the petitioned-for employees under MERA.

The State's Attorneys of Franklin, Windsor, Orange, Addison and Windham Counties take the position that the employees VSEA seeks to represent are not employees covered by MERA. They contend that the deputy state's attorneys and victim advocates cannot be covered by MERA as they serve at the pleasure of an elected official, and thus are not employees of any "political subdivision" under MERA but rather employees of the individual State' Attorney for whom they work. Further, they assert that the administrative secretaries and secretaries VSEA seeks to represent are state employees not covered by MERA. In sum, they contend that the Labor Relations Board is without jurisdiction over these petitions because none of the employees at issue are municipal employees as defined by MERA.

The Chittenden County State's Attorney takes the position that its employees covered by the election petition filed by VSEA are municipal employees under MERA because they are employed by one of the "political subdivision of the State of Vermont" under MERA. Alternatively, the Chittenden County State's attorney states that they are state employees covered by the provisions of the State Employees Labor Relations Act.

The determination whether MERA applies to the deputy state's attorneys, victim advocates, administrative secretaries and secretaries in the eight State's Attorney offices covered by the election petitions filed by VSEA involves examining a complex labor relations environment. At first blush, it appears that the State's Attorney Office in each county may constitute an employer under MERA. Chapter II, §13, makes it clear that counties constitute "political subdivisions". MERA includes "any of the political subdivisions of the State of Vermont" within its definition of "municipal employer". 21 V.S.A. §1722(13).

The State's Attorneys in each county exercise some of the functions of an employer. They have the sole authority to hire and discharge the deputy state's attorneys, victim advocates and secretaries whom work in their offices. They may change the caseloads and assignments of deputy state's attorneys working in their office as part of supervising them, and also oversee the work of secretaries and victim advocates in their offices.

We do not find persuasive the contention of the State's Attorneys of Franklin, Windsor, Orange, Addison and Windham Counties that the deputy state's attorneys and victim advocates cannot be covered by MERA because they serve at the pleasure of an elected official. They assert that, as a result, these individuals are not employees of any "political subdivision" under MERA but rather employees of persons – i.e., the individual State's Attorneys - who by statute are elected by voters of each State' Attorney's respective district. The evidence does not support a conclusion that the deputy state's attorneys and victim advocates are employees of individual persons. Instead, they are government employees.

The fact that the deputy state's attorneys and victim advocates serve at the pleasure of the State's Attorneys does not defeat their possible ability to be covered by MERA. The Board held in one case decided under MERA that the fact that a zoning administrator was "appointed to a

fixed term does not foreclose the right to be represented by a union for collective bargaining purposes during the term of that appointment.” IBEW Local 300 and Town of Stowe, 23 VLRB 264, 275 (2000). The Board reasoned:

A union is able to negotiate wages, hours and conditions of employment for the Zoning Administrator. At the same time, the Selectboard’s power to appoint and reappoint the Zoning Administrator as defined by the Town charter is not affected by the Zoning Administrator’s inclusion in the bargaining unit. 23 VLRB at 275.

Similarly here, a union under an appropriate statutory scheme would be able to negotiate wages, hours and conditions of employment for deputy state’s attorneys and victim advocates other than their tenure of employment. The fact that they serve at the pleasure of the State’s Attorneys would not affect their inclusion in the unit.

Nonetheless, the limited employer functions exercised by the State’s Attorneys are not sufficient to make them municipal employers within the meaning of MERA when MERA is examined in its entirety. When construing a statute, the overriding objective must be to effectuate the intent of the Legislature. In re Grievance of Danforth, 174 Vt. 231, 238 (2002). Provisions that are part of the same statutory scheme must be read in context and the entire statutory scheme read in pari materia with reference to each provision. Id. at 238-239.

MERA provides municipal employees with the right to “form, join or assist employee organizations and to bargain collectively”. 21 V.S.A. §1721. “Collective bargaining” or “bargain collectively” is defined in MERA as “the process of negotiating in good faith the wages, hours or conditions of employment between a municipal employer and the exclusive bargaining agent of employees with the intent to arrive at an agreement which, when reached, shall be reduced to writing.” 21 V.S.A. §1722(4). “Wages, hours and other conditions of employment” under MERA “means any condition of employment directing the economic circumstances, health, safety or convenience of employees but excluding matters of managerial prerogative”. 21 V.S.A.

§1722(17). MERA provides for a collective bargaining procedure where “the representatives of the municipal employer and the bargaining unit shall meet at any reasonable time and shall bargain in good faith with respect to wages, hours and conditions of employment, and shall execute a written contract incorporating any agreement reached. 21 V.S.A. §1725(a).

These provisions of MERA set forth an explicit statutory scheme in which municipal employers negotiate with the union representing municipal employees over the full panoply of mandatory bargaining subjects of wages, hours and other conditions of employment. The State’s Attorneys fall well short of the ability to negotiate over this range of subjects.

State’s Attorneys do not establish the pay of deputy state’s attorneys. The funding of deputy state’s attorney wages is through the State appropriations process. The pay of deputy state’s attorneys is established through the State of Vermont Attorney Pay Plan. It is a step pay plan in which attorneys generally are paid at the lowest step of the pay plan when hired, and then progress through the steps at anniversary dates of hire. The influence of State’s Attorneys in these matters is limited. Also, State’s Attorneys do not establish the wages of the secretaries. Secretaries working in State’s Attorney offices are state employees who are paid by the State. Further, State’s Attorneys do not establish the wages of the victim advocates. Victim advocates are treated like classified State employees for purposes of pay. They generally receive the wage increases provided for in the State-VSEA collective bargaining agreement even though they are not covered by these agreements.

Further, the evidence does not indicate that State’s Attorneys establish the benefits of employees in their offices. For instance, deputy state’s attorneys, victim advocates and secretaries in State’s Attorney offices are eligible to receive health insurance benefits through State of Vermont health plans.

The lack of responsibility of State's Attorneys in these crucial areas of wages and benefits means they would lack the effective ability to negotiate with a union representing employees in their offices over matters which are mandatory bargaining subjects under MERA and which are of great importance to the employees. We cannot construe MERA to allow such a result at odds with its explicit collective bargaining scheme.

However, VSEA contends that the Department of State's Attorneys and Sheriffs is a municipal employer within the meaning of MERA. VSEA further maintains that the Department, in combination with the fourteen State's Attorney offices, acts as a single employer, forming a single integrated enterprise under MERA that employs the employees who are the subject of the eight petitions before us.

We would have to conclude that the Department is a "political subdivision of the State of Vermont" to conclude that it is a municipal employer within the meaning of MERA. This term is nowhere defined in MERA. VSEA supports its position that the Department is a political subdivision by pointing to the statute creating the Department appearing in Chapter 5, "County Officers; Powers and Duties", of Title 24, "Municipal and County Government", of Vermont Statutes. VSEA contends that this reflects its nature as an administrative collective of county officials. VSEA also relies on a statutory provision defining the term "political subdivision" in the context of the state election law as including "consolidations" of other traditional political subdivisions. VSEA asserts in sum that the Department comprises a consolidation of county-level offices carrying out traditional public functions, and is thus a political subdivision of the State.

We conclude that VSEA has not established that the Department is a political subdivision of the State under MERA. The fact that the statute creating the Department is in municipal and

county government statutory sections is not surprising given that these sections contain the governing provisions for the functions performed on a county level by the State's Attorneys and Sheriffs. However, this does not mean that the Department itself, which is a statewide entity, is a political subdivision of the State. Moreover, a provision of state elections law defining political subdivision is not applicable to interpreting an unrelated labor relations statute.

The entities explicitly referred to in the definition of "municipal employer" in §1722(13) of MERA all are organized on a less than statewide basis. The term "political subdivision of the State of Vermont", which also is included within the definition, would constitute as commonly understood entities organized on a less than statewide basis such as by county. We cannot construe MERA's definition of municipal employer to include a statewide entity such as the Department of State's Attorneys and Sheriffs. The fact that the Department was created to address issues involving all the county State's Attorneys and Sheriffs offices does not change the reality that the Department is part of State government, not a political subdivision of the State.

In sum, we conclude that neither the State's Attorney offices nor the Department of State's Attorneys and Sheriffs fall within the definition of municipal employer under MERA, whether they are considered individually or collectively. Our conclusion in this regard is reinforced by other considerations. The secretaries in the State's Attorney offices whom VSEA is seeking to represent are explicitly made state employees by statute. 32 V.S.A. §1185(b) provides that "(s)ecretaries shall be state employees paid by the state, and shall receive those benefits" provided other state employees. It would be incongruous given this statutory provision to consider secretaries as municipal employees within the meaning of MERA.

The labor relations in the State's Attorney offices constitute hybrid situations which do not come within the purview of any of the Vermont labor relations statutes. As discussed above,

the county-level State's Attorneys exercise some of the functions of employers but lack responsibility over employees in the crucial areas of wages and benefits, and MERA does not apply in such a context. The wages and benefits of employees in the State's Attorney offices is determined on a statewide level through the State government budget process, involvement of the Department of State's Attorneys and sheriffs, statutory provisions, state government pay plans and other mechanisms, and actions of the Executive Branch of the State government.

However, this state government involvement does not mean that the State Employees Labor Relations Act, 3 V.S.A. §901 *et seq.*, applies to the State's Attorney offices. A "State employee" covered by SELRA "means any individual employed on a permanent or limited status basis by the State of Vermont . . . but excluding an individual . . . (e)xempt or excluded from the State classified service" except that the State Police and certain employees of the Defender General are included within the meaning of "State employee".

There is no evidence to support a conclusion that any of the employees whom VSEA seeks to represent in these petitions are included within the State classified service. The budget documents admitted into evidence indicate that the employees are listed as exempt employees excluded from the state classified service. The petitioned-for secretaries are explicitly excluded by statute from the rules provided for state classified employees under applicable statutory provisions. 32 V.S.A. §1185(b); 3 V.S.A Chapter 13. Also, the fact that all of the petitioned-for employees serve at the pleasure of the State's Attorneys defeats any claim that they are state classified employees since state classified employees have stronger job tenure protections. State government policies provide that all classified employees with the Executive Branch of the State who have passed an original probationary period will not be subject to dismissal or suspension

except for cause. State of Vermont Personnel Policies and Procedures, Section 2.3, Chapter 12.01; Section 8.0. In sum, SELRA does not apply to the State's Attorney offices.

Further, there is no other labor relations statute which would cover State's Attorney offices. The State Labor Relations Act, 21 V.S.A. §1501 *et seq.*, does not apply to public employees and government entities. *See* 21 V.S.A. §1501(6)(G). 21 V.S.A. §1501(7)(B). The four other labor relations statutes in the State are clearly inapplicable as they cover the judiciary, teachers, independent direct support providers, and early care and education providers. 3 V.S.A. §1010 *et seq.*; 16 V.S.A. §1981 *et seq.*; 21 V.S.A. §1631 *et seq.*; 33 V.S.A. §3601 *et seq.* Any statutory collective bargaining rights which would be granted employees of the State's Attorney offices would have to come through legislative action.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the Petitions for Election of Collective Bargaining Representative filed by the Vermont State Employees' Association in Docket Nos. 14-30, 14-31, 14-32, 14-33, 14-34, 14-35, 14-48 and 14-49 are dismissed.

Dated this 3rd day of November, 2014, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ James C. Kiehle

James C. Kiehle

/s/ Gary F. Karnedy

Gary F. Karnedy