

Jurisdictional Questions

Under the State Labor Relations Act, in a case involving whether the VLRB or the National Labor Relations Board had jurisdiction, the VLRB asserted jurisdiction over a representation election petition to represent employees of a private non-profit library whose gross annual revenues were less than \$1 million.¹ The VLRB concluded that the NLRB had declined to assert jurisdiction over the class and category of employees to which the library belonged because, in a previous advisory opinion, the NLRB had declined to assert jurisdiction over a private non-profit library whose gross annual revenues were less than \$1 million.²

The Library subsequently appealed the VLRB decision to Superior Court. The Superior Court refused to assert jurisdiction over the case on the grounds that the Library could have appealed the VLRB decision directly to the Vermont Supreme Court. The Supreme Court agreed that statutory law provided for direct appeal to the Supreme Court of unit determination and union certification orders of the VLRB under the State Labor Relations Act, and affirmed the Superior Court decision. The VLRB decision thus remained in effect.³

In 2014, the VLRB determined whether it had jurisdiction over eight petitions for election of collective bargaining representatives filed by the Vermont State Employees' Association ("VSEA") under the Municipal Employee Relations Act seeking to represent deputy state's attorneys, victim advocates, administrative secretaries and secretaries of State's Attorney Offices in eight counties of Vermont. VSEA asserted that the Board should order that an election be conducted under the Municipal Act among all the employees under a single statewide bargaining unit. VSEA contended that the Board should find that the Department of State's Attorneys

¹ Local 1369, AFSCME, AFL-CIO and Kellogg-Hubbard Library, 15 VLRB 60 (1992).

² Id.

³ Kellogg-Hubbard Library v. Labor Relations Board, 162 Vt. 571 (1994).

and Sheriffs is a municipal employer within the meaning of the Municipal Act and that the Department, in combination with the 14 State's Attorney offices, acts as a single employer, forming a single integrated enterprise under the Municipal Act that employs the employees who are subject of the eight petitions.

The Board determined that neither the State's Attorney offices nor the Department of State's Attorneys and Sheriffs fall within the definition of municipal employer under the Municipal Act, whether they are considered individually or collectively.⁴ The Board held that 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."⁵ The Board concluded that any statutory collective bargaining rights which would be granted employees of the State's Attorney offices would have to come through legislative action.⁶

VSEA appealed the Board decision to the Supreme Court, and the Court reversed the Board conclusion that the Municipal Act did not apply to petitions filed by VSEA to seek to represent employees of State's Attorneys' offices. The Court remanded to the Board to process the petitions filed by VSEA involving State's Attorneys' offices which employ five or more employees as defined by the Municipal Act.⁷ The Board subsequently conducted elections in 2016 among employees in four of the State's Attorneys' offices. Employees voted to be represented by VSEA in two or the four elections.

In 2017, the State Employees Labor Relations Act was amended to grant collective bargaining rights under the Act to deputy State's Attorneys and other

⁴ Vermont State Employees' Association Petitions for Election of Collective Bargaining Representative (Re: Chittenden County State's Attorney Employees, et al), 33 VLRB 119, 130-36 (2014).

⁵ Id. at 136.

⁶ Id. at 138.

⁷ VSEA Petitions for Election of Collective Bargaining Representative (re: Chittenden County State's Attorney Employees, et al), 2016 VT 7.

employees of State's Attorneys' offices, rather than provide them such rights under the Municipal Act.⁸

⁸ Act No. 81, 2017 Session.