

Early in the session, the Department requested statutory language to protect the SAS employees' participation in the State's insurance and retirement programs. The proposed bill incorporates that important language.

The Department does not object to the employees' rights to organize and collectively bargain.

The Department believes that the bill needs changes in order to ensure efficiency, consistency, and financial viability. To that end, this summary will outline (1) the Vt. S.Ct. Decision; (2) what provisions relating to compensation currently exist; (3) the Department's suggestions for changes and/or clarity to the language; (4) and remaining questions.

The Vermont Supreme Court said that the questions before them were:

1. *"Whether the employees covered by VSEA's 8 petitions fall under MERA"; and*
2. *"More specifically, the issue is whether either the individual state's attorneys of the legislatively created Vermont Department of State's Attorney and Sheriffs, or some combination thereof, are municipal employers."*

The Court said: *"... we conclude that each individual state's attorney that employs five or more employees is a municipal employer for purposes of MERA"*.

The Court noted that the individual State's Attorneys *"retain the ultimate authority whether to discharge employees...change caseloads, assignments, and other working conditions of the deputy state's attorneys working in their office"*; but then also noted the following regarding the salary and benefits of the employees:

- *"Although 24 VSA sec 363 permits state's attorneys to 'fix the pay' of their DSAs 'with the approval of the Governor', in practice the Executive Committee's adoption of the State of Vermont Attorney Pay Plan currently establishes the pay"*.
- The Court noted that the Secretaries salaries are established by the Commissioner of HR and *are "categorized expressly by statute as state employees...and who receive the same benefits as state-classified employees"*; and that,
- *"State's attorneys do not establish the wages of victim advocates, who are treated like classified state employees for the purposes of pay and generally receive wage increases provided for in the state-VSEA collective bargaining agreement, though they are not covered by the agreement"*, but noted that *"State's attorneys control the victim advocates' hours and other conditions of employment"*.
- The Court's decision commented that the staff in the local SA offices *"are eligible to receive health insurance benefits...(and)...retirement benefits from the state..."*. ***(Subsequent to this Court decision, the State DHR asked the Department of SAS to initiate statutory language to clearly ensure that the State can continue to allow these employees to continue insurance and retirement benefits.)***

The Court noted: *"The (SAS) Executive Director drafts a proposed budget that includes wages and benefits for the deputy state's attorneys, victim advocates, and secretaries working in the SAOs"*, and that this budget is presented for the Governor's approval through Finance and Management...and presented to the Legislature as part of the entire state government budget".

The Court determined that there is not joint employer relationship between the SAS Department and the local SA Offices (*"...we uphold the Board's determination that the Department is not an employer of the petitioned-for employees in conjunction with the individual state's attorney."*)

Under the bill, the Department of States Attorneys and Sheriffs would be responsible for collective bargaining with employees (DSA, VA, Secretaries) under State Employees Labor Relations Act (SELRA) on certain issues.

Under the bill, bargaining on some issues would be conducted by “...each State’s Attorney’s Office represented by the respective State’s Attorney or designee”. This local bargaining would also be under SELRA, not MELRA (though the Court said the local SA is a municipal employee under MELRA if they employ 5 or more employees).

The bill identifies subjects for bargaining, impasse proceedings, funding, etc. under SELRA.

The bill also legislatively establishes a statewide bargaining unit of all employees (job titles of Deputy State’s Attorney, Victim Advocate and Secretary; see new section 908, pg. 11).

It then states that the employees at each local office “*may elect to have the bargaining unit’s representative collectively bargain with the State’s Attorney for that office in relation to the matter set forth pursuant to subdivision 904 (c)(2)*”; (i.e. min. hours, working conditions, RIF, rules for personnel administration).

In Sec.7, pg. 12, it again bifurcates the bargaining conducted at the Department level versus the local SA Office level, and more specifically states that any agreement determined by the Vermont Labor Relations Board relating to the Department-level agreement will be binding on each party “subject to appropriations in accordance with subsection 982(d) of this title”. However, the bill proposes that in the case of the local SA Offices, the “decision of the Board shall be final and binding on each party” – with no reference to subject to appropriations. Since the local SA Offices derive their funding from the fiscal allocation provided through the Department or through grants, which supports all 14 SA offices (and some limited funding to the Sheriffs Department), this would be inconsistent with the provisions governing the bargaining provisions applicable to the rest of state government.

A significant concern for the Department and the State’s Attorneys is the need for additional Pay Act funding, and the Administration’s and Legislature’s commitment to ensure that costs associated with bargaining will be included in the Pay Act bill and appropriation. The Department believes that absent Pay Act funding, the other sources of position funding (such as the grant supporting the Victim Advocates) will be overly taxed and may result in reduced funding to other grantees or, in the worst-case, elimination of positions.

Under section 8 (c), pg. 12, if local SA Offices are to be required to bargain locally, the language under that section should include the State’s Attorney’s offices, which would require the contracts to seek funding from the Governor for “sufficient funds from the General Assembly to implement the agreement” (existing statutory language).

On Section 10, pg. 14, the language still has the Secretaries as “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 VSA ch. 13.” It also states that the “compensation of each Secretary shall be determined by the Commissioner of Human Resources with the approval of the Governor, “or by collective bargaining pursuant to 3 VSA ch 27” (new language). If the collective bargaining for the SA office staff will include the Secretaries, as proposed by the bill, then the Department believes that the language above – and in lines 1-9 on page 14, which has traditionally determined both their benefits and their salary for them “as if state employees” should be sunset at the passage of any collective bargaining agreement reached that would cover the Secretaries; and further, that the bill clearly state that the parties are able to negotiate changes to the “as if” benefits and salary structure without facing an unfair labor practice charge by either side.

Section 10 (a), which allows the SAS Executive Director to enter into an agreement with HR to provide assistance and support in negotiations and administering the CBA, has not been determined, and no fiscal impact has been reviewed by either SAS or DHR relating to this.

Other notes:

Page 2: The language relating to Retirement benefits reads:

“Employee” includes deputy State’s Attorneys, victim advocates employed by a State’s Attorney pursuant to 13 V.S.A. § 5306, and secretaries employed by a State’s Attorney pursuant to 32 V.S.A. § 1185.”

What about other job titles (permanent or limited service positions) that may be hired or added in future? If titles are not named in the statute, they would not have the ability to participate in the retirement benefit, even though they may be permanent or limited service positions that should otherwise be eligible. The Department suggests adding

language: “...or any other titles that cover permanent or limited-service employees in the Department or local State’s Attorneys offices, provided that the employee would otherwise meet eligibility for participation based upon plan requirements”.

Page 4: The language relating to Insurance benefits reads:

State’s Attorney’s sheriffs, employees of the State’s Attorney’s offices whose compensation is administered through the State of Vermont payroll system except contractual and temporary employees and deputy sheriffs paid by the State of Vermont pursuant to 24 VSA 290 (b);

Why is language relating to the State payroll system necessary?

Also, we think the reference to 24 VSA 290 (b) is incorrect as this refers to Audits.