COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE and AFSCME, COUNCIL 93	Case No. SCR-23-10200 Issued: September 29, 2023

CERB JURISDICTIONAL RULING

On August 23, 2023, AFSCME, Council 93 (Union) filed a petition with the Department of Labor Relations (DLR), seeking to represent a bargaining unit of assistant district attorneys (ADAs) employed in the Suffolk County District Attorney's Office (Employer). On September 5, 2023, the DLR sent the parties a letter advising them that it "would not direct an investigation into the petition unless and until the parties provided information demonstrating that the DLR had jurisdiction over the petitioned-for employees and that the provisions of M.G.L. c. 12, which pertain to assistant district attorneys, do not engender problems that are irreconcilable with the general principles underlying M.G.L. c. 150E (the Law) and collective bargaining." The DLR directed the parties to answer the following four questions on or before September 15, 2023:

1. Whether the petitioned-for employees are employed by a public employer, as the term "public employer" is defined in Section 1 of the Law;
2. Whether the petitioned-for employees are precluded by statute from collective bargaining as appointed officials;
3. Whether the statutory scheme for appointment and compensation of assistant district attorneys are precluded from statute from collective bargaining; and
4. Whether the statutory scheme for appointment and compensation of assistant district attorneys is irreconcilable with collective bargaining.

Both parties filed a response in a timely manner. After reviewing those responses and the relevant statutory language, the Commonwealth Employment Relations Board (CERB) concludes that the provisions of Chapter 150E do not apply to the ADAs. The CERB therefore dismisses the petition for lack of jurisdiction.

M.G.L. c. 12

Chapter 12 of the Massachusetts General Laws is titled, "Department of the Attorney General and the District Attorneys." Two provisions of this chapter are directly pertinent to our ruling. First, Section 12, titled "District attorneys; qualifications; election, term," provides for the election every four years of a district general for each of the districts set forth in Section 13, which includes, as pertinent here, Suffolk County.

Section 16 pertains to ADAs and states in its entirety:

> *Salaries of assistant district attorneys*
>
> [1]Each district attorney shall, subject to appropriation and subject to the conditions of this section, appoint and may, at his pleasure, remove such assistant district attorneys as are necessary to the functioning of the office of the district attorney. [2]Assistant district attorneys shall receive from the commonwealth salaries as recommended by the district attorney appointing them, subject to appropriation and subject to the conditions of this section. [3]No assistant district attorney shall be appointed and no such salary shall be paid unless and until such position and such salary (a) shall have been recommenced in writing by the district attorney making the appointment and (b) shall have been included in a schedule of offices and positions approved by the house and senate committees on ways and means. [4]The provisions of sections nine A and forty-five of chapter thirty, chapter thirty-one, and chapter one hundred and fifty E shall not apply to said assistant district attorneys. [5] Assistant district attorneys shall devote their full time during ordinary business hours to their duties, and shall neither directly nor indirectly engage in the practice of law.
> (Sentence numbering added for ease of reference).

Chapter 12 also contains several sections that address the compensation of positions other than ADAs that district attorneys may appoint and remove, including messengers and other office assistants (Section 19), additional legal assistants (Section

20). and special district attorneys (Section 20A). None of these sections reference Chapter 150E.

Ruling

The issue before us is whether the petitioned-for ADAs are entitled to collective bargaining rights under M.G.L. c. 150E (the Law). The fourth and penultimate sentence of Section 16 plainly states that the "provisions of . . . Chapter [150E] shall not apply to said assistant district attorneys." The Employer argues that the petition should be dismissed for lack of jurisdiction based on this sentence. The Union disagrees. It argues that because Section 16 is titled "Salaries of Assistant District Attorneys," and because ADAs salaries are subject to appropriation from the Ways and Means Committees of the Massachusetts Legislature, the Legislature intended only to exempt the Assistant District Attorneys' *salaries* from collective bargaining but it did not intend to deprive them of all collective bargaining rights under the Law. We disagree with the Union for several reasons.

First, "[a] fundamental tenet of statutory interpretation is that statutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result." Sullivan v. Brookline, 435 Mass. 353, 360 (2001). Section 16 contains five sentences. The third sentence sets forth the specific conditions under which ADAs are to be appointed and compensated. Immediately following that is the sentence at issue here, which states that "Chapter 150E shall not apply to *said* district attorneys." Viewing the statute as a harmonious whole, we construe the use of the word "said" to refer to those assistant district attorneys who have

met the conditions set forth in the third sentence. Section 16 is unequivocal that, as to those "said" qualifying district attorneys, Chapter 150E "shall not apply."

The fact that Section 16 is titled "Salaries of assistant district attorneys," does not cause us to reach a different conclusion. Although the second and third sentences relate to the ADAS' salaries, the remaining three sentences do not. They instead address ADAs' appointment and removal, their obligation to devote all working hours to the position and to refrain from practicing law, and, as pertinent here, their exemption from certain laws' coverage. Thus, while titles of statutory provisions may be considered in their construction, see, e.g., Silverman v. Wedge, 339 Mass. 244, 245 (1959), because the body of Section 16 discusses matters other than salary, we do not regard its title as limiting the plain meaning of Section 16's fourth sentence in the manner the Union urges.

Our conclusion that Chapter 150E's inapplicability is not limited to salary matters is made further apparent when reviewing the other statutory provisions listed in the fourth sentence. Although M.G.L. c. 30, §45, which addresses the Commonwealth's classification pay plan, is arguably connected to the manner in which ADAs are compensated, the remaining two statutes address other matters and are virtually silent as to pay.[1] Given their subject matter, it would be illogical to construe the sentence stating that these statutes do not apply to ADAs as being limited to salary alone.

We finally note that none of the other provisions in Chapter 12 that authorize the district attorney to appoint employees exempts those employees from Chapter 150E's

[1] M.G.L. c. 30, §9A pertains to removal rights for veterans in state service and M.G.L. c. 31, the state's civil service statute, address discipline, layoff, bypass and examination appeals for employees covered by that law.

coverage. Nor are ADAs or any of the district attorney's offices defined as public employers or employers within the meaning of Section 1 of the Law.[2] This further strengthens our conclusion that the Legislature knowingly intended to exempt ADAs from the Law's coverage.

Conclusion

For the foregoing reasons, we conclude that Chapter 150E does not apply to the ADAs. We therefore dismiss the Union's petition for lack of jurisdiction.[3]

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MARJORIE WITTNER, CHAIR, CERB

KELLY STRONG, CERB MEMBER

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[2] This distinguishes the ADAs from the Massachusetts Water Resources Authority (MWRA) employees that the Union references on page 7 of its submission for the proposition that statutory limitations on a union's ability to bargain over certain topics does not preclude it from bargaining over other mandatory subjects of bargaining. The Union's argument ignores the fact that Section 1 of the Law expressly defines the MWRA as the statutory employer for MWRA employees. As stated above, the ADAs are not similarly included.

[3] Having decided this matter on these grounds, we do not address the parties' other arguments.