IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 81, Petitioner,	)	
v.	)	C. A. No.: N09M-10-032 CLS
STATE OF DELAWARE, PUBLIC EMPLOYMENT RELATIONS BOARD. Respondent.	)	

On Plaintiff's Motion to Issue a
Writ of Mandamus. **Granted.**

ORDER

Perry F. Goldust, Esquire, Perry F. Goldust, P.A., Wilmington, Delaware, Attorney for Petitioner.

Sherry V. Hoffman, Deputy Attorney General, Attorney for Respondent Public Employment Relations Board.

SCOTT, J.

Introduction

Before the Court is a Complaint requesting the Court to issue a Writ of Mandamus, pursuant to 10 *Del. C.* § 564, to compel the State of Delaware Public Employment Relations Board ("PERB") to certify that the positions known as Communications Systems Specialist and Senior Communications Systems Specialist are part of Bargaining Unit #1 ("BU #1"). Having reviewed the parties' submissions and the record below, the Court concludes that the Motion is **Granted.**

Facts

On October 1, 2008, a prehearing conference was held by the Executive Director of PERB ("Executive Director") to discuss classifications for BU #1. The Petitioner, American Federation of State, County and Municipal Employees Council 81 ("AFSCME Council 81"), and PERB were present at the conference.[1] On October 2, 2008, the Executive Director sent a letter (the "Stipulation") to all participants at the October 1st meeting summarizing the outcome of the prehearing conference. The Stipulation indicated the resolutions reached by the parties and asked the parties to review the Stipulation and return it to the Executive Director by October 10, 2008.[2] The Stipulation also noted the remaining issues to be

[1] Representatives for LIUNA and UFCW were also present.
[2] It is alleged that both PERB and AFSCME Council 81 signed the Stipulation. Pl.'s Mot. at ¶ 10.

addressed at a future hearing. The only issues remaining were the classification of Constable and Senior Voting Machine Technician.[3]

On January 26, 2008, the Executive Director received a letter from Michael Caldwell objecting to the inclusion of Communications Systems Specialist and Senior Communications Systems Specialist in BU #1.[4] On January 28, 2009, the Executive Director forwarded Mr. Caldwell's letter to the interested parties requesting the State's position regarding the opposition raised in the letter.[5]

On or around February 4, 2009, AFSCME Council 81 responded to the January 26th letter and opposed reopening the stipulation based on Mr. Caldwell's objections.[6] On May 12, 2009, the Executive Director denied AFSCME Council 81's objection to reopening the stipulation.[7]

AFSCME filed a Complaint with this Court requesting the Court to issue a Writ of Mandamus. PERB responded by filing a Motion to Dismiss pursuant to Delaware Superior Court Civil Rule 12(b)(6) for failure to state a claim upon which relief can be granted.[8] On March 26, 2010, this Court held a hearing and heard oral arguments on this Motion.

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[3] Communication Systems Specialist and Senior Communication Systems Specialist were both included in BU #1 as part of the stipulated agreement.
[4] Pl.'s Ex. 2.
[5] Pl.'s Ex. 3.
[6] Pl.'s Ex. 5.
[7] Pl.'s Ex. 6.
[8] Super. Ct. Civ. R. 12(b)(6).

Parties Contentions

AFSCME Council 81 contends that a Writ of Mandamus should be issued because (1) 10 *Del. C.* § 1310(a) and §1311(a) does not permit an individual employee to intervene as a non-party and, therefore, the letter from Mr. Caldwell should not disrupt the stipulation; (2) the Executive Director must object to the stipulation within seven days and the objections in this matter came four months after the stipulation was signed; and (3) under PERB Rule 3.4(4)[9] the Executive Director may only withhold a stipulation between the employee organization and the public employer if the stipulation is contrary to the law or violates the PERB Rules, neither of which occurred in the current case.

PERB requests dismissal of the Petition for Writ of Mandamus arguing that Plaintiff has failed to establish the prerequisites necessary to grant the request. Specifically, PERB contends that: (1) the duty delegated to it requires a factual determination, which is discretionary and not ministerial; and (2) that AFSCME Council 81 has an adequate remedy at law because the Executive Director has

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[9] PERB Rule 3.4(4) states in pertinent part:

> If the employee organization and the public employer agree on the appropriate bargaining unit, the parties shall submit to the Executive Director a stipulation setting forth the agreement of the parties which may then be approved by the Executive Director unless the Executive Director objects to the stipulated bargaining unit. The Executive Director may object to the stipulation only if the stipulation is contrary to law or otherwise violates PERB procedures. If necessary, the Executive Director shall notify the parties of his/her objections within seven (7) days of the receipt of the stipulation. If there are no objections, the Executive Director shall issue a Bargaining Unit Determination.

offered dates to hold a hearing regarding the appropriate job classifications for BU #1 and AFSCME Council 81 has an opportunity to appeal the decision of the Executive Director to the PERB. Because neither prerequisite is satisfied, PERB requests that the Motion be dismissed as a matter of law pursuant to Superior Court Civil Rule 12(b)(6).

Discussion

A writ of mandamus may be issued by this Court to compel lower tribunals, boards, and agencies to perform an official duty.[10] The basis for issuing a writ of mandamus is limited and is a matter of judicial discretion.[11] A writ will be issued if the petitioner can show that it "has a clear right to performance of the duty, and no other adequate remedy."[12] If the right to performance of an official duty is doubtful and not clearly established, or if the official duty sought to be compelled is discretionary rather than ministerial in nature then the writ of mandamus will not be issued.[13] For a duty to be ministerial the duty must be prescribed with "such precision and certainty that nothing is left to discretion or judgment."[14]

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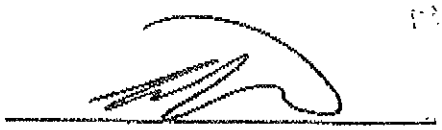
[10] *Bd. of Managers of Del. Criminal Justice Info. Sys. v. Gannett Co.*, 847 A.2d 1123, 1125 (Del. Super. 2004).
[11] *Longfellow v. Kearney*, 2005 WL 1953097, at *1 (Del. Super. Aug. 2, 2005).
[12] *Capital Sch. Dist. v. PERB*, 1992 WL 147980, at * 1 (Del. Super. May 28, 1992) (quoting *Schagrin Gas Co. v. Evans*, 418 A.2d 997, 998 (Del. 1980)).
[13] *Id.*
[14] *Longfellow*, 2005 WL 1953097, at *1.

Based on the record before the Court, the Motion for a Writ of Mandamus is granted. PERB Rule 3.4(4) explicitly requires any objection to a stipulation between the parties to occur within seven days of the stipulation. It is undisputed that the Executive Director did not object within seven days, but that the "objection" occurred months later after receipt of the letter from Mr. Caldwell. Based on the language of the Rule, if the Executive Director fails to object to the stipulation within the allotted seven days any objection is waived and the agreed upon stipulation governs. Because the seven days passed without any objection, the agreement was final and Communication Systems Specialist and Senior Communications Systems Specialist should be included in BU #1. The time to object had passed and, therefore, the Executive Director had no discretion in determining the proper bargaining unit for jobs included in the stipulation. Any objection made after the seven days was improper. Accordingly, Communication Systems Specialist and Senior Communication Systems Specialist shall be included in BU #1 and AFSCME Council 81's Motion is granted.

IT IS SO ORDERED.



Judge Calvin L. Scott, Jr.