COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WEST SIDE CAREER AND TECHNOLOGY CENTER ESDUCATION ASSOCIATION, PSEA/NEA	:	
	:	CASE NO. PERA-C-18-265-E
v.	:	
WEST SIDE CAREER AND TECHNOLOGY CENTER	:	

PROPOSED DECISION AND ORDER

On October 12, 2018, West Side Career and Technology Center Education Association, PSEA/NEA (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the West Side Career and Technology Center (CTC or Employer) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

On November 9, 2018, the Secretary of the Board issued a complaint and notice of hearing, in which the matter was assigned to a pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating January 18, 2019, in Harrisburg, as the time and place of hearing, if necessary.

After a continuance requested by the Association, the hearing was held on April 26, 2019, in Harrisburg, before the undersigned Hearing Examiner. All parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Association filed its post-hearing brief on August 26, 2019. CTC filed its post-hearing brief on September 23, 2019.

The Hearing Examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. CTC is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6-7).

2. The Association is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6-7).

3. The Association is the exclusive representative of a unit of full-time employes including classroom teachers, nurse, librarian, guidance counselors, and full-time vocational extension education teachers; and excluding supervisors, first level supervisors, and confidential employes as defined by PERA. (N.T. 25-26; PERA-R-565-C).

4. CTC is a regional vocational education school. (N.T. 23-24)

5. The Association’s certification does not cover part-time employes and the CBA does not generally recognize part-time employes as

part of the bargaining unit. However, the parties agreed in 2013 to reduce a music teacher from full time to part-time and the parties bargained over the part-time music teacher's resulting hours, salary and benefits. (N.T. 28, 32-33; Association Exhibit 2, 3).

6. The parties' last collective bargaining agreement (CBA) ran for a term of mid-2011 to mid-2016. In August 2016, the parties agreed to extend the CBA through August 31, 2017. At the time of the hearing, the parties were in status quo as the previous agreement had expired on August 31, 2017 and no successor CBA or extension had been agreed to. (N.T. 27-29; Association Exhibit 2).

7. Before negotiations on the future CBA began, the parties were subject to an arbitration award over the dismissal of an Art teacher named Margaret Mullin. Mullin was unilaterally demoted from full-time to part-time effective the beginning of the 2015-2016 school year with an associated cut in wages and benefits. This moved Mullin out of the bargaining unit and her new terms and conditions of employment were unilaterally set by CTC. The Association grieved the issue and, in an August 23, 2016, Award (Mullin arbitration award), Arbitrator Thomas McConnell found for the Association and held that the District violated the CBA when it demoted Mullin from a full-time Art position and cut her wages, benefits and work hours. Arbitrator McConnell held that CTC is required to bargain with the Association before moving a full-time position to part-time, and to bargain the terms and conditions of employment for that position pursuant to the parties CBA. (N.T. 29-33; Association Exhibit 3).

8. The Association's lead negotiator is Christopher Morreale, a bargaining unit member and Vice-President of the Association. CTC's lead negotiator is attorney Charles Coslett. The CTC's Joint Operating Committee (JOC) consists of one member from each of the three school districts which supply CTC. (N.T. 33-34, 47).

9. On August 9, 2016, during a meeting between the parties over outstanding grievances, and before Arbitrator McConnell has issued his award in favor of the Association, Coslett said to the Association "If we lose the Mullin grievances, we will bargain it in, or you will have to go on strike." Coslett was referring to CTC's right to demote. (N.T. 38-39; Association Exhibit 4).

10. On March 6, 2017, Coslett sent an email to Bernadette McHugh, Univserv Representative for the Association, responding to an email from McHugh regarding bargaining. Coslett's email states in relevant part:

> . . . a 5 year proposal is acceptable to [CTC], provided that all past practices not memorialized are extinguished upon execution of the successor agreement and the Mullin arbitration award is reversed by a contractual covenant conceding that any educator employed by [CTC] is subject to demotion in accordance with Section 1151 of the School Code.

(N.T. 59; Association Exhibit 5, page 1).

11. CTC's first bargaining proposal was the status quo except it included language which incorporated 24 PS § 1151 of the School Code and would reverse the Mullin Arbitration Award. On June 9, 2017, Morreale emailed a counter proposal which states in relevant part:

> Being we received a favorable finding in two separate hearings regarding demotions. We will not concede on this item. We have also suffered over 20% in reduced membership over the past 7 years from furloughs and not replacing retirees. The staffing has hit the absolute minimum to operate the school so there should be no need for demotions. There has not been a reduction in student enrollment. We have also worked with administration on working out issues related to the shortages of teachers for coverages. In addition, we have allowed [CTC] to utilize a support person in the locker room to help accommodate the teacher coverage shortage for this year although it is a diversion of bargaining unit work.

(N.T. 40-42; Association Exhibit 4).

12. On June 9, 2017, Coslett responded to Morreale with an email which stated:

> WEST SIDE CTC RESPONSE TO WSCTC [EA] EMAIL OF JUNE 9, 2017
>
> 1. The JOC continues to believe that a three (3) year agreement is optimal. If [the Association] wants a five (5) year proposal, the issue of employe healthcare cost sharing must be addressed.
>
> 2. There will be no new agreement until the Mullin arbitration award is reversed and the issue of employee demotion, whether of full time or part time professional, shall be solely governed by Section 1151 of the Public School Code of 1949, as amended.
>
> 3. All past practices which are not identified and agreed to by the parties shall be abrogated upon execution of the new CBA. ESPA's position that no new past practices will be eliminated, without them even being identified, is evidence of bad faith bargaining.
>
> 4. ERI will not be part of the new CBA.
>
> 5. Changing the length of the school day would result in transportation hurdles for all five (5) sending districts. Therefore, the school day shall remain governed by the language in the present CBA;

> 6. The employer continues to believe that if an employe holds more than one co-curricular position, payment for all such positions other than the first shall be at a rate of 70% of the rate set forth in the CBA.

(N.T. 42, 60; Association Exhibit 4, 5 page 3).

13. On August 22, 2017, the parties had a negotiation meeting. At this meeting, Coslett repeated CTC's position that there would be no new agreement until the Association agreed that CTC had the unilateral right to demote pursuant to Section 1151 and to "aggregate past practices." Coslett said to the Association: "We will not bargain off of those conditions. We will read the newspaper to you because we have to meet to negotiate." (N.T. 43-45; Association Exhibit 4).

14. On October 6, 2017, Coslett sent an email to McHugh, that demanded reversal of the Mullin arbitration award and "restoration of the rule of law" as set forth in cases interpreting Section 1151 of the School Code. Coslett's email states:

> Good morning, Bern:
>
> After considerable reflection by members of the school's Negotiating Committee, and profound disappointment arising from the bargaining unit's protracted intransigence re the above subject, I have been directed to set forth the following proposal:
>
> The Employer seeks the following:
>
> 1. The abrogation of past practices not identified and successfully bargained into the successor agreement.
>
> 2. Reversal of the Mullin arbitration award, and restoration of the rule of law as set forth in cases interpreting Section 1151 of the School Code.
>
> 3. Health care premium share based upon an 80/20 split;
>
> 4. An agreement for the period of time from successful execution of the successor agreement through June 30, 2020 [see Paragraph 11 below].
>
> 5. Review of Co/Extra Curricular positions. This to include renaming, adjustment of salaries, # that can be held at one time, and opening to all professional staff and office personnel;
>
> 6. Contractual obligation to attend the following events without additional compensation of like for like time: [list of 5 events].

7. Reimbursement of college credits limited to 6 per year and must be approved by administration prior to taking. Only 6 credits per calendar year will be allowed for Step advancement.

8. Attend up to 2 staff meetings per month without "like for like time off", said meetings to be held during 10th period;

9. Compensation of $25.00/hr. for professional development during summer months or when required for a teacher to attend school meetings during summer months.

10. Professional staff to leave building only with prior notification and approval of Principal. Requirement to sign out and upon returning to building. Personal time away from building will be "charged" against accrued time off if available;

11. No retroactive pay increases. New rates of compensation become effective upon the successful execution of the successor agreement.

(N.T. 45, 60; Association Exhibit 4, 5 page 4-5).

15. On March 13, 2018, the parties had a negotiation meeting. Coslett did not attend this meeting, however JOC members Gary Richards and Gerald Conger did attend. At the meeting, the parties made positive progress regarding CTC's condition regarding the right to demote. The Association agreed to consider allowing the CTC to demote new staff based on position openings dues to resignations, or retirements using the MOU process. That is, the Association proposed that once someone retired or resigned, the CTC would be able to move that position to part-time using the MOU process as the parties did in 2013 with respect to the music teacher position. The MOU process would require CTC to negotiate terms and conditions of employment for the new part-time employes. Morreale thought the meeting was positive and that the JOC members would consider it. (N.T. 46-47; Association Exhibit 4).

16. The Association's prepared Contact Proposal of March 13, 2018 states:

Contract Proposal (Conger/Richards Meeting) 3/13/18

- 5 Year proposal

- Past Practice

* for any past practice issue that arises that is not identified, we will use the grievance process and the outcome/settlement will be recorded, signed off on, and moved into the next negotiated contract. The local does not consider

its failure to specifically identify any existing past practices as a waiver of such practices.

* [List of eleven identified past practices.]

- Retirement Incentive

* $100/ day of unused accumulated sick days.

- Tuition Reimbursement

* $500/ credit for permanent certification
* Vocational 2 certificate
* Vocational 1 certificate
* $200/ credit after permanent certification.

- Right to Demote

* Assignment based on retirement/ resignation

* Use MOU process (Ex. Music)

- Language Cleanup

* [List of four identified contract language issues.]

(N.T. 61; Association Exhibit 5, page 6).

17. On May 30, 2018 the parties had another negotiating meeting. Present for CTC were Coslett and Richards. Morreale and Thomas Pieczynski represented the Association. Morreale felt the meeting was positive and that the Association fully explained its position regarding the right to demote. Coslett said that CTC would consider the Association's position. Coslett appeared open to the Association's proposals with respect to the right to demote. (N.T. 48-50; Association Exhibit 4).

18. On June 15, 2018, the parties had another negotiating meeting. Present for CTC were Coslett and Richards. Morreale and Pieczynski represented the Association. CTC proposed that bargaining unit members would be safe from demotion for the life of the successor CBA and the Association's demotion proposal would sunset at the end of the successor CBA and revert to the CTC's proposal of following the School Code, which would invalidate the Mullin arbitration award. (N.T. 48-50; Association Exhibit 4).

19. At the June 15, 2018 meeting Coslett also proposed that CTC leave the healthcare consortium of regional school districts that come together to negotiate healthcare insurance as a unit. The Association did not respond to this proposal at this time. (N.T. 55).

20. On June 23, 2018, Morreale emailed Coslett with the Association's updated proposal, which made agreed upon changes to terms such as the CBA end date, past practice language, retirement allowances, and tuition reimbursements. Morreale also told Coslett in the email that the Association would not agree to a sunset clause with respect to the right to demote. Morreale reiterated the Association's position is that demotions should be handled such that once a bargaining unit member retired or resigned, the CTC would be able to move that position to part-time using the MOU process as the parties did in 2013 with respect to the music teacher position. (N.T. 50; Association Exhibit 4).

20. The Association's prepared Contract Proposal of June 15, 2018, which was attached to Morreale's June 23, 2018 email, states:

> Contract Proposal 6/15/18
>
> - 5 Year proposal
>
> * September 1, 2017 – July 1, 2022
>
> - Past Practice
>
> * for any past practice issue that arises that is not identified, we will use the grievance process and the outcome/settlement will be recorded, signed off on, and moved into the next negotiated contract. The local does not consider its failure to specifically identify any existing past practices as a waiver of such practices.
>
> * [List of eight identified past practices.]
>
> - Retirement Allowance
>
> * $90/ day of unused accumulated sick days, up to 90 days.
> * Or by the WAM method, whichever is higher at the time.
> * After 90 days, follow the WAM method on pages 8 and 9 of the contract.
>
> - Tuition Reimbursement
>
> * $450/ credit for permanent certification
> * Vocational 2 certificate
> * $250/ credit after permanent certification.
> * Academic and Vocational
> - Right to Demote
>
> * Assignment based on retirement/ resignation
>
> * Use MOU process (Ex. Music)

- Language Cleanup

* [List of four identified contract language issues.]

(N.T. 61-62; Association Exhibit 5, page 8-9).

21. On June 25, 2018, Coslett emailed Morreale and said "While I appreciate the courtesy of your response, we are clearly at an impasse. I see no further reason to meet at this time." CTC did not offer any counter proposals at this time. Morreale understood this email to mean that CTC was refusing to have further negotiating sessions. Morreale interpreted CTC's stance to be at this point that CTC was refusing to negotiate because the Association was not willing to give CTC the right to demote. (N.T. 51, 63; Association Exhibit 4, 5 page 10).

22. On July 12, 2018, Morreale emailed Coslett and wrote:

> We have made many good faith attempts to bargain a contract. Your decision to conditionally bargain does not constitute an impasse. You have been conditionally bargaining as well as trying to control the process and then declare impasse. We are not at impasse. We have continued to bargain in good faith for a successor contract including making concessions. However, we are withdrawing the "Past Practice" and "Right to Demote" language from our proposal because we thought we were moving forward in good faith. We will be contacting a mediator and filing a charge for conditional bargaining and not bargaining in good faith.

(N.T. 52, 63-64; Association Exhibit 4, 5 page 12).

23. On July 12, 2018, Coslett emailed Morreale in response and wrote:

> Do whatever the hell you please. The law is very clear that if you don't want anything but the status quo on healthcare, an extraordinary expense which essentially pads your salary with significant tax free income, I can and will advise my clients to stand firm.

(N.T. 53; Association Exhibit 4).

24. Coslett did not make any offers to meet and negotiate on July 12, 2018. (N.T. 54).

25. On October 15, 2018, the parties had their first negotiating session with mediator Dan O'Rourke. The mediation was requested by the Association. The right to demote was discussed again and no resolution was agreed to. Coslett reiterated CTC's position that the next CBA must contain a reversal of the Mullin arbitration award. Coslett repeated the same position on the Mullin arbitration

and right to demote that he has expressed since August, 2016. (N.T. 64-67; Association Exhibit 4).

26. On December 14, 2018, the parties had another negotiating session with O'Rourke mediating. This unfair practice charge was discussed. Coslett expressed that CTC would not make a concession on the right to demote. Coslett said that Arbitrator Tom McConnell was corrupt and that he did not challenge the Mullin arbitration award because he would have lost again on appeal. Coslett mentioned he would read the Association a book to fulfill the requirement of meeting. (N.T. 67-69; Association Exhibit 4).

DISCUSSION

The Association claims that CTC violated Section 1201(a)(5) of the Act when by bargaining in bad faith during the negotiation of a successor CBA.

Section 701 of PERA states:

> Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employes to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement of any question arising thereunder and the execution of a written contract incorporating any agreement reached but such obligation does not compel either party to agree to a proposal or require the making of a concession.

43 P.S. § 1101.701.

Good-faith bargaining requires the parties to make a serious effort to resolve differences and to reach common ground. Morrisville School District, 687 A.2d 5 (Cmmwlth Court, 1996). Although an employer cannot be forced to make a concession on a particular issue or to accept a specific proposal, part of an employer's mutual obligation of good-faith bargaining is a sincere desire to reach agreement and to make a serious effort to resolve differences to reach common ground. Id.; Appeal of Cumberland Valley School District, 483 Pa. 134, 142 (1978). The failure to make a counterproposal may constitute some evidence of an overall failure to make a serious effort at resolving differences and reaching common ground, but, by itself, is within the protection of Section 701. Morrisville School District, 687 A.2d 5. While a rigid, inflexible adherence to a "line in the sand" may be a normal bargaining ploy, it can constitute lack of good faith when combined with other factors of bad faith bargaining. Id. Good-faith bargaining is not demonstrated by mere attendance at bargaining sessions and the exchange of information if these events are also accompanied by a rigid bargaining position. Morrisville School District, 25 PPER ¶ 25197 (Final Order, 1994). The Board has held:

> **In order to determine whether the parties to the bargaining process are bargaining in good faith**

> **the Board can only rely on the outward manifestations of their intent.** In such circumstances it is important to distinguish between self-serving evidence which may show essentially procedural compliance with the obligation to negotiate over subcontracting and evidence which tends to show open mindedness and serious desire to reach common ground through real compromise over substantive matters. Good faith in collective bargaining is not demonstrated solely by the amount of information exchange or the number of times the parties have met or stated their desire to agree. Rather, good faith in bargaining is demonstrated principally by modification of one's position with regard to the matters at issue in the negotiation which shows actual attempt to reach compromise or agreements. **Because it is possible to comply with the procedural requirements of bargaining such as supplying information and meeting with the bargaining committee without actually intending to reach out to the other side with compromise, the Board has found the willingness to modify a position through counterproposal to be of primary importance when looking at the totality of the circumstances.**

Morrisville School District, 25 PPER ¶ 25197 (emphasis added)(internal citations omitted).

When determining whether an employer bargainied in good faith, the Board examines the totality of the circumstances. Lancaster County, 45 PPER 94 (Final Order, 2014).

Turning to this case, I find that the record supports a finding that CTC has bargained in bad faith: CTC did not have a sincere desire to reach agreement and made no serious effort to resolve differences to reach common ground. My conclusion is based on an analysis of the totality of the circumstances in the case and in particular the following three factors: 1. CTC conditioned good-faith bargaining on the Association meeting its demand to annul the Mullin Arbitration award[1]; 2. CTC's statements indicating it was conducting sham bargaining

[1] Notwithstanding the parties protracted disagreement and arbitration on the issue of negotiating over the terms and conditions of employment for part-time employes removed from the bargaining unit by demotion, the Board has exclusive jurisdiction over the issues of determining the appropriateness of units and determining which positions should be included in or excluded from bargaining units. Richland Education Association v. PLRB, 403 A.2d. 1008 (Pa. Cmwlth. 1979); International Brotherhood of Teamsters, Local No. 8 v. The Pennsylvania State University, 51 PPER 21 (Proposed Decision and Order, 2019). The Board has long held that regular part-time teachers are included in professional bargaining-units as part of its broad-based bargaining unit policy. Northeastern School District, 9 PPER ¶ 9102 (Final Order 1978). In considering whether regular part-time teachers were within

sessions; and 3. CTC's unilateral and inaccurate declaration of impasse and cessation of bargaining.

The record in this matter shows that CTC has conditioned good faith bargaining on the Association agreeing to revoke the Mullin arbitration award. Conditional bargaining has been found by the Board to be evidence of bad faith bargaining. In PLRB v. School District of the City of Erie, 13 PPER ¶ 13270 (Proposed Decision and Order, 1982), the employer was found in violation of its bargaining obligation for refusing to bargain with its opponent unless that opponent first agreed to contract language proposed by the employer.

On August 9, 2016, Coslett said to the Association "If we lose the Mullin grievances, we will bargain it in, or you will have to go on strike." This statement was made before bargaining had even begun and clearly and correctly forecasted CTC's position. On March 6, 2017, Coslett stated: "a 5 year proposal is acceptable to [CTC], provided that all past practices not memorialized are extinguished upon execution of the successor agreement and the Mullin arbitration award is reversed by a contractual covenant conceding that any educator employed by [CTC] is subject to demotion in accordance with Section 1151 of the School Code." CTC's first bargaining proposal was the status quo except it included language which incorporated 24 PS § 1151 of the School Code and would reverse the Mullin arbitration award. On June 9, 2017, Coslett wrote to the Union: "There will be no new agreement until the Mullin arbitration award is reversed and the issue of employee demotion, whether of full time or part time professional, shall be solely governed by Section 1151 of the Public School Code of 1949, as amended." On August 22, 2017, Coslett repeated CTC's position that there would be no new agreement until the Association agreed that CTC had the unilateral right to demote pursuant to Section 1151 and to "aggregate past practices." Coslett said to the Association: "We will not bargain off of those conditions. We will read the newspaper to you because we have to meet to negotiate." On October 6, 2017, Coslett demanded reversal of the Mullin arbitration award and "restoration of the rule of law" as set forth in cases interpreting Section 1151 of the School Code.

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the scope of a previously certified professional unit, the Board in Northeastern held:

> Clearly, if regular part-time teachers are excluded from the unit herein such employes would of necessity be an appropriate unit standing alone or with other employes with whom they share an identifiable community of interest. It is highly unlikely that regular part-time teachers would be included with non-teachers. Thus, if regular part-time teachers are not included herein they would consequently constitute an appropriate unit standing alone. Mindful of the Act's caveat against over-fragmentization, the Board concludes that regular part-time teachers are properly included in the existing unit.

Northeastern, supra.

At this point CTC's position was resolutely clear and CTC had made no movement from its position and had not engaged in good faith bargaining as there is no evidence CTC had any intent of reaching an agreement or make a serious effort of finding a common ground on the issue.

Starting with the March 13, 2018, meeting, which Coslett did not attend, the Association agreed to consider allowing the CTC to demote new staff based on position openings due to resignations, or retirements using the MOU process. That is, the Association proposed that once someone retired or resigned, the CTC would be able to move that position to part-time using the MOU process as the parties did in 2013 with respect to the music teacher position.

Then, at the May 30, 2018, meeting Coslett said that CTC would consider the Association's position. However, events would show that this perceived movement by CTC was not substantial and not offered with any intent to find a compromise position. At the June 15, 2018, meeting, CTC proposed that bargaining unit members would be safe from demotion for the life of the successor CBA and the Association's demotion proposal would sunset at the end of the successor CBA and revert to the CTC's proposal of following the School Code, which would invalidate the Mullin arbitration award. That is, CTC merely proposed postponing the elimination of the Mullin arbitration award for three or five years, whichever would be the length of the successor agreement. CTC later dropped even this slight modification after it unilaterally and incorrectly declared impasse, as discussed below, and reverted to its universally fixed position: annulment of the Mullin arbitration award.

On June 23, 2018, Morreale reiterated the Association's position that demotions should be handled such that once a bargaining unit member retired or resigned, the CTC would be able to move that position to part-time using the MOU process as the parties did in 2013 with respect to the music teacher position. On June 25, 2018, Coslett emailed Morreale and said "While I appreciate the courtesy of your response, we are clearly at an impasse. I see no further reason to meet at this time." CTC did not offer any counter proposals at this time. This unfair practice charge was filed on October 12, 2018.

Subsequent meetings reinforced CTC's rigid stance: At the October 15, 2018 meeting, Coslett reiterated CTC's position that the next CBA must contain a reversal of the Mullin arbitration award. This was a regression from the slight modification made earlier by CTC. At the December 14, 2018, meeting Coslett expressed that CTC would not make a concession on the right to demote.

As stated by the Association in its Brief, it is clear that the annulment of the Mullin arbitration award was "the price of admission for any bargaining to take place at all." (Association's Brief at 15.) CTC has steadfastly held a rigid bargaining position of requiring the elimination of the Mullin arbitration award. This rigid line, in combination with other evidence of bad faith bargaining, as discussed below, is unlawful under PERA as bad-faith bargaining.

Evidence of CTC's bad faith bargaining also consists of Coslett's statements indicating that CTC was conducting sham bargaining sessions and not acting in good faith. At the August 22, 2017, meeting, Coslett repeated CTC's position that there would be no new agreement until the Association agreed that CTC had the unilateral right to demote and Coslett said: "We will not bargain off of those conditions. We will read the newspaper to you because we have to meet to negotiate." This is manifest and dispositive evidence of a lack of a sincere desire to reach agreement and to make a serious effort to resolve differences to reach common ground. Good faith bargaining is not demonstrated by mere attendance at bargaining sessions if these events are also accompanied by a rigid bargaining position. Morrisville School District, 25 PPER ¶ 25197. CTC's attitude towards bargaining with the Association is affirmed by subsequent actions. At the December 14, 2018, meeting, Coslett expressed that CTC would not make a concession on the right to demote and said he would "read the Association a book" to fulfill the requirement of meeting.

Finally, the strongest evidence of CTC's bad-faith bargaining was its unilateral declaration of impasse. On June 25, 2018, Coslett emailed Morreale and said "While I appreciate the courtesy of your response, we are clearly at an impasse. I see no further reason to meet at this time." An impasse has been defined as

> That point at which the parties have exhausted the prospects of concluding an agreement and further discussions would be fruitless. . . . [P]erhaps all that can be said with confidence is than an impasse is a 'state of facts in which the parties, despite the best of faith, are simply deadlocked.'

Norwin School District v. Belan, 510 Pa. 255, 268 n. 9 (1986). The definition of impasse is not met when progress is perceptible, the Union has indicated by its conduct that substantial movement is forthcoming, or the district has demonstrated that it is not interested in further movement or proposals. Morrisville School District, 687 A.2d 5.

In this matter there was no impasse on June 15, 2018, because CTC had *never engaged in good-faith bargaining* to that point and had clearly demonstrated that is was not interested in any substantial movement or proposals with respect to the right to demote. The clear, outward manifestations of CTC's intent prior to its unilateral declaration of impasse was a refusal to consider any common ground through real compromise over the right to demote. The declaration of impasse was the coup-de-grace and made blindingly clear the essential composition of CTC's position: it was not interested in bargaining unless the Association completely capitulated and surrendered the Mullin arbitration award as the entrance fee. The Association's unfair practice charge soon followed.

For the above reasons, CTC has violated Section 1201(a)(5) of the Act by engaging in bad-faith bargaining.

CONCLUSIONS

The Hearing Examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. CTC is a public employer within the meaning of Section 301(1) of PERA.

2. The Association is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties hereto.

4. CTC has committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that CTC shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

3. Take the following affirmative action:

(a) Immediately meet and bargain in good faith with the Association over the successor CBA consistent with this Order;

(b) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days;

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance; and

(d) Serve a copy of the attached Affidavit of Compliance upon the Association.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-seventh day of November, 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

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STEPHEN A. HELMERICH, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WEST SIDE CAREER AND TECHNOLOGY CENTER ESDUCATION ASSOCIATION, PSEA/NEA	:	
	:	CASE NO. PERA-C-18-265-E
v.	:	
	:	
WEST SIDE CAREER AND TECHNOLOGY CENTER	:	
	:	

AFFIDAVIT OF COMPLIANCE

CTC hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it complied with the Proposed Decision and Order as directed therein; that it immediately meet and bargained in good faith with the Association consistent with this Order; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

_____
Signature/Date

_____
Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

_____
Signature of Notary Public