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STATE OF NEVADA

**STATE OF NEVADA
E.M.R.B.**

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

CLARK COUNTY EDUCATION
ASSOCIATION,

Complainant,

v.

CLARK COUNTY SCHOOL DISTRICT,

Respondent.

Case No. 2017-008

ORDER

ITEM NO. 824

On July 12, 2017, this matter came before the State of Nevada, Local Government Employee-Management Relations Board (“Board”) for consideration and decision pursuant to the provisions of the Local Government-Management Relations Act (the “Act”), NAC Chapter 288 and NRS Chapter 233B. The Board held an administrative hearing on this matter on July 11-12, 2017, in Las Vegas, Nevada.

In its Complaint, the Clark County Education Association (“CCEA”) claims that the Clark County School District (“CCSD”) violated NRS 288.270 by committing the prohibited practice of failing to bargain in good faith with CCEA.

CCEA and CCSD are parties to a collective bargaining agreement (CBA) with effective dates from 2015 to 2017 (“2015-2017 CBA”). In the course of negotiating said CBA, the parties began working on a new salary system called the Professional Growth System (“PGS”) in an effort to better recruit and retain teachers.

The PGS based salary was one wherein Educators/Licensed Professionals had many options to participate in targeted professional development activities aligned to their individual Professional Growth Plan (“PGP”). The PGP is developed collaboratively with their supervisors to accumulate Contact Units (“CUs”) for advancement on the salary schedule.

The parties indicated that when the 2015-2017 CBA was ratified on January 14, 2016, the salary schedule was developed with some basic frameworks that went towards the goal of this new salary

1 system, including the tracks, transition, starting salary, and others. However, the parties indicated that
2 given that all of the various activities had not been included at that time, it was the full understanding of
3 the parties to continue to work collaboratively to develop the full PGS post-ratification as evidenced by
4 the CBA.

5 As such, on January 15, 2016, CCSD Director of Human Resources Staci Vesneske
6 (“Vesneske”) sent CCEA Executive Director John Vellardita (“Vellardita”) and CCEA Director of
7 Professional Development Brenda Pearson (“Pearson”) a document entitled Summary and Suggested
8 Timeline to draft the PGS documents, with a CCSD/CCEA joint logo, and draft parameters for the type
9 of activities that would count towards the 225 CUs for salary advancement and the respective CU,
10 afforded to each activity.

11 An Advisory Committee was created, and was made up of CCSD Management appointed by
12 CCSD Superintendent Pat Skorkowsky (“Skorkowsky”), and CCEA representatives of Vellardita and
13 Pearson. The Advisory Committee was charged with the drafting of the Professional Growth System
14 Reference guide (“Guide”).

15 After extensive collaboration and negotiation, on March 2, 2016, Vesneske sent Skorkowsky a
16 Memorandum memorializing the understanding between CCSD and CCEA as well as requesting a final
17 approval. On March 8, 2016, Skorkowsky responded with his final approval.

18 The parties indicated that with the approval received, the Advisory Committee continued its
19 extensive work to ensure the success of the PGS and produced a series of jointly approved and
20 negotiated communications, tutorials, forms, and informational documents. Over the course of a year,
21 trainings were produced and provided for both Educator/Licensed Professional and Administrators.

22 On August 1, 2016, CCEA and CCSD jointly communicated and distributed to all licensed
23 professionals an updated PGS Guide that was approved as the final version. This approved Final
24 Version presented to all educators/licensed professionals, specifically included the following sections in
25 dispute by the parties:

26 Page 1: The inclusion of self-contained special education teachers in the two-year track.

27 Pages 10-11: Eight Contact Units per semester (five CUs per quarter credit) for
28 coursework taken at an “Approved Teacher Education Program” or a college/university

1 designated by the Carnegie Classification of Institutions of Higher Education as a Highest
2 Research Activity or Higher Research Activity institution.

3 The two aforementioned sections in dispute were given final approval by Skorkowsky and
4 CCEA.

5 Nonetheless, on January 27, 2017, CCSD Director of Human Resources Andre Long (“Long”)
6 stated at the PGS Advisory Committee meeting that CCSD would be striking those sections from the
7 Guide. Moreover, Long stated that CCSD would not honor the April 12, 2016 Summary Agreement
8 reached between CCSD and CCEA. Long indicated that CCSD was making these changes as he was
9 told by CCEA Employee Management Relations Associate Superintendent and Chief Negotiator
10 Edward Goldman (“Goldman”) that Skorkowsky did not have authority to approve changes that were
11 made post-ratification, and that the Board of Trustees had not approved the changes. Prior to this time,
12 Goldman had had no participation in the development of the PGS system.

13 As such, on February 7, 2017, CCSD memorialized the changes it was making on the Guide and
14 their intent to communicate such changes to all educators/licensed professionals. In addition, the memo
15 referenced other changes the Advisory Committee had discussed, but CCEA had not yet agreed to,
16 including the elimination of the Massive Open Online Courses (“MOOCs”) CUs. On February 27,
17 2017, CCEA responded indicating “[f]or CCSD to decide more than a year later to eliminate changes
18 made by the PGS team, and state on the record that Superintendent Skorkowsky did not have the
19 authority to approve changes, despite speaking for CCSD and the Board of Trustees in his role as
20 Superintendent is an act of bad faith.” CCSD subsequently sent out memoranda informing all licensed
21 employees of the changes to the existing “final and approved” version of the Guide. The modifications
22 made unilaterally included removing special education teachers in a self-contained classroom in non-
23 Title I, Tier I and Tier II school from the two-year tracks; and downgrading the amount of CUs for
24 coursework from 8 CUs per semester credit or 5 CUs per quarter credit, to 5 and 3 respectively. Despite
25 CCEA’s objections to the new Guide, CCSD included CCEA’s logo and contact information in the new
26 Guide.

27 DISCUSSION

28 It is a prohibited practice for a local government employer to willfully refuse to bargain
collectively in good faith with the exclusive representative as required in NRS 288.150. NRS

1 288.270(1)(e). “A party’s conduct at the bargaining table must evidence a sincere desire to come to an
2 agreement. The determination of whether there has been such sincerity is made by drawing inferences
3 from conduct of the parties as a whole.” *City of Reno v. Int’l Ass’n of Firefighters, Local 731*, Item No.
4 253-A (1991), quoting *NLRB v. Int’l Union*, 361 U.S. 488 (1970).

5 The Act imposes a reciprocal duty on employers and bargaining agents to negotiate in good faith
6 concerning the mandatory subjects of bargaining listed in NRS 288.150. *Ed. Support Employees Ass’n*
7 *v. Clark County Sch. Dist.*, Case No. A1-046113, Item No. 809, 4 (2015). Salary or wage rates or other
8 forms of direct monetary compensation are mandatory subjects of bargaining. NRS 288.150(2)(a). The
9 duty to bargain in good faith does not require that the parties actually reach an agreement, but does
10 require that the parties approach negotiations with a sincere effort to do so. *Id.* “In order to show ‘bad
11 faith’, a complainant must present ‘substantial evidence of fraud, deceitful action or dishonest
12 conduct.’” *Boland v. Nevada Serv. Employees Union*, Item No. 802, at 5 (2015), quoting *Amalgamated*
13 *Ass’n of St., Elec. Ry. and Motor Coach Emp. of America v. Lockridge*, 403 U.S. 274, 301 (1971). NRS
14 288.270(1)(e) deems it a prohibited labor practice for a local government employer to bargain in bad
15 faith with a recognized employee organization, and a unilateral change to the bargained for terms of
16 employment is regarded as a *per se* violation of this statute. A unilateral change also violates NRS
17 288.270(1)(a). *O’Leary v. Las Vegas Metropolitan Police Dep’t*, Item No. 803, EMRB Case No. A1-
18 046116 (May 15, 2015); *see also Serv. Employees Int’l Union, Local 1107 v. Clark County*, Item No.
19 713A, EMRB Case No. A1-045965 (Oct. 5, 2010). Under the unilateral change theory, an employer
20 commits a prohibited labor practice when it changes the terms and conditions of employment without
21 first bargaining in good faith with the recognized bargaining agent. *Boykin v. City of N. Las Vegas*
22 *Police Dep’t*, Case No. A1-045921, Item No. 674E (2010); *City of Reno v. Reno Police Protective*
23 *Ass’n*, 118 Nev. 889, 59 P.3d 1212 (2002).

24 The parties’ CBA provides, in pertinent part:

25 **Article 26-2-6:** Notwithstanding any provision of this Agreement to the contrary, there
26 are licensed positions which may be determined by the District to be critical needs
27 positions. In an effort to encourage licensed employees to accept and then to remain in
28 those positions, the parties may negotiate new terms related to this issue under Article 26-
5 of this Agreement.

1
2 **Article 26-5:** Representatives of CCSD and CCEA shall meet twice a year as the
3 Professional Salary Table Joint Committee (PSTJC) to review the salary schedule and any
4 emergent issues or implementation problems and by mutual consent can modify the terms
5 of Articles 26-1 through 26-5. Those meeting shall take place in the first and last quarter
6 of each fiscal year's budget.

7 **26-3 Professional Growth System – Article 26-3-1:** the CCSD and CCEA believe it is
8 important to maintain a professional learning system which leads to improvement in
9 student learning and educator/licensed professional practice. The PST shall recognize
10 professional growth which promotes significant contributions to student learning and
11 educator/licensed professional practice, and is equally accessible by all members of the
12 bargaining unit. The PST shall reward and encourage educators/licensed professionals to
13 remain career-long learners in order to increase student learning, enhance and update
14 relevant skills, and have educators/licensed professionals be visible models as learners to
15 their students and colleagues. Therefore, the Professional Growth System (“PGS”)
16 referenced in Article 26-3-3 herein shall encourage Professional Growth Plan (PGP)
17 proposals which use evidence of updated skills and measures of student performance as
18 the basis for column movement along the PST.

19 **Article 26-3-3:** Consistent with the Professional Growth System Memorandum of
20 Agreement between the CCSD and CCEA, the process for developing and implementing
21 a Professional Growth Plan shall be as follows:

- 22 a. Develop an Action Plan.
- 23 b. Design the PGP.
- 24 c. Propose and receive authorization for the PGP.
- 25 d. Maintain evidence of the PGP.
- 26 e. Undergo a yearly review of the PGP.
- 27 f. Document accomplishment pertaining to the PGP.

28 The parties agreed to revamp the salary schedule as set out in Article 26 of the CBA. The
parties also recognized and agreed that many specifics of the new system would have to be decided later
and, as such, enacted Article 26-5. The parties met and agreed, over the course of a year on such
specifics, which were reached via an advisory committee and approved by the Superintendent.

An Advisory Committee, made up of Skorkowsky and CCEA representatives, drafted the Guide
which detailed the various professional development activities, and the number of CUs an
Educator/Licensed Professional can attain as well as information on the tracks one can be on based their
job assignment and school. This was a product of extensive collaboration and negotiation with
numerous working drafts, where all changes and edits required a final approval by Skorkowsky and
Vellardita to be included in the Guide.

1 CCEA was bestowed with a reasonable understanding that Skorkowsky, as Superintendent, had
2 the authority to speak on behalf of CCSD and the CCSD Board of Trustees pursuant to the modification
3 by mutual consent language contained in Article 26-5, and had done so with their approval. At no point
4 was there any indication that followed any of Skorkowsky's approvals that CCSD had erred,
5 misunderstood, or required an approval not received from the Board. Rather, on April 8, 2016,
6 Skorkowsky sent out to all Administrative and Licensed Staff a Memorandum communicating the
7 "historic" joint effort between CCEA and CCSD. He further stated in that communication that the
8 "attached innovative Professional Growth System (PGS) Reference Guide was created to provide
9 educators/licensed professionals with opportunities to participate in professional growth activities to
10 enhance classroom instruction and to increase student achievement throughout the District. Through
11 the partnership, we have developed processes, tools, and resources to promote the implementation of
12 the PGS."

13 Given Skorkowsky's written approval to the terms outlined by Vesneske in the MOU dated
14 March 2, 2016 and extensive joint efforts made to implement those communications, distributed
15 documents, and training the new PGS and the Guide, CCEA believed in good faith that such approval
16 was received at the time Skorkowsky approved the terms and approved the final version of the Guide as
17 created by CCSD.

18 Throughout May and through the summer of 2016, CCEA and CCSD developed jointly,
19 communicated, and distributed a series of forms for the PGS. In addition, CCEA and CCSD jointly
20 communicated a link for various video tutorials on the PGS, as well as a Joint Memorandum to all
21 Administrators and Licensed Staff to provide additional clarification and additional information around
22 the PGS.

23 The Nevada Supreme Court holds that "the modern term permits the application of equitable
24 estoppel against a government to avoid manifest injustice and hardship to the injured party." *S. Nevada*
25 *Mem'l Hosp. v. State, Dep't of Human Resv*, 101 Nev. 387, 390, 705 P.2d 139, 141 (1985). The
26 doctrine consists of four elements: "(1) the party to be estopped must be apprised of the true facts; (2)
27 he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has
28 the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true

1 state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped.” *S. Nevada Mem'l Hosp.*, 101 Nev. at 391, 705 P.2d at 142.

3 On March 8, 2016, Superintendent Skorkowsky responded to the Memorandum sent from
4 Vesneske stating that they were good to go and final approval was obtained on March 8, 2016. There
5 was no indication or response that followed to indicate that he still needed CCSD Board approval. In
6 addition to the above, based on the Guide sent out by CCSD and CCEA jointly, and Skorkowsky’s own
7 memorandum, Educators/Licensed Professional reasonably relied upon the Guide to invest in additional
8 professional development and also make changes to where they would teach and what they would teach
9 in order to accrue the CUs for salary advancement.

10 Its approval, communication, and distribution by CCSD to all educators/licensed professionals
11 did result in educators voluntarily changing job assignments and schools to take advantage of the track
12 it would afford them to advance in salary and invest in additional college education based upon
13 representations made by CCSD through the Guide and all other communications that indicated a full
14 Agreement to all parts of the Guide. CCEA and CCSD jointly presented the Guide and informed all
15 newly hired Educators/Licensed professional at the New Hire Orientations that were held in August.
16 Credible testimony was presented that educators expended great effort and expense to complete
17 rigorous coursework in reliance thereon.

18 On April 26, 2016, CCEA and CCSD jointly provided all educators/licensed professionals a list
19 of all Title I, Tier I, II, and III schools to inform them of which schools qualified for either the two year
20 track or three year track. With the information, educators made decisions on whether to transfer to a
21 school that was on a two year track or three year track in the 2016 spring voluntary transfer period. On
22 May 2, 2016, CCSD Director I Employee Contracts and Compensation Joyce Herreria, sent to all
23 licensed employees a Memorandum, wherein she provided the process to receive the CUs or transition
24 in accordance with the April 12, 2016, and April 14, 2016, agreements reached between CCEA and
25 CCSD. Starting on May 9, 2016, CCEA and CCSD jointly provided CCSD Administrators and
26 Associate Superintendents trainings around the new PGS. On May 16, 2016, a PGS Documentation
27 Log was jointly provided to all educators. On May 26, 2016, a joint memo was sent to all CCSD
28 admins and licensed staff from Skorkowsky and Vellardita providing additional clarification and

1 additional information around CUs.

2 On May 26, 2016, and May 28, 2016, CCEA and CCSD jointly communicated to all licensed
3 professionals a link for various video tutorials on the PGS, CU verification, and the CU logs, as well as
4 dates throughout June where CCEA and CCSD would be holding informational Q&A. On July 22,
5 2016, CCEA and CCSD jointly communicated and distributed to all educators the Contact Unit
6 Consideration Form CCF-PGS6, which every educator must use to obtain approval for proposed
7 professional learning activities under the PGS, and as represented to them under the reference guide
8 they received in April 2016. On August 1, 2016, prior to the start of the 2016-2017 school year, CCEA
9 and CCSD jointly communicated and distributed to all licensed professionals an updated PGS Guide.
10 The final version was approved by both CCSD and CCEA, as indicated on the Guide. CCEA and
11 CCSD also distributed to all educators tools to go with the PGS, including jointly approved forms.

12 Starting in the fall of the 2016-2017 school year, the PGS Advisory Committee jointly held
13 informational trainings and presentations at individual schools. During all trainings and presentations,
14 the Guide was presented as the negotiated and approved August 1, 2016, final version. At no point, did
15 CCSD indicate there was an issue with training and presenting the Guide as the true and agreed terms
16 negotiated in accordance with the CBA. In addition to the trainings and presentation by the Advisory
17 Committee at schools, CCEA and CCSD distributed to all educators/licensed professional the PGS
18 “Frequently Asked Questions” informational document, wherein it explicitly stated to “refer to the PGS
19 Reference Guide” to learn about not only which activities and courses could accrue CUs, but also
20 whether they were teaching in a school or designation that would put them on a two year or three year
21 track. Moreover, the Frequently Asked Questions documents referred all educators/licensed
22 professionals to CCF-PGS forms to obtain approval and track their accrual of CUs.

23 As such, there was at least a full year of extensive collaborative work between CCEA and
24 CCSD, wherein every aspect of the roll-out of the PGS was a joint effort that required constant final
25 approval by Skorkowsky and CCSD management, as well as significant undertaking in communicating
26 and educating all Educators/Licensed professional and Administrators on the PGS and Guide that led
27 thousands to undertake additional professional development activities and college coursework, as well
28 as changes in schools and job assignments.

1 Nonetheless, CCSD memorialized the unilateral changes it was making to the Guide and sent
2 memoranda informing all licensed employees of the changes to the existing “final and approved”
3 version of the Guide. Interestingly, on April 18, 2017, Long sent a certified letter to CCEA stating that
4 the MOOCs were eliminated based on the agreement and approval reached by the PGS advisory
5 committee. As such, CCSD seemed to take the position that the PGS advisory committee had authority
6 to negotiate changes to the PGS, despite also being post-ratification, but lacked the same ability when it
7 came to the ones CCSD did not want to honor.

8 Moreover, in the same vein, although CCSD now claims the CCSD Board of Trustees needed to
9 approve CUs for homework or two-year track for closed-classroom special education teacher and non-
10 Title 1 schools, there was no evidence presented that the School Board engaged in any sort of good faith
11 ratification review. CCSD unilaterally changed that the actual terms and conditions of employment
12 from what was otherwise bargained for and approved by the Superintendent. CCSD agreed to the final
13 version of the terms found in the PGS Guide as evidenced by over a year’s worth of communications
14 between CCEA and CCSD top management, including Skorkowsky, as well as documents, tools,
15 trainings, presentations that were made by CCSD to all Licensed Educators and Administrators. The
16 doctrine of equitable estoppel applies to avoid manifest injustice and hardship to the injured party.
17 CCSD intended that their conduct be acted upon or at least acted in a manner so as the parties had the
18 right to believe it was so intended. It is clear that not only CCEA, but licensed professionals relied to
19 their detriment.

20 Based upon the conduct of the parties as a whole, CCEA has presented substantial evidence of
21 deceitful action or dishonest conduct by CCSD. As such, CCEA has shown bad faith bargaining by
22 CCSD. CCEA demonstrated that it entered the process of negotiating the PGS fully through
23 implementation in good faith – not just the framework and concept that was ratified in the 2015-2017
24 CBA, but continued to negotiate the terms and conditions outlined in the Reference Guide with CCSD.
25 CCSD regularly engaged with CCEA and educators for over a year, which resulted in numerous
26 agreements and ultimately resulted in the bargained for written Reference Guide (Exhibit 30) that stated
27 to all recipients of the Guide that this was the Final Approved version and included approved usage of
28 CCEA and CCSD logo. Moreover, it included the approved use of a video with the Superintendent and

1 CCEA Executive Director – both considered the spokespersons and decision makers of both
2 organizations.

3 However, despite CCEA’s clear objections as shown in Exhibits 33 and 38, CCSD issued their
4 own version of a Reference Guide. The District did not attempt to bargain for these changes and
5 unilaterally made changes distributing its own subsequent guide to the bargaining unit. Collective
6 bargaining is not “limited to the negotiation of an agreement... Collective bargaining is a continuing
7 process involving, among other things, day to day adjustments in the contract and working rules,
8 resolution of problems not covered by existing agreements and protection of rights already secured by
9 contract.” *Las Vegas Police Protective Ass’n v. City of Las Vegas*, Case No. A1-045461, Item No. 248,
10 at 6 (1990), *quoting Conley v. Gibson*, 355 U.S. 41, 46 (1957); *Truckee Meadows Fire Prot. Dist. v.*
11 *Int’l Ass’n of Fire Fighters, Local 2487*, 109 Nev. 367, 376–77, 849 P.2d 343, 350 (1993) (noting that
12 “[r]equiring appellee to bargain does not require that an agreement be reached. It does, however,
13 provide a process whereby employees will be consulted about decisions which have profound impact on
14 them and thus, industrial peace will be preserved and promoted.”).

15 Moreover, the failure to designate an agent, or bargaining team with negotiation authority is a
16 significant indicator of bad faith bargaining, which would point to a finding of bad faith in this case.
17 *Ed. Support Employees Ass’n v. CCSD*, Case No. A1-046113, Item No. 809 (2015), *quoting Fitzgerald*
18 *Mills Corp.*, 133 NLRB 877 (1961). In addition to Skorkowsky, however, testimony showed that
19 CCSD appointed Mark Oakden to a newly created position as PGS Coordinator to oversee the PGS.
20 Oakden testified that he believed the August Guide to be the agreed upon Guide. Yet, CCSD does not
21 credibly dispute that they unilaterally issued a subsequent Guide containing unilateral changes.

22 Furthermore, CCSD’s unilateral actions are inconsistent with the actions they took prior. The
23 April 6, 2017, Reference Guide is nothing more than a CCSD version of what the parties had bargained
24 for previously. No evidence was presented that this subsequent Reference Guide was ratified either.
25 Most egregious was the District’s use of CCEA’s logo, a video featuring CCEA Executive Director
26 Vellardita, and CCEA’s contact information which attempted to represent to the bargaining unit that
27 CCEA had bargained for these subsequent unilateral changes, which CCEA did not.

28 ///

1 Finally, based on the facts in this case and the issues presented, the Board declines to award cost
2 and fees in this matter.

3 **FINDINGS OF FACT**

4 1. CCEA and CCSD are parties to a CBA with effective dates from 2015 to 2017.

5 2. In the course of the negotiating said CBA, the parties began working on a new salary
6 system called the PGS.

7 3. When the 2015-2017 CBA was ratified on January 14, 2016, the salary schedule was
8 developed with some basic frameworks that went towards the goal of this new salary system.

9 4. It was the understanding of the parties to continue to work collaboratively to develop the
10 full PGS post-ratification.

11 5. The parties met and agreed, over the course of a year on such specifics, which were
12 reached via an advisory committee and approved by the Superintendent.

13 6. On January 15, 2016, Vesneske sent Vellardita and Pearson a document entitled
14 Summary and Suggested Timeline to draft the PGS documents, with a CCSD/CCEA joint logo, and
15 draft parameters for the type of activities that would count towards the 225 CUs for salary advancement
16 and the respective CU, afforded to each activity.

17 7. An Advisory Committee was created, and was made up of Skorkowsky, Vellardita and
18 Pearson, and was charged with the drafting of the Guide.

19 8. On March 2, 2016, Vesneske sent Skorkowsky a Memorandum memorializing the
20 understanding between CCSD and CCEA as well as requested a final approval.

21 9. On March 8, 2016, Skorkowsky responded with his final approval.

22 10. The Advisory Committee continued its extensive work to ensure the success of the PGS
23 and produced a series of jointly approved and negotiated communications, tutorials, forms, and
24 informational documents.

25 11. Over the course of a year, trainings were produced and provided for both
26 Educator/Licensed Professional and Administrators.

27 12. CCEA was bestowed with a reasonable understanding that Skorkowsky, as
28 Superintendent, had the authority to speak on behalf of CCSD and the CCSD Board of Trustees, and

1 had done so with their approval.

2 13. At no point was there any indication that followed any of Skorkowsky's approvals that
3 CCSD had erred, misunderstood, or required an approval not received from the Board.

4 14. On April 8, 2016, Skorkowsky sent out to all Administrative and Licensed Staff a
5 Memorandum communicating the "historic" joint effort between CCEA and CCSD.

6 15. Throughout May and through the summer of 2016, CCEA and CCSD developed jointly,
7 communicated, and distributed a series of forms for the PGS.

8 16. On April 26, 2016, CCEA and CCSD jointly provided all educators/licensed
9 professionals a list of all Title I, Tier I, II, and III schools to inform them of which schools qualified for
10 either the two year track or three year track

11 17. On May 2, 2016, Herreria sent to all licensed employees a Memorandum, wherein she
12 provided the process to receive the CUs or transition.

13 18. Starting on May 9, 2016, CCEA and CCSD jointly provided CCSD Administrators and
14 Associate Superintendents trainings around the new PGS.

15 19. On May 16, 2016, a PGS Documentation Log was jointly provided to all educators.

16 20. On May 26, 2016, a joint memo was sent to all CCSD administrators and licensed staff
17 from Skorkowsky and Vellardita providing additional clarification and additional information around
18 CUs.

19 21. On May 26, 2016 and May 28, 2016, CCEA and CCSD jointly communicated to all
20 licensed professionals a link for various video tutorials on the PGS, CU verification, and the CU logs,
21 as well as dates throughout June where CCEA and CCSD would be holding informational Q&A.

22 22. On July 22, 2016, CCEA and CCSD jointly communicated and distributed to all
23 educators the Contact Unit Consideration Form CCF-PGS6.

24 23. CCEA and CCSD jointly communicated a link for various video tutorials on the PGS, as
25 well as a Joint Memorandum to all Administrators and Licensed Staff to provide additional clarification
26 and additional information around the PGS.

27 24. On August 1, 2016, CCEA and CCSD jointly communicated and distributed to all
28 licensed professionals an updated PGS Guide that was approved as the final version.

1 25. CCEA and CCSD jointly presented the Guide and informed all newly hired
2 Educators/Licensed professional at the New Hire Orientations that were held in August.

3 26. Starting in the fall of the 2016-2017 school year, the PGS Advisory Committee jointly
4 held informational trainings and presentations at individual schools.

5 27. During all trainings and presentations, the Guide was presented as the negotiated and
6 approved August 1, 2016, final version.

7 28. At no point did CCSD indicate there was an issue with training and presenting the Guide
8 as the true and agreed terms negotiated in accordance with the CBA.

9 29. CCEA and CCSD distributed to all educators/licensed professional the PGS “Frequently
10 Asked Questions” informational document, wherein it explicitly stated to “refer to the PGS Reference
11 Guide”.

12 30. Credible testimony was presented that educators expended great effort and expense to
13 complete rigorous coursework in reliance thereon.

14 31. CCSD regularly engaged with CCEA and educators for over a year, which resulted in
15 numerous agreements and ultimately resulted in the bargained for written Reference Guide that stated
16 to all recipients of the Guide that this was the Final Approved version and included approved usage of
17 CCEA and CCSD logo.

18 32. CCSD intended that their conduct be acted upon or at least acted in a manner so as the
19 parties had the right to believe it was so intended.

20 33. CCEA and licensed professionals relied to their detriment.

21 34. The bargained for written Reference Guide (Exhibit 30) stated to all that it was the Final
22 Approved version and included the use of a video with the Superintendent and CCEA Executive
23 Director – both considered the spokespersons and decision makers of both organizations.

24 35. On January 27, 2017, Long stated at the PGS Advisory Committee meeting that CCSD
25 would be striking the disputed sections (pages 1, 10, and 11) from the Guide.

26 36. On February 7, 2017, CCSD memorialized the changes it was making on the Guide and
27 their intent to communicate such changes to all educators/licensed professionals despite CCEA’s clear
28 objections

1 37. Most egregious was the District's use of CCEA's logo, a video featuring CCEA
2 Executive Director Vellardita, and CCEA's contact information which attempted to represent to the
3 bargaining unit that CCEA had bargained for these subsequent unilateral changes, which CCEA which
4 did not

5 38. The memo referenced other changes the Advisory Committee had discussed, but CCEA
6 had not yet agreed to, including the elimination of the MOOCs.

7 39. Despite CCEA's objections to the new Guide, CCSD included CCEA's logo and contact
8 information in the new Guide.

9 40. The School Board did not engage in any sort of good faith ratification review of the new
10 Guide.

11 41. On April 18, 2017, Long sent a certified letter to CCEA stating that the MOOCs were
12 eliminated based on the agreement and approval reached by the PGS advisory committee.

13 42. If any of the foregoing findings is more appropriately construed as a conclusion of law, it
14 may be so construed.

15 **CONCLUSIONS OF LAW**

16 1. The Board is authorized to hear and determine complaints arising under the Local
17 Government Employee-Management Relations Act.

18 2. The Board has exclusive jurisdiction over the parties and the subject matters of the
19 Complaint on file herein pursuant to the provisions of NRS Chapter 288.

20 3. NRS 288.270(1)(e) states that it is a prohibited practice for a local government employer
21 willfully to refuse to bargain collectively in good faith with the exclusive representative as required in
22 NRS 288.150.

23 4. A party's conduct at the bargaining table must evidence a sincere desire to come to an
24 agreement. The determination of whether there has been such sincerity is made by drawing inferences
25 from conduct of the parties as a whole.

26 5. The Act imposed a reciprocal duty on employers and bargaining agents to negotiate in
27 good faith concerning the mandatory subjects of bargaining listed in NRS 288.150.

28 ///

1 6. Salary or wage rates or other forms of direct monetary compensation are mandatory
2 subjects of bargaining.

3 7. The modern term permits the application of equitable estoppel against a government to
4 avoid manifest injustice and hardship to the injured party.

5 8. The doctrine consists of four elements: (1) the party to be estopped must be apprised of
6 the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party
7 asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be
8 ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to
9 be estopped.

10 9. The doctrine of equitable estoppel applies to avoid manifest injustice and hardship to the
11 injured party.

12 10. The duty to bargain in good faith does not required that the parties actually reach an
13 agreement, but does require that the parties approach negotiations with a sincere effort to do so.

14 11. In order to show bad faith, a complainant must present substantial evidence of fraud,
15 deceitful action or dishonest conduct.

16 12. A unilateral change to the bargained for terms of employment is regarded as a *per se*
17 violation of NRS 288.270(1).

18 13. Based on the conduct of the parties as whole, CCEA has presented substantial evidence
19 of deceitful action or dishonest conduct by CCSD.

20 14. If any of the foregoing conclusions is more appropriately construed as a finding of fact, it
21 may be so construed.

22 ORDER

23 Based on the foregoing, it is hereby ordered that the Board finds in favor of Complainant Clark
24 County Education Association as set forth above. The specifics for earning CUs as detailed in the
25 August 1, 2016, Guide shall be restored with the exception of the granting of MOOCs credits¹. The
26 parties shall continue to bargain in good faith on the suspension of MOOCs CUs. The bargaining unit

27 _____
28 ¹ Pursuant to the testimony of the parties' witnesses, the granting of MOOCs credits was agreed to be
suspended pending a negotiation and final approval of the changes of the MOOCs credit program.

1 employees shall be awarded all CUs earned pursuant to the August 1, 2016 Guide as modified only by
2 MOOC CU suspension agreement. Each party shall bear its own fees and costs.

3 DATED this 21 day of August, 2017.

4
5 LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

6
7 By: 
8 BRENT ECKERSLEY, ESQ., Chair

9 By: 
10 SANDRA MASTERS, Vice-Chair

11 By: 
12 PHILIP LARSON, Board Member

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