COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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| APSCUF | : | |
| | : | |
| v. | : | Case No. PERA-C-24-200-E |
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| PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION | : | |

**PROPOSED DECISION AND ORDER**

On September 4, 2024, the Association of Pennsylvania State College and University Faculties (APSCUF or Union) filed a charge of unfair practices, as amended on September 27, 2024, with the Pennsylvania Labor Relations Board (Board) against the Pennsylvania State System of Higher Education, Cheyney University (PASSHE or Cheyney), alleging that PASSHE violated Section 1201(a)(1), (5), and (9) of the Public Employe Relations Act (PERA or Act) by failing to implement the terms of a 2023 Compliance Plan concerning a cap on temporary faculty.

On October 10, 2024, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation and directing a hearing on January 22, 2025, if necessary. The hearing ensued, as scheduled, on January 22, 2025, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties each filed separate post-hearing briefs in support of their respective positions on March 14, 2025.

The Hearing Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. PASSHE is a public employer within the meaning of Section 301(1) of PERA. (Joint Exhibit 4)

2. APSCUF is an employe organization within the meaning of Section 301(3) of PERA. (Joint Exhibit 4)

3. APSCUF is the exclusive bargaining representative for a unit of professional faculty employes at the PASSHE universities. (Joint Exhibit 1)

4. APSCUF and PASSHE are parties to a collective bargaining agreement (CBA) effective July 1, 2023 to June 30, 2027, which places a cap on the number of temporary and part-time faculty that can be employed at the PASSHE universities (temp cap). (N.T. 21; Joint Exhibit 1, 4)

5. Specifically, Article 11.F of the CBA, which is entitled "Regulations Regarding the Hiring of Temporary and Regular Part-Time FACULTY MEMBERS," provides in relevant part as follows:

> 1. The full-time equivalent (FTE) of temporary and regular part-time FACULTY MEMBERS at any University shall not exceed twenty-five percent (25%) of the full-time equivalent (FTE) of all FACULTY MEMBERS employed at that University as of October

31 of the previous year. A UNIVERSITY and local APSCUF may, by written local agreement, exceed the limit provided herein.

2. All Universities shall be in compliance with the twenty-five percent (25%) FTE limit as set forth above. Exceptions to the above provision (F.1) are those temporary FACULTY MEMBERS employed in the same department as replacements for regular FACULTY MEMBERS granted approved leaves of absences. A grievance alleging a violation of this provision may be filed directly at Step 3 of the grievance procedure under Article 5.
3. In the event that a UNIVERSITY is above the twenty-five percent (25%) FTE limit the following steps shall be taken to come into compliance with this provision:

   a. The President or designee will develop a plan to come into compliance and will submit the plan to the Chancellor.
   b. The Chancellor will bring the plan to State Meet and Discuss for input prior to approval of the plan.

(Joint Exhibit 1)(emphasis in original)

6. Cheyney University has exceeded the temp cap for several years. (N.T. 21-22; Joint Exhibit 4)

7. On or about December 13, 2022, APSCUF grieved Cheyney's failure and refusal to comply with the 25 percent temp cap and processed the grievance to arbitration, which was scheduled for hearing on October 31, 2023. (N.T. 22; Joint Exhibit 4)

8. In accordance with the remedy available under the CBA, PASSHE brought a compliance plan to APSCUF at their State Meet and Discuss. (Joint Exhibit 4)

9. On or about August 16, 2023, the Cheyney University President developed, and the Office of the Chancellor (OOC) approved, a plan to hire 13 new full-time permanent faculty members over the course of the 2023-2024 academic year in order to become compliant with the 25 percent temp cap by fall of 2024. (Joint Exhibit 4)

10. On August 16, 2023, Cheyney Interim Provost Sharon Gramby-Sobukwe indicated the following, in relevant part, to APSCUF Local President Norma George:

> During [Academic Year] 2022-23, the full-time equivalent (FTE) of temporary and regular part-time faculty members exceeded twenty-five percent (25%) of the full-time equivalent (FTE) of all faculty employed at Cheyney University as of October 31, 2021. As required in Article 11[F.3] of the APSCUF collective bargaining agreement, this is a plan to come into compliance. We will do so over the next three semesters, Fall 2023, Spring 2024, and Fall 2024. This plan is based upon Cheyney's commitment to hire full-time permanent and reduce the associated temporary (especially full-time) faculty positions.
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> As the table below shows, 13 new full-time permanent faculty are planned to backfill faculty positions recently vacated because of retirement and resignations (6), and to fill new positions strategically identified to meet student (6) needs, and program

> accreditation requirements (1). Currently, 1 of these positions is filled for Fall 2023, 7 are approved (3 of which are already posted), and 4 are anticipated for approval and posting by Spring 2024 at the latest.
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> ...
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> Thus, using the attached worksheets, we project a steady increase in the full-time equivalent (FTE) of permanent full-time faculty and corresponding decline in the full-time equivalent (FTE) of temporary and regular part-time faculty...
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> ...
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> These projections are dependent upon several intervening factors, some of which are apparent, and we are positioned to address. First, new permanent, full-time faculty positions are predicated upon stable enrollments at a minimum. Cheyney University's steady gradual increases in enrollments, and a reinvigorated admissions and recruitment team suggest continuation of this trend. Secondly, this plan is expectant of current faculty capacity to manage several searches simultaneously, potentially seven at a minimum over a year. Two searches per department will be needed at most. Thirdly, this plan depends on available and qualified candidates. Cheyney University has recently hired a Recruitment Officer to assist in identifying qualified applicants from professional organizations and other similar universities. However, other unforeseen factors may also impact these outcomes.

(Joint Exhibit 2)

11. The parties agreed to cancel the arbitration hearing in reliance upon the Chancellor's approval of the 2023 Compliance Plan. Joshua Grubbs, APSCUF's Director of Labor Relations, specifically testified that the arbitration was postponed because part of the remedy for the grievance was to come into compliance and to provide a plan for that process under Article 11.F.3 of the CBA and that Cheyney had provided a compliance plan in August 2023. Grubbs also described how Cheyney management chose the positions to be filled in accordance with the plan, along with the timelines for those selections. (N.T. 22-23; Joint Exhibit 4)

12. In the 2023-2024 academic year, there were fluctuations in the number and headcount of permanent faculty members. But Cheyney did not propose, and OOC did not approve, any modifications to the 2023 Compliance Plan. In fact, by the end of the fall 2023 semester, Cheyney had filled three positions under the Plan, including an Assistant Professor of Business position, an Assistant Professor of Culinary Arts and Chef position, as well as an Athletic Director position. (N.T. 25-26; Joint Exhibit 4)

13. In April 2024, the OOC and/or Cheyney shared progress reporting that 13 faculty positions would be hired. (Joint Exhibit 4)

14. In May 2024, the OOC and/or Cheyney provided APSCUF with an Updated Compliance Plan that was discussed on May 10, 2024 with state and local APSCUF. (N.T. 26-28; Joint Exhibit 3, 4)

15. The Updated Compliance Plan reported slowed hiring, but continued to provide charts projecting that Cheyney would hire 13 full-time faculty in accordance with the 2023 Compliance Plan, albeit with extended search and hire deadlines. (N.T. 26-28; Joint Exhibit 3, 4)

16. The Updated Compliance Plan was not approved by the Chancellor. (Joint Exhibit 4)

17. By May 2024, Cheyney had appointed five (5) permanent faculty members in accordance with the 2023 Compliance Plan. (Joint Exhibit 4)

18. In June or July 2024, Cheyney put all active searches on hold. Cheyney advised APSCUF in June 2024 that three of the positions were frozen. Then, on July 3, 2024, at the next local meet and discuss session, APSCUF learned that all of the unfilled positions in the plan had been frozen. (N.T. 28-32; Union Exhibit 1, 2, 3, Joint Exhibit 4)

19. On August 14, 2024, the parties met for another local meet and discuss session, which was attended by Cheyney President Aaron Walton and APSCUF State President Ken Mash, among others. Walton indicated that the positions from the plan continued to be frozen and that the Chancellor had issued a directive, requiring Walton to review all options for getting under the temp cap. Walton did not bring the new directive with him, nor did he present APSCUF with a new compliance plan from the Chancellor during that meet and discuss session. (N.T. 33-34)

20. On August 23, 2024, Cheyney Interim Provost Jackie Irving presented APSCUF with a new compliance plan that continued to adhere to filling the 13 original positions, but which delayed the dates further to the spring semester of 2025. In this new plan, Irving asserted that, as of August 23, 2024, the percentage of regular part-time and temporary faculty was below the 25 percent temp cap. (N.T. 34-37; Union Exhibit 4)[1]

21. The fall semester at Cheyney began on August 26, 2024. (N.T. 37)

22. APSCUF Labor Relations Director Grubbs testified that, at the beginning of the fall 2024 semester, Cheyney cancelled a bunch of classes, reduced the number of adjunct temporary faculty at the university, and "gave massive amounts of overload to the tenured faculty." Grubbs described overload as a method of compensating for someone who works more than a normal load, which he defined as four three-hour courses per semester or 12 credits. Grubbs explained that a typical amount of overload would be three hours and a massive amount would be anything over that. He testified that there were faculty employes at Cheyney who were assigned 21 or 24 hours in the fall, which was essentially a full year workload for just one semester. He acknowledged that the faculty employes were paid for the overload assignments and that overload is a common occurrence at the PASSHE universities. (N.T. 38-39, 58-59)[2]

23. Labor Relations Director Grubbs testified that this was not consistent with the Compliance Plan since the staffing cuts to the temporary

[1] The record shows that Irving became Interim Provost at Cheyney on June 1, 2024. (N.T. 92).

[2] The CBA contemplates overload assignments in Article 25, which provides for additional pay for each workload hour in excess of 15 per academic term or in excess of 24 per academic year. (Joint Exhibit 1).

and part-time employes only made up half of the Plan. He emphasized how the parties had been working on the Compliance Plan for about a year until Cheyney had simply changed the Plan entirely right before the fall semester. (N.T. 39-40)

24. On September 4, 2024, the parties met for a local meet and discuss session, during which they started addressing the positions listed in the August 23, 2024 status update. Local APSCUF President Norma George questioned Cheyney Provost Irving on the status of about six of the positions, to which Irving responded with the various stages of the searches. Eventually, Cheyney Director of Human Resources John Gruenwald intervened to state that all the positions had been frozen and were not being searched anymore. At that point, APSCUF State President Mash indicated that Cheyney was not complying with the Plan and had committed an unfair labor practice. There were no representatives from PASSHE at the meeting. (N.T. 40-42)

25. APSCUF Labor Relations Director Grubbs testified that the Cheyney President did not develop a new plan in writing, nor did PASSHE present APSCUF with a new plan. He indicated that none of the positions in the original plan have been posted since fall 2024. (N.T. 43-44)

26. In fall semester 2024, Cheyney came into compliance with the CBA requirements of Article 11.F.1 when the FTE of temporary and regular part-time faculty did not exceed 25 percent of the FTE of all faculty members employed at Cheyney as of October 31 of the previous year. (Joint Exhibit 4)

27. Cheyney President Walton testified that, at the time of the hearing, Cheyney's enrollment was approximately 600 students. He described how Cheyney's enrollment was at its largest during the 2021-2022 year with 728 students. (N.T. 68)

28. In the fall of 2023, Cheyney was suddenly placed on probation by the United States Commission on Education, which is Cheyney's accrediting body. President Walton explained how this occurred in conjunction with the implementation of a new FAFSA system by the United States Department of Education, which caused financial aid problems for universities nationwide. Walton described how Cheyney had an increased enrollment of about ten percent for the prior four years until fall 2023. However, he testified that Cheyney's enrollment dropped 17 percent for the next year. (N.T. 68-70)

29. President Walton testified that, in spring 2024, Cheyney immediately began to feel the effects of probation and the FAFSA issues, which resulted in their lowest application numbers in seven years. He indicated that Cheyney began to make adjustments in anticipation of the lower enrollment, as less demand for classes would impact hiring. He explained how he promised the Union he would do everything he could to avoid retrenchments, which necessarily involved reducing the number of adjuncts as the first line of defense for the full-time employes because the adjunct numbers were too high anyway. (N.T. 71-74)

30. President Walton testified that he became aware of the issues surrounding Cheyney's financial stability, which was the focus of the Chancellor's July 2024 directive, as early as May 2024. He described how the impact was going to be felt everywhere at Cheyney, not just with declining enrollments and faculty, but also with food service, contracts, etc. He summarized the directive as do whatever is necessary to get Cheyney back to financial stability. On cross-examination, however, he admitted that the

Chancellor's directive addresses financial sustainability and says nothing about the Article 11.F Compliance Plan. (N.T. 77-78, 82)

31. President Walton testified that it is still Cheyney's intention to eventually hire the positions necessary for the Plan. He stressed how it might not be exactly according to the Plan, but he stated that Cheyney will look at its needs and go forward with the hiring. He indicated that Cheyney had already started that process as of the hearing date in this matter. (N.T. 78)

32. President Walton testified, on cross-examination, that the decision to change the number of adjuncts at Cheyney was made in August 2024. He conceded that the updated plan conveyed to APSCUF during the August 23, 2024 meeting still indicated the hirings would continue on an extended timeline. He also agreed that Cheyney did not advise APSCUF at that time that Cheyney intended to rescind the contracts for temporary adjuncts and change the schedule. (N.T. 83-87; Union Exhibit 4)

33. President Walton asserted that Cheyney came into compliance with the Plan, but then conceded that it was "not necessarily the way that this plan called for." He claimed that there are two phases of the plan, with phase one being the reduction in adjuncts to ostensibly come under the temp cap, and phase two being "looking at what we need moving forward." He acknowledged that Cheyney has not "completed the process," but reiterated Cheyney's intent to do so. He then immediately qualified his testimony, stating that Cheyney may or may not fill all the positions in the plan, depending on what the need is. He admitted that he was having conversations with and giving directives to the Cheyney Provost, which were different from what is set forth in the Compliance Plan. (N.T. 88-90)

## DISCUSSION

APSCUF argues that PASSHE, and specifically Cheyney University, violated Section 1201(a)(1), (5), and (9) of the Act[3] by repudiating a binding settlement agreement contained in the original Compliance Plan and going ahead with a new plan of eliminating only temporary and part-time faculty in the fall semester of 2024, in bad faith, without providing the Union with a meaningful opportunity for input. Specifically, APSCUF contends that the original Compliance Plan from August 2023 was a binding settlement of the December 2022 grievance, alleging a violation of Article 11.F of the CBA, which Cheyney violated when it unilaterally decided to come into compliance with Article 11.F of the CBA in a manner that was inconsistent with the terms of the Compliance Plan. In addition, APSCUF maintains that Cheyney also violated the "meet and discuss" provisions of the Act when Cheyney changed the terms of the original Compliance Plan right before the start of the fall 2024 semester by misleading APSCUF into believing the original terms were still intact, and then unilaterally altering those terms without permitting

[3] Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act...(5) 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...(9) Refusing to comply with the requirements of 'meet and discuss.'" 43 P.S. § 1101.1201.

APSCUF to provide input into the new plan. PASSHE, meanwhile, submits that the charge should be dismissed as moot because the record shows that Cheyney has since come into compliance with Article 11.F of the CBA in the fall semester of 2024 when the FTE of temporary and regular part-time faculty did not exceed 25 percent of the FTE of all faculty members employed at Cheyney as of October 31 of the previous year. PASSHE also posits that the charge should be dismissed because PASSHE complied with the CBA and provided APSCUF with the opportunity to submit input to the Chancellor prior to the Chancellor's approval of the Plan, which was the only contractual rights afforded to the Union under the CBA. PASSHE further maintains that the Compliance Plan did not provide APSCUF with an enforceable right to compel Cheyney to hire 13 new full-time faculty employes, as the Plan did not create any sort of bargained-for agreement between APSCUF and PASSHE that would negate PASSHE's otherwise managerial prerogative to determine its standards of service, organizational structure, and the selection and direction of personnel. PASSHE also claims that the Compliance Plan consisted of two parts, a proposal to hire 13 new full-time faculty employes, along with a corresponding projection to reduce the number of temporary and part-time employes, in addition to several contingencies, which provided enough flexibility that Cheyney was under no obligation to continually resolicit input from APSCUF every time the Plan was in need of adjustment.

As a preliminary matter, the Board has long held that unilateral implementation and bad faith bargaining charges of unfair labor practices are rendered moot by resolution of the bargaining impasse through execution of a successor agreement. Temple University, 25 PPER ¶ 25121 (Final Order, 1994). In determining whether alleged past violations of bargaining obligations occurring during negotiations should be heard, the Board considers as paramount whether its involvement after a successor agreement has been reached, is appropriate under the facts of any particular case. AFSCME District Council 33 and Local 159 v. City of Philadelphia, 36 PPER 158 (Final Order, 2005). In this regard, the Board distinguishes between those charges where the employes continue to suffer the residual effects of an unlawful, unilateral change to wages, hours and working conditions, which are typically not moot, as opposed to those involving bargaining tactics which do not result in affirmative relief to the employes, but rather cease and desist orders, which are generally mooted by the parties' entry into a collective bargaining agreement. *Id.* (citing Hazleton Area Education Support Personnel Ass'n v. Hazleton Area School District, 29 PPER ¶ 29180 (Final Order, 1998)(holding that the charge was not moot because the employer failed to present evidence that the new agreement addressed the matters involved in the unfair practices charge). Of course, even if a charge is technically moot, it may be decided when the issue presented is one of great public importance or is one that is capable of repetition yet evading review. Association of Pennsylvania State College and University Faculties v. PLRB, 8 A.3d 300, 305 (Pa. 2010).

On these facts, I am unable to conclude that the Union's charge of unfair practices has been rendered moot, as alleged by PASSHE. First of all, there is no evidence that the parties have since entered into a bargained-for agreement, which could potentially resolve the bad faith bargaining allegations at issue. PASSHE points out that Cheyney has since come into compliance with the Article 11.F temp cap during the fall 2024 semester, which presumably means that there is no longer any case or controversy that is ripe for adjudication. However, PASSHE misperceives the crux of APSCUF's charge, which clearly takes issue with how Cheyney came into compliance with Article 11.F of the CBA. Indeed, APSCUF argues that Cheyney violated a

grievance settlement agreement, which required Cheyney to adhere to the original terms contained in the August 2023 Compliance Plan, which Cheyney has admittedly not done.

In fact, even if this matter could be construed as moot, the Union has presented a classic exception to the mootness doctrine for a situation that is capable of repetition yet evading review. In Temple University Hospital Nurses Ass'n v. Temple University Health System & Temple University Hospital, 42 PPER 55 (Proposed Decision and Order 2011), Hearing Examiner Wallace, facing a mootness claim by the employer after it allegedly amended a policy which unlawfully prohibited employes from wearing items critical of the hospital in certain areas of the facility, found that "the moot parts of the charge would not be subject to dismisal [sic] because by the simple expedient of amending the policy as soon as a charge is filed [the Employer] would be able to evade review of conduct that is capable of repetition."

In the same vein, PASSHE, and Cheyney, by the simple expedient of unilaterally altering an Article 11.F compliance plan under the CBA and simply reducing its complement of temporary and part-time employes without further input from APSCUP, could effectively evade review of conduct that is very clearly capable of repetition. On this point, the record shows that Cheyney has exceeded the cap for several years and that there are a number of outstanding grievances filed relating to this issue. (N.T. 64-65; Joint Exhibit 4). As such, it is highly probable that there will be future grievances, which result in additional compliance plans pursuant to Article 11.F of the CBA. Accordingly, this case also falls into one of the well-organized exceptions to the mootness doctrine and must be reviewed on the merits.

As detailed above, APSCUF argues that PASSHE and Cheyney committed unfair practices under the Act by violating the terms of a binding grievance settlement agreement. Where a grievance has been resolved through a settlement, a public employer violates its duty to bargain when it refuses to comply with the grievance settlement agreement. Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, Department of Corrections, Rockview SCI, 47 PPER 43 (Final Order, 2015). Where there is a settlement agreement, the Board will determine (1) if a meeting of the minds on the settlement actually exists; (2) whether the parties' intent is apparent from the settlement agreement; and (3) whether the party has failed to comply with the agreement's provisions. AFSCME District Council 47 Local 2187 v. City of Philadelphia, 36 PPER 124 (Final Order, 2005). The burden is on the complainant to establish by substantial evidence that the respondent has failed or refused to comply with the terms of the settlement agreement. Rockview SCI, *supra.*

To establish that a binding agreement exists, the charging party must prove that the parties reached a meeting of the minds concerning the subject matter at issue. Riverview Intermediate Unit #6 v. Riverview Intermediate Unit #6 Education Ass'n, 53 PPER 75 (Proposed Decision and Order, 2022)(*citing* Philadelphia Community College, 52 PPER 77 (Final Order, 2020)). Where the parties have a meeting of the minds concerning the subject matter of the agreement, a binding agreement exists. Larksville Borough, 48 PPER 82 (Final Order, 2017). The Board will determine that the parties have not reached a binding agreement where the parties reach agreement on some terms, but are unable to come to a complete resolution of their dispute. APSCUF v. PASSHE, West Chester University, 44 PPER 31 (Proposed Decision and Order, 2012), 44 PPER 72 (Final Order, 2013). It is the external conduct of the

parties and not subjective beliefs that establishes the presence or absence of a meeting of the minds. Bethel Park School District, 27 PPER 27033 (Proposed Decision and Order, 1995).

In this case, APSCUF has not sustained its burden of proving that PASSHE and/or Cheyney violated Section 1201(a)(5) of the Act by refusing to comply with a grievance settlement agreement. The record shows that APSCUF grieved Cheyney's failure and refusal to comply with the 25 percent temp cap in December 2022 and processed the grievance to arbitration, which was eventually scheduled for hearing on October 31, 2023. The parties stipulated and agreed that "[i]n accordance with the remedy available under the CBA, PASSHE brought a compliance plan to APSCUF at their State Meet and Discuss." On August 16, 2023, the Cheyney University President developed, and the Office of the Chancellor (OOC) approved, a plan to hire 13 new full-time permanent faculty members over the course of the 2023-2024 academic year in order to become compliant with the 25 percent temp cap by fall of 2024. Also on August 16, 2023, the Cheyney Interim Provost forwarded the specific terms of the compliance plan to the Local APSCUF President.

As PASSHE persuasively notes in its post-hearing brief, this evidence does not satisfy the Board's criteria to constitute a bargained-for agreement, requiring Cheyney to hire 13 new full-time faculty employes consistent with the plan. There is no evidence of a meeting of the minds between the parties on the compliance plan. To the contrary, the record shows only that Cheyney developed a plan to come into compliance with Article 11.F of the CBA, which was submitted to the Chancellor, who provided APSCUF with the opportunity to provide input at the statewide meet and discuss session, before approval of the plan. Thus, the record shows that the August 2023 compliance plan was adopted pursuant to PASSHE's and Cheyney's meet and discuss obligation pursuant to Article 11.F.3 of the CBA. It is well-settled that a plan adopted pursuant to a "meet and discuss" obligation is not a bargained-for agreement under the Act. *See* PLRB v. APSCUF, 355 A.2d 853 (Pa. Cmwlth. 1976)(wherein the court placed its imprimatur of approval on the proposition that nothing arising out of a meet and discuss session is necessarily binding on the employer and that collective bargaining and meet and discuss are mutually exclusive).

It is of no consequence that the parties agreed to cancel the arbitration hearing in reliance upon the Chancellor's approval of the 2023 Compliance Plan. APSCUF bargained for a "meet and discuss" obligation on the part of PASSHE and Cheyney, in the event that Cheyney was above the 25 percent temp cap in Article 11.F of the CBA. APSCUF admitted that it obtained that remedy in August 2023 when the Chancellor brought the compliance plan for input during the statewide meet and discuss session. That APSCUF may have agreed with, or even optimistically embraced, the compliance plan adopted by Cheyney and PASSHE does not somehow transform the plan into a collectively bargained-for agreement between the parties.[4] The

[4] To illustrate this point further, it is worth considering that PASSHE and Cheyney would have been free to adopt a different plan for compliance, which only called for significant reductions in temporary and part-time employes, to which APSCUF may have vehemently objected and counseled against during "meet and discuss," and then for PASSHE and Cheyney to subsequently disregard the input from APSCUF and go forward with their plan, provided that PASSHE and Cheyney did so in good faith. *See* 43 P.S. § 1101.301, which provides that: "'Meet and discuss' means the obligation of a public employer upon request to meet at reasonable times and discuss recommendations submitted by

parties appear to have struck a bargain in Article 11.F whereby PASSHE agreed to some minor limitations to its otherwise inherent managerial prerogative to determine its standards of service, organizational structure, and the selection and direction of personnel, subject to a plan for compliance with the 25 percent temp cap approved only after a meet and discuss session with the Union. However, there is simply no evidence to support the notion that PASSHE or Cheyney has bargained away that right by entering into a binding grievance settlement agreement. As a result, the charge under Section 1201(a)(5) must be dismissed. The same result, however, does not obtain with regard to APSCUF's charge under Section 1201(a)(9) of the Act.

In APSCUF v. SSHE, Edinboro University & West Chester University, 35 PPER 41 (Proposed Decision and Order, 2004), which was a case involving the same parties, albeit with different PASSHE schools, Hearing Examiner Lassi opined as follows:

> [PASSHE's] argument that it need not meet and discuss with APSCUF over its managerial policy decision to eliminate sports programs is contrary to the plain language of Section 702 of PERA, which states as follows:
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> "Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, [standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel.] ***Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment*** as well as the impact thereon upon request by public employe representatives."
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> 43 P.S. § 1101.702. (emphasis added).
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> That meet and discuss is required over managerial decisions that affect employe wages, hours and working conditions was made clear by Commonwealth Court in its decision in PLRB v. APSCUF, 24 Pa. Commonwealth Ct. 337, 355 A.2d 853 (Pa. Cmwlth. 1976), where the court stated:
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> "The meet and discuss sessions exist as a device to permit input or recommendations from the employes on policy matters affecting wages, hours and terms and conditions of employment so as to assist the public employer in ultimately making its discretionary resolution or disposition of the issues in question..."
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> 355 A.2d at 856.

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representatives of public employes: Provided, That any decisions or determinations on matters so discussed shall remain with the public employer and be deemed final on any issue or issues raised." *See also* PLRB v. APSCUF, 355 A.2d 853 (Pa. Cmwlth. 1976)(the parties to a meet and discuss session must not be guilty of bad faith, and this implies good faith insofar as it pertains to fairness and sincerity, but it does not imply good faith as that term is used as a phrase of art in collective bargaining).

Thus, PERA expressly requires that [PASSHE] meet and discuss with APSCUF over managerial policy decisions affecting wages, hours and working conditions. Here bargaining unit members lost their jobs because of the decisions to eliminate the sports programs (FF 12). Therefore, those decisions affected wages, hours and working conditions and were subject to meet and discuss with APSCUF.

With regard to the issue of whether APSCUF proved a failure to meet and discuss, the court stated in PLRB v. APSCUF:

"If the evidence proves that a public employer has met and discussed in bad faith, *has reached its conclusions on the issues before the meet and discuss session,* refuses to attend a meet and discuss session, refuses to listen to the employes, or fails to provide an opportunity for the employes to persuade, then we would have little difficulty in concluding that an unfair practice has been committed under Section 1201(a)(9) of PERA." 355 A.2d at 857 (emphasis added).

In New Castle School District, 14 PPER ¶ 14219 (Proposed Decision and Order, 1983), 14 PPER ¶ 14266 (Final Order, 1983), the Board concurred with the following assessment by the hearing examiner:

'While the obligation to meet and discuss requires consultation with the exclusive bargaining representative ... it does not require employe involvement at all stages of the decision-making process. ... Rather it requires only that the exclusive representative of the employes be given an opportunity to meet and discuss with the [E]mployer prior to a decision being made on the subject in question."

14 PPER at 614. *Accord* Commonwealth, Department of Public Welfare, 18 PPER ¶ 18198 (Proposed Decision and Order, 1987). Because the record in New Castle demonstrated that the employer had provided the union with an opportunity to meet and discuss over the managerial policy matter (the consolidation of schools) before the employer decided on its course of action, the hearing examiner and Board found no violation of the employer's meet and discuss duty.

The record evidence...indicates that APSCUF was not provided with an opportunity to timely request meet and discuss over elimination of the sports programs at Edinboro and West Chester Universities. Rather, APSCUF only became aware of the universities' consideration of such a course of action after they had already decided to eliminate the programs (FF 5, 8). By not providing APSCUF with the opportunity to request meet and discuss before the managerial policy decision was made, [PASSHE] violated its meet and discuss duty. PLRB v. APSCUF, *supra*; New Castle, *supra*; Commonwealth, Department of Public Welfare, *supra*. *See also* Harrisburg School District, 13 PPER ¶ 13077 (Final Order, 1982); Commonwealth, Department of Public Welfare, 10 PPER ¶ 10136 (Final Order, 1979). Therefore, [PASSHE] committed unfair practices and the timing and content of APSCUF's post-managerial decision meet and discuss requests has no bearing on the outcome here.

35 PPER at 133.

In the instant matter, involving PASSHE and Cheyney, the record likewise shows that the Respondents did not provide APSCUF with the opportunity to timely request meet and discuss over the new compliance plan, which indefinitely froze all the hiring of new full-time faculty employes, rescinded the contracts of temporary and part-time employes, thereby dramatically reducing the number of temporary and part-time employes, and significantly increased the workload of the full-time faculty pursuant to the overload provisions of the CBA. While the Respondents did initially provide APSCUF with the opportunity to meet and discuss in August 2023 when the initial plan was adopted, and did include the potential for a number of contingencies, such as consistent enrollment levels, in that initial plan, the Respondents nevertheless fundamentally altered that original plan right before the start of the fall 2024 semester by increasing the workload for bargaining unit employes to the point where they were teaching an entire year's worth of credits in one semester. Although employe workload is typically held to be a managerial prerogative, PSSU v. PLRB, 15 PPER ¶ 15017 (Pa. 1983), it is beyond dispute that such a drastic increase in workload affected wages, hours, and working conditions for the bargaining unit employes here, just like the decision to eliminate sports programs did in Edinboro/West Chester, *supra.* Therefore, the Respondents' decision to alter the compliance plan in the days immediately preceding the fall 2024 semester was also subject to meet and discuss with APSCUF. However, the record shows that the Respondents reached their conclusion to implement a new plan before any meet and discuss with APSCUF regarding the terms of the new plan and failed to provide an opportunity for the employes to persuade, which clearly violates the meet and discuss obligation contained in Section 702 of PERA, as expressly announced by the Commonwealth Court.[5]

This result obtains notwithstanding the testimony of Cheyney President Walton, who claimed that Cheyney still intended on fulfilling the original plan by hiring for the positions set forth in the August 2023 plan. On this point, Walton equivocated and qualified his testimony several times, which casts considerable doubt over his representations. While Cheyney may, at some point, eventually hire for the positions set forth in the original plan, Walton asserted enough times during the hearing that Cheyney may also not do so. Thus, any assertion or claim by Respondents that the original plan is still in effect has not been accepted as credible or worthy of belief. Indeed, Walton readily conceded that he was having conversations with and giving directives to the Cheyney Provost in August 2023, which were different from what was set forth in the compliance plan.

[5] The Board long ago explained the significant difference between the meet and discuss obligation contained in Section 702 of PERA from the meet and discuss obligation arising under Section 704 for first-level supervisory units. Under Section 702 of PERA, a rank-and-file unit of employes, which has *bargaining rights* and therefore the capacity to enter into binding collective bargaining agreements, also has meet and discuss rights with respect to nonmandatory subjects of bargaining. Pennsylvania Liquor Control Board, 18 PPER ¶ 18058 (Final Order, 1987)(emphasis in original). Therefore, an employer may choose to bargain with the rank-and-file unit over nonmandatory topics and subsequently include them in their collective bargaining agreement, which includes agreements between the parties regarding all matters so negotiated. *Id.* And the courts of this Commonwealth have enforced such agreements. *Id.*

PASSHE's reliance on the testimony of Cheyney Interim Provost Jacqueline Irving is similarly unavailing. Irving testified that she was instructed in August 2024 to consolidate classes and to reach out to APSCUF through the department chairs, who are members of the bargaining unit. (N.T. 92-93). Specifically, she claimed that she sent out an email asking the chairs to make themselves available for a meeting and that Local APSCUF President Norma George was the only one who responded, indicating she was away at a funeral. (N.T. 93-94). Irving testified that when the chairs failed to show up for the meeting, Cheyney simply went forward with the process. (N.T. 94). She further claimed that "the email was sent to the chairs to describe all of the adjustments that needed to be made with regard to the directive of the president" and the Article 11.F plan. (N.T. 94). She testified that Cheyney wanted to have a conversation with the chairs and give them an opportunity to make any schedule adjustments based on the directives she had received. (N.T. 94). She indicated that she sent the chairs a schedule and provided an explanation as to why they needed the meeting. She stated that they finally did have a subsequent meeting. (N.T. 94-95). She testified that she provided the chairs with a copy of the classes and temporary faculty that were being reduced, along with the plan to assign overload courses. (N.T. 95). She claimed that this information was presented to the chairs prior to the scheduling changes. (N.T. 95-96).

However, Provost Irving was unable to say when she sent her purported email to the chairs, aside from it being "during the summer." (N.T. 97). Nor did PASSHE offer the alleged emails in question as an exhibit during the hearing. What is more, there is no evidence that any of the chairs were officers of APSCUF. The only contact with APSCUF that Irving apparently had was with Local President George. She asserted that she met with George sometime in August 2024, which was prior to the August 23, 2024 meet and discuss session between the parties. (N.T. 102). But the updated compliance plan that Irving presented to George on August 23, 2024, contains no mention whatsoever of any scheduling changes, reduction in classes, or meetings with George or the chairs. (Union Exhibit 4). Instead, the updated compliance plan from August 23, 2024 continues to project that Cheyney would hire the 13 new full-time positions contained in the original plan. (Union Exhibit 4). In light of this evidence, Irving's testimony has not been accepted as credible in this regard. Perhaps most importantly though, Irving based much of her testimony on the "directive(s) from the president." The only logical inference to be drawn from this testimony is that Cheyney President Walton had already made up his mind concerning the temp cap for the fall 2024 semester before Irving even began to email the department chairs. Indeed, President Walton testified that the decision to change the number of adjuncts at Cheyney was made in August 2024 and that the updated plan conveyed to APSCUF during the August 23, 2024 meeting still indicated the hirings would continue on an extended timeline. He also agreed that Cheyney did not advise APSCUF at that time that Cheyney intended to rescind the contracts for temporary adjuncts and change the schedule. This evidence clearly supports a violation of the meet and discuss obligation under Section 1201(a)(9) of the Act.

PASSHE asserts in its post-hearing brief that it provided APSCUF with all of the rights accorded to the Union in the CBA. More specifically, PASSHE insists that the contract provides for a meet and discuss opportunity under Article 11.F, which APSCUF received in August 2023, and that the compliance plan was sufficiently flexible to permit the deviations contemplated in its various contingencies. Although the contract does not necessarily provide an answer for whether PASSHE and Cheyney must meet and

discuss with regard to every potential permutation of a compliance plan under Article 11.F, PASSHE overlooks the fact that its obligation to meet and discuss also arises from Section 702 of PERA for matters affecting wages, hours, and terms and conditions of employment. Accordingly, it must be concluded that Respondents have violated Section 1201(a)(9) of PERA by failing to meet and discuss with APSCUF prior to the implementation of a new compliance plan in late August 2024.

Finally, with regard to the remedy, APSCUF contends that PASSHE should be directed to immediately resume performance under the terms of the August 2023 compliance plan, restore the status quo ante, and to make whole any and all affected bargaining unit employes. However, that is the Board's usual and customary remedy for an employer's refusal to bargain in violation of Section 1201(a)(5) of the Act, which APSCUF has not demonstrated here. Instead, the Board's typical remedy for a failure to engage in meet and discuss is to direct the employer to meet and discuss. Edinboro/West Chester, *supra.* But PASSHE will not be directed to engage in a meet and discuss session with APSCUF regarding the new compliance plan because the record shows that such a session eventually occurred at Cheyney on September 4, 2024 and that Cheyney came into compliance with the Article 11.F temp cap for the fall 2024 semester. As such, the remedy will be limited to a cease and desist order, along with the Board's usual posting requirements.

**CONCLUSIONS**

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

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

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

3. The Board has jurisdiction over the parties hereto.

4. PASSHE has committed unfair practices in violation of Section 1201(a)(1) and (9) of PERA.

5. PASSHE has not committed unfair practices in violation of Section 1201(a)(5) of PERA.

**ORDER**

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

**HEREBY ORDERS AND DIRECTS**

That PASSHE 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 comply with the requirements of "meet and discuss."

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of PERA:

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

(b) 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

(c) Serve a copy of the attached Affidavit of Compliance upon the Union.

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 from Harrisburg, Pennsylvania this 7th day of May, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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| APSCUF | : | |
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| v. | : | Case No. PERA-C-24-200-E |
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| PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION | : | |

**AFFIDAVIT OF COMPLIANCE**

PASSHE, Cheyney University hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (9) of the Public Employe Relations Act; that it has complied with the Proposed Decision and Order as directed therein; that it has posted a copy of the Proposed Decision and Order in the manner prescribed therein; and that it has served a 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