On March 13, 2013, the International Brotherhood of Police Officers, Local 731 (IBPO) filed a complaint (SPP-30,265) with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the State of Connecticut, Judicial Branch (the State) violated the State Employee Relations Act (SERA or the Act) when it placed Michael Schweitzer (Schweitzer) in a bargaining unit position and paid him certain wages pursuant to a grievance settlement between the State, the Connecticut State Employees Association, SEIU, Local 2001 (CSEA), and Schweitzer. On April 1, 2013,
IBPO filed another complaint (SPP-30,287) with the Labor Board alleging that the State violated the Act when it placed Robert Perez (Perez) in a bargaining unit position and paid him certain wages pursuant to a grievance settlement between the State, CSEA, and Perez.

After the requisite preliminary steps had been taken, the two matters were consolidated, CSEA filed a motion to intervene, and the matter came before the Labor Board for a hearing on September 13, 2013. All parties appeared, were represented, and the Labor Board granted CSEA’s motion to intervene and IBPO withdrew Complaint No. SPP-30,265. The parties were then allowed to introduce evidence, examine and cross-examine witnesses, and make argument. The parties filed post-hearing briefs, the last of which was received on October 30, 2013. Based on the entire record before us, we make the following findings of fact, conclusions of law and we issue the following order.

**FINDINGS OF FACT**

1. The State is an employer within the meaning of the Act.

2. CSEA is an employee organization within the meaning of the Act and at all material times has been the exclusive bargaining representative of “employees working . . . as Supervising Judicial Marshals . . .” (Ex. 20).

3. IBPO is an employee organization with the meaning of the Act and at all material times has been the exclusive bargaining representative of “employees in Judicial Marshal, Lead Judicial Marshal and Judicial Security Officer positions regularly working 20 or more hours per week . . .” (Ex. 8).

4. The State and CSEA are parties to a collective bargaining agreement (Ex. 20), effective July 1, 2008 through June 30, 2012, which provides, in relevant part:

   **ARTICLE XII DISCIPLINE**

   Section 1 . . . All discipline under this Article shall be for just cause . . .

   . . .

   Section 3 . . . Appeal Procedures.

   . . .

   (b) Within fourteen (14) days of the imposition of discipline . . . an employee may file a Step III grievance.

   . . .

5. The State and IBPO are parties to a collective bargaining agreement (Ex. 8), effective July 1, 2011 through June 30, 2016, which provides, in relevant part:

   **ARTICLE XXV COMPENSATION**
Section 1

... The salary schedules for bargaining unit positions are set forth in Appendix A ... 

Section 2. Failure to meet CDL requirement. A Judicial Marshal who has never held a valid CDL with required endorsements since December 1, 2000 shall not progress beyond Step 2 of the Judicial Marshal salary scale (if he/she was classified as a Judicial Marshal 1 under the 2002-2004 agreement) or Step 4 of the Judicial Marshal salary scale (if he/she was classified as a Judicial Marshal 2 under the 2002-2004 agreement) unless and until he/she obtains and maintains a valid CDL with required endorsements, except as provided in (d) below.

... (c) A Judicial Marshal who successfully completed probation before a valid CDL with required endorsements was condition of doing so, who does not have a valid CDL with required endorsements as of June 30, 2007 and has therefore been denied one or more annual increments pursuant to the terms of prior agreements between the parties, but who on or after July 1, 2007 obtains and maintains a valid CDL with required endorsements, shall resume step advancement at his/her next annual increment date.

... 6. Step advancement under the salary schedule in the collective bargaining agreement between IBPO and the State is annual. By agreement of the parties, resumption of annual step advancement upon acquisition or reacquisition of a valid CDL with required endorsements proceeds from that step the Judicial Marshal held at the time of such acquisition or reacquisition.

7. Sometime prior to January 26, 2012, Judicial Marshal Robert Perez (Perez) was promoted to the position of Supervising Judicial Marshal and moved from the IBPO bargaining unit to the CSEA bargaining unit.

8. On January 26, 2012, Perez was terminated by the State and Grievance No. 16,242 was filed contesting the termination through the grievance procedure in the collective bargaining agreement between CSEA and the State.

9. At a December 6, 2012 labor-management meeting, personnel manager for superior court operations Maria Kewer informed IBPO president Joseph Gaetano (Gaetano) that Perez may be returned to the IBPO bargaining unit position as part of a potential settlement of a CSEA grievance. IBPO and the State agreed that in the event Perez returned he would be assigned to a facility in Enfield and another employee with whom Perez had a conflict would be transferred from that location. Perez’s compensation was not discussed.
10. On December 10, 2012, Perez, CSEA and the State entered into a stipulated agreement (Ex. 12) in settlement of Grievance No 16,242. The stipulated agreement provides, in relevant part:

* * *
2. Effective January 11, 2013, [Perez] will return to work in the position of Judicial Marshal, which shall be considered a voluntary demotion. He shall be assigned to the Enfield location and to the first shift. . .

3. [Perez] will obtain a Commercial Driver Instruction Permit (CDIP) … Upon return to work [Perez’s] salary shall be calculated as if he possesses a valid commercial drivers’ license (CDL), in accordance with Article XXV, Section 2, of the IBPO collective bargaining agreement. He will be slotted into step 7 of the current IBPO pay plan. [Perez] will follow the … regulations for obtaining a Commercial Driver’s License and will obtain such license by June 1, 2013. The parties agree that [Perez] will attend the CDL training offered to the current class of academy recruits . . . In the event [Perez] fails to obtain a CDL by June 1, 2013, his salary may be adjusted downward prospectively in accordance with the IBPO collective bargaining agreement . . .

11. On January 11, 2013, Perez returned to work as a Judicial Marshal and was placed on Step 7 of the IBPO salary schedule.

12. At a labor-management meeting on January 25, 2013, the subject of Perez’s placement into the IBPO bargaining unit and lack of a CDL was discussed. A member of IBPO remarked that Perez must be placed at Step 4 if he does not have a CDL. At the conclusion of the meeting the State advised IBPO that it would adjust Perez to Step 4 of the salary schedule.

13. By letter (Ex. 9) to Perez dated February 6, 2013, and copied to Gaetano and Attorney Susan Nelson of CSEA, manager of labor relations Vicki Marino (Marino) stated, in relevant part:

The Judicial Branch agreed to set your rate of pay in step 7 of the IBPO salary scale based on your assertions that you would obtain the permit and participate in the CDL training. Because you have failed to obtain the appropriate permit, you are ineligible to participate in the training and therefore, you have not complied with the requirements of the agreement.

Effective immediately, your compensation will be adjusted to step 4 of the IBPO salary scale in accordance with Article XXV, Section 2, of the collective bargaining agreement. If you obtain a CDL in the future, any

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1 IBPO was neither involved in the negotiation of, nor signatory to, the stipulated agreement and was not provided with a copy of the agreement at that time.

2 The purpose of the meeting was to discuss proposed changes to employee uniforms.
salary step progression beyond step 4 will be handled in accordance with Article XXV, Section 2, of the collective bargaining agreement.

14. On March 4, 2013, Perez obtained a commercial driver’s learner’s permit (CDLP) from the State of Massachusetts. (Ex. 14).

15. CSEA contested the State’s placement of Perez at Step 4 of the IBPO salary schedule as a violation of the December 10, 2012 stipulated agreement.

16. On March 15, 2013, Perez and representatives of CSEA and the State executed an addendum (Ex. 15) to the December 10, 2012 stipulated agreement, which provides, in relevant part:

   1. [Perez’s] salary will be restored to Step 7 of the IBPO salary schedule effective February 6, 2013.

   2. If [Perez] fails to obtain a CDL by June 1, 2013, his salary will be adjusted downward prospectively in accordance with the IBPO collective bargaining agreement . . .

17. On May 6, 2013, Perez obtained a CDL and which Perez did not possess at any time prior to such date.

CONCLUSIONS OF LAW

1. An employer violates its duty under the Act to bargain in good faith when it admits its actions violated the collective bargaining agreement as interpreted by the complainant and fails to establish a valid collateral defense.

2. It is a prohibited practice and a violation of the Act for an employer to negotiate a bargaining unit member’s terms or conditions of employment, either directly with the member or with an entity other than the recognized exclusive bargaining agent for such unit.

DISCUSSION

IBPO contends that its collective bargaining agreement with the State expressly prohibits placement of a bargaining unit member at Step 7 of the salary schedule absent a CDL and that the State violated Section 5-272(a)(4)3 of the Act when it negotiated an

3 Conn. Gen. Stat. § 5-272 provides, in relevant part:

(a) Employers or their representatives or agents are prohibited from: … (4) refusing to bargain collectively in good faith with an employee organization which has been designated … as the exclusive representative of employees in an appropriate unit …
agreement with Perez and CSEA to the contrary. Specifically, IBPO claims that the settlement resolving CSEA grievance No. 16,242 violated the collective bargaining agreement between IBPO and the State as well as IBPO’s right to act as the exclusive representative of Judicial Marshals.

In response, the State argues that it had no duty to bargain with IBPO because the stipulated agreements neither gave Perez special benefits nor substantially effected the terms and conditions of work for other IBPO members. In addition, the State contends that IBPO failed to request or demand bargaining and that IBPO’s requested remedies are inappropriate. CSEA joins in this latter contention and asks that its grievance settlement not be disturbed.

It is well established that an employer does not shed its obligations under the Act merely by entering into settlement agreements with third parties:

\[W\]e have consistently held that settlements … must take into consideration the employer’s collective bargaining obligations. An employer cannot ignore its contractual or collective bargaining obligations simply because it desires to avoid liability in another arena. \textit{Town of Winchester}, Decision No. 3430 (1996); \textit{State of Connecticut}, Decision No. 3575 (1998).

\textit{State of Connecticut}, Decision No. 4269 p.4 (2007). In the past, we have assessed alleged contract violations arising from third party settlements under a repudiation analysis. \textit{State of Connecticut, Department of Public Safety}, \textit{supra}; \textit{Town of Winchester, supra}. The Labor Board ordinarily has no jurisdiction to find a prohibited practice in the mere violation of a collective bargaining agreement. \textit{Town of Stratford}, Decision No. 4562 (2011); \textit{Town of Plainville}, Decision No. 1790 (1979); \textit{City of Bridgeport}, Decision No. 1091 (1972). Where, however, the alleged breach amounts to a repudiation of the agreement, the statutory duty to bargain in good faith is in issue and jurisdiction exists. \textit{City of Bridgeport}, Decision No. 4693 (2014); \textit{City of Meriden}, Decision No. 4553 (2011); \textit{Hartford Board of Education}, Decision No. 2141 (1982); \textit{Town of Plainville, supra}; \textit{Stratford Board of Education}, Decision No. 1057 (1972).

\[A\]s we have repeatedly held, repudiation is something beyond a mere breach of contract and must meet stricter criteria amounting to one of three sets of circumstances. The first is where the respondent party takes an action based upon an interpretation of the contract and that interpretation is asserted in subjective bad faith. The second is where the respondent party takes an action based upon an interpretation of the contract and that interpretation is wholly frivolous or implausible. The third type does not involve assertion of an interpretation of the contract but instead the respondent either admits or does not challenge the complainant’s

\footnote{IBPO’s complaint (Ex. 1) seeks “[a]n order requiring the [State] retroactively place Perez at the appropriate level on the IBPO salary schedule . . . ” but its brief requests that Perez be returned to the position of Supervising Judicial Marshal in CSEA’s bargaining unit.}
interpretation and seeks to defend its actions on some collateral ground which does not rest upon an interpretation of the contract.

*State of Connecticut*, Decision No. 4536 p. 17 (2011) (internal citations omitted). Given the record before us, we find that the third form of repudiation exists in this case.

Notwithstanding the State’s attempt to dispute IBPO’s interpretation of the collective bargaining agreement, we find that the State admitted Perez was limited to a Step 4 salary under Art. XXV § 2 until he obtained a CDL. After discussing IBPO’s position at the January 25, 2013 labor-management meeting the State agreed to place Perez at Step 4 and Marino’s February 6, 2013 letter confirmed that such placement was “in accordance with Article XXV, Section 2, of the collective bargaining agreement.” As in *State of Connecticut, Department of Public Safety*, supra, a respondent will not avoid a collateral defense repudiation analysis by disputing application of contract language during presentation of a case before the Labor Board where no such dispute existed during the events in question.

Having established that, absent a CDL, Perez was otherwise limited to a Step 4 salary by Art. XXV § 2, we turn to the December 10, 2012 stipulated agreement and find that it does not establish a valid collateral defense so as to justify the State’s actions. Citing *City of Torrington*, Decision No. 4029 (2005), the State argues that it had no obligation to obtain IBPO’s consent to the Perez grievance settlement because it did not impact other IBPO bargaining unit members. We disagree. *City of Torrington* concerned the impact of an agreement settling an employee’s lawsuit on other bargaining unit members, not conflict between the terms of the settlement and an existing collective bargaining agreement. Nor do we find warranted the State’s reliance on *New Haven Board of Education*, Decision No. 1983 (1981). In that case the employer agreed with the union representing school administrators to pay laid off administrators hired into the teachers’ bargaining unit a monthly “separation adjustment allowance” which the Labor Board found was for past services and an acceptable form of severance pay. There is nothing in the instant record to support a finding that the compensation at issue is anything other than salary for Perez’s current work in IBPO’s unit.

The State further argues that IBPO waived its rights since Gaetano knew that Perez might be returning to the IBPO unit as early as December 6, 2012, yet raised no concerns about the arrangement except for a minor interpersonal issue that was quickly resolved. A union’s failure to demand bargaining may constitute waiver given the totality of circumstances. *Norwich v. Norwich Fire Fighters*, 173 Conn. 210 (1977); *Windsor Board of Education*, Decision No. 4555 (2011); *Town of Tolland*, Decision No. 4316 (2008); *Town of Greenwich*, Decision No. 3781 (2000). The question in the present case

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5 In its brief the State argues that Art. XXV § 2 only limits step progression of employees without CDLs based on certain factors and that the record is insufficient to establish Perez’s proper placement under those factors. State brief pp. 7-8. An alleged lack of evidence in the instant proceedings, however, does not establish an alternative construction of the language concerning the CDL requirement and, as noted above, we find that the State admitted IBPOs construction was appropriate.
is whether Gaetano had full notice of the State’s intent to place Perez on Step 7 of the IBPO salary schedule without requiring him to possess a CDL and a reasonable opportunity to demand bargaining before the implementation of that arrangement. Gaetano had notice only that the State was contemplating Perez’s return to the bargaining unit, not that it was negotiating Perez’s placement on the salary schedule. Under these circumstances we find no waiver.

Contrary to the State’s claims, the grievance settlement did afford Perez special benefits. By entering into an agreement that resolved CSEA’s pending challenge to certain disciplinary action and allowing a prospective member of IBPO’s bargaining unit a higher salary, the State ignored its “collective bargaining obligations simply because it desire[d] to avoid liability in another arena.” State of Connecticut, Decision No. 4269, supra at p. 4.

Lastly, we address IBPO’s direct dealing charge. “The law is clear that once an exclusive bargaining agent has been chosen, an employer must bargain through that agent concerning wages, hours and conditions of employment.” Town of Trumbull, Decision No. 2102 (1981); see also Hartford Board of Education, Decision 3357 (1996). The employer may not circumvent that bargaining agent and negotiate directly with the employees. West Hartford Education Association v. DeCourcy, 162 Conn. 566 (1972); Town of Trumbull, supra; Norwalk Board of Education, Decision No. 3379 (1996). Nor may the employer circumvent that bargaining agent by negotiating mandatory subjects with a different union. Cf. New Haven Board of Education, supra (“It would constitute a practice prohibited by the Act for a union representing one bargaining unit to negotiate salaries to be paid for services in another bargaining unit represented by a different union”).

Since Perez was not a member of IBPO’s bargaining unit when the December 10, 2012 agreement was negotiated and signed, we find no violation of IBPO’s position as exclusive representative occurred at that time. The same, however, cannot be said of the March 15, 2013, addendum. At that point Perez was in IBPO’s unit and by entering into an agreement with Perez and a third party concerning the application of the collectively bargained wage schedule, the State blatantly ignored IBPO’s exclusive status and in doing so, violated the Act.

Turning to the issue of remedy, we reject IBPO’s request to return Perez to CSEA’s bargaining unit as inappropriate given the circumstances. Rather, we find that the policies underlying the Act are best served by placing Perez at the step he would now occupy had he been properly placed at Step 4 on January 11, 2013. In the event IBPO and the State cannot agree as to Perez’s current placement on the salary scale under this reasoning, compliance proceedings will be conducted.
ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the State Employee Relations Act, it is hereby

ORDERED, that the State of Connecticut Judicial Branch

I. Cease and desist from failing to bargain with IBPO in accordance with the Act.

II. Take the following affirmative action which we find will effectuate the purposes of the Act:

A. Immediately place Robert Perez at the step on the IBPO salary schedule that he would currently occupy in accordance with the collective bargaining agreement between the Judicial Branch and IBPO had he been initially placed at step 4 on January 11, 2013, with such step placement to be determined in a compliance hearing before this Board in the event the parties are not able to mutually agree on the step in question within thirty days of this Decision and Order.

B. Post immediately and leave posted for a period of sixty (60) consecutive days from the date of posting, in a conspicuous place where the employees of the bargaining unit customarily assemble, a copy of the Decision and Order in its entirety.

C. Notify the Connecticut State Board of Labor Relations at its office in the Labor Department, 38 Wolcott Hill Road, Wethersfield, Connecticut within thirty (30) days of receipt of this Decision and Order of the steps taken by the State of Connecticut Judicial Branch to comply herewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Patricia V. Low
Patricia V. Low
Chairman

Wendella Ault Battey
Wendella Ault Battey
Board Member

Robert A. Dellapina
Robert A. Dellapina
Alternate Board Member
CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 18th day of June, 2014 to the following:

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