

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**MILWAUKEE TEACHERS' EDUCATION ASSOCIATION**  
Involving Certain Employees of  
**MILWAUKEE BOARD OF SCHOOL DIRECTORS**

Case 101  
No. 58169  
ME-994

**Decision No. 17009-F**

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Appearances:

Perry, Shapiro, Quindel, Saks & Lerner, S.C., by **Attorney Richard Saks**, 823 North Cass Street, Milwaukee, WI 53203-3405, appearing on behalf of Milwaukee Teachers' Education Association.

**Attorney Grant Langley**, City Attorney, by **Attorney Donald L. Schriefer**, Assistant City Attorney, 200 East Wells Street, Room 800, City Hall, Milwaukee, WI 53202-3551, appearing on behalf of the Milwaukee Board of School Directors.

**Mr. John Weigelt**, Executive Director, Administrators and Supervisors Council, 811 North Hawley Road, Suite 110, Milwaukee, WI 53213, appearing on behalf of Administrators and Supervisors Council.

**FINDINGS OF FACT, CONCLUSION OF LAW  
AND ORDER CLARIFYING BARGAINING UNIT**

Milwaukee Teachers' Education Association (MTEA) filed a petition on November 3, 1999 with the Wisconsin Employment Relations Commission to clarify a bargaining unit of professional employees of the Milwaukee Board of School Directors by including the position

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of Curriculum Generalist. The District opposes the petition because it believes the Curriculum Generalists are supervisors and/or managerial employees. The Administrators and Supervisors Council appeared at the hearing and took no position.

Hearings were held in Milwaukee, Wisconsin, on June 5, 2000, and September 6, 2000, by Examiner Sharon A. Gallagher. The MTEA and the District filed post-hearing briefs, the last of which was received on November 14, 2000.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

### **FINDINGS OF FACT**

1. Milwaukee Teachers' Education Association, herein the MTEA, is a labor organization and has its offices located at 5130 West Vliet Street, Milwaukee, Wisconsin 53208.

2. Milwaukee Board of School Directors, herein MPS or District, is a municipal employer and has its offices located at 5225 West Vliet Street, Milwaukee, Wisconsin 53210.

3. Administrators and Supervisors Council, herein ASC, is an organization that represents certain employees of the District and has its offices located at 811 North Hawley Road, Suite 110, Milwaukee, Wisconsin 53213.

4. MTEA is the exclusive bargaining representative of certain of the District's employees described most recently in a February, 1998 Commission Order Amending Certification (Dec. No. 6595-E) as:

. . . all regular teaching personnel (hereinafter referred to as teachers) teaching at least fifty percent (50%) of a full teaching schedule or presently on leave, as well as those teaching on a regular part-time basis less than fifty percent (50%) of a full schedule, (including guidance counselors, school social workers, teacher-librarians, traveling music teachers and teacher therapists, including speech pathologists, occupational therapists and physical therapists, music teachers 550N who otherwise regularly employed in the bargaining unit, team managers, clinical educators, speech pathologists, itinerant teachers, diagnostic teachers, vocational work evaluators, community human relations coordinators, human relations curriculum developers, mobility and orientation specialists, community resource teachers, program implementors, curriculum coordinators, Montessori coordinators and school nurses, excluding substitute per diem teachers, office and clerical employees, and other employees, supervisors and executives.

5. The Curriculum Generalist position was created by the District at the suggestion of several school Principals who felt that existing non-bargaining unit resources/positions (typically the Principal and several Assistant Principals) did not allow them to adequately supervise/evaluate the classroom performance of teachers or to insure that District curriculum was being properly implemented.

At the time of hearing, the District had filed Curriculum Generalist positions at Riverside High School (Sandra Peterson), Vincent High School (Steve Carr) and Burroughs Middle School (Lizzie Hartwell).

The job posting for the Riverside Curriculum Generalist position stated in pertinent part:

. . .

#### **Curriculum Generalist — Riverside University High School**

##### **MAJOR DUTIES, FUNCTIONS, AND RESPONSIBILITIES:**

- Work with principal to establish quality programs.
- Work with principal in supervising teachers.
- Work with school and teachers to implement performance assessment procedures.
- Work with school to implement Board and DPI mandates.
- Work with teachers and principal in implementing and monitoring school board approved policies, practices, and programs.
- Assist department chairpersons and teachers in program development, proficiency development and other departmental tasks needed for curriculum and instruction continuity.
- Implement the identified elementary and secondary education goals with personnel from the ten IRE schools.
- Provide leadership and support for the school's Education Plan activities of pre-set goals and objectives.
- Organize and implement successful instructional strategies used in the school's Education Plan.
- Participate in the development and implementation of inservice programs.
- Work with the building principal in providing leadership in curriculum and instruction and the integration of technology across the curriculum.
- Participate in parent meetings on issues related to instruction and curriculum development as requested from school principal.
- Provide progress reports and communicate concerns related to curriculum and instruction matters.
- Provide leadership in the implementation of curriculum guides.

**Qualifications:**

- Master's degree.
- Minimum of three (3) years successful teaching experience.
- Must be able to obtain a supervisor's license within two (2) years of appointment.
- Experience in coursework in curriculum development and staff development preferred.
- Demonstrated leadership skills.
- Proficient in computer technology preferred.
- Demonstrated written and oral communication skills.
- Demonstrated commitment to equity and multiculturalism.
- Minimum of one year direct teacher development supervision preferred.
- Experience in higher education instruction preferred.

The salary range is \$43,428 - \$63,103.260 days (Schedule III. Range 06A)

. . .

Curriculum Generalists spend a majority of their time evaluating the classroom performance of teachers. The evaluations they perform are used by the District to determine whether an employee should be transferred, non-renewed or terminated. Due to the pendency of this dispute between the parties, because he continued to be a member of the bargaining unit at the time of hearing and because the parties' bargaining agreement prohibits unit employees from evaluating other unit employees, Carr had not performed any formal evaluations of bargaining unit employees.

Curriculum Generalists also spend a substantial amount of time insuring that District curriculum is properly implemented by school faculty department committee's and individual employees. If an employee does not perform curriculum duties as directed by the Curriculum Generalist, the Generalist can give the employee a written reprimand. More serious discipline would be imposed by the school Principal.

Curriculum Generalists also perform a wide variety of administrative functions based on the specific needs of the school to which they are assigned. During the summer, in the absence of the school Principal, the Generalist directs the work of all building employees — primarily clerical and maintenance employees.

The compensation level of the Curriculum Generalists is comparable to that of bargaining unit employees with the education and experience required of Curriculum Generalists.

6. The current MTEA contract contains provisions relating to teacher evaluations at

## **M. TEACHER AND SCHOOL SOCIAL WORKER EVALUATIONS**

1. The name(s) of the administrative evaluator(s) primarily responsible for the evaluation and who shall sign the evaluation card shall be made known to the employee in writing within thirty (30) days of the commencement of the school year. Bargaining unit employees shall not evaluate other bargaining unit employees.

2. New teachers shall be employed on probation for three (3) years pursuant to the terms of a one (1)-year individual contract. Said contract shall automatically be renewed unless terminated, in accordance with the provisions of this section. Upon attaining their fourth contract, teachers shall achieve tenure status. All non-tenured teachers shall receive a written evaluation at least once per year during the first three (3) years of employment.

3. After permanent tenure status has been reached, evaluation shall be made as follows:

- a. Annually for the first two (2) years under such status.
- b. At three (3)-year intervals thereafter.

4. The evaluator(s), when making his/her report, shall select from among the evaluation cards, the card which most nearly characterizes the teacher for whom the evaluation is being made, and a complete written statement shall be submitted in support of his/her appraisal. This evaluation should be based upon and should include all of the following:

- a. A sufficient number of classroom visitations, observations, and personal conferences.
- b. An analysis of points of strength and weakness, with specific examples.
- c. Definite suggestions for ways in which improvement may be made, if such be necessary.

If the employer develops more than the present four (4) evaluation cards, the cards shall comply with the procedures of the contract and copies of the cards shall be provided to the MTEA.

5. The teacher shall be informed of his/her status and meaning of any evaluation report by the evaluator(s) before it is submitted to central services.

eight (48) hours to study the evaluator(s) comments and respond in writing to them, if the teacher so desires. Any written response by the teacher shall be made a part of the original evaluation report and shall remain in the teacher's evaluation file in central services. Teachers will be requested to sign the evaluation report. The teacher's signature does not indicate approval, but merely that it has been reviewed as set forth above. The evaluator(s) may file and the teacher may request a special evaluation at a time other than the specified times for evaluations.

6. In the event a teacher receives a satisfactory evaluation card with an attachment where the evaluator(s) recommends a transfer should be taken under advisement, the teacher shall specify in writing whether he/she concurs in the recommendation for transfer. Where the teacher does not concur and upon request of the evaluator(s) or teacher, the MTEA and the director, Department of Leadership Services, or leadership specialist shall confer in the building with all parties to resolve the problem. If, as a result of the conference, the director, Department of Leadership Services, or leadership specialist concurs in the recommendation of the evaluator(s) and before any action is taken in the matter, they shall:

- a. Notify the teacher and the MTEA within ten (10) workdays in advance that a conference has been scheduled with the superintendent or his/her designee involving the teacher, MTEA, the evaluator(s), and the director, Department of Leadership Services, or the leadership specialist. The notice will include a statement of the problem. The purpose of the conference shall be to explore possible areas of assistance necessary to overcome the difficulties which have been referred to in the evaluation report.

- b. The decision of the superintendent or his/her designee shall be reduced to writing and, together with the reasons, furnished to the teacher and MTEA. If the MTEA and/or the teacher are not in agreement with the decision, the MTEA may proceed through the final step of the grievance procedure, starting at the third step.

7. In the event a teacher receives an unsatisfactory evaluation card and the teacher does not concur, upon request of the evaluator(s) or teacher, the MTEA and the director, Department of Leadership Services, or leadership specialist shall confer in the building with all parties to attempt to resolve the problem. If, as a result of the conference, the director, Department of Leadership Services, or leadership specialist concurs in the recommendation of the evaluator(s) then before any action is taken in the matter, the director, Department of Leadership Services, or leadership specialist shall inform the teacher by letter that the

recommendation for non-renewal, if a non-tenured teacher, or termination, if a tenured teacher, in the Milwaukee Public Schools. The letter shall also state the fact that the teacher has ten (10) workdays to request a hearing before the superintendent or his/her designee on the matter. The MTEA shall receive a copy of this letter. If the teacher requests a hearing, he/she shall be sent a notice of the date set for the hearing and the charges involved. The MTEA shall be sent a copy of this notice at least three (3) workdays prior to the hearing.

- a. The hearing shall be held within ten (10) workdays to hear the charges and the responses before the superintendent or his/her designee, at which time the teacher may be represented by the MTEA, legal counsel, or any other person of he/her choosing. Within five (5) workdays of the hearing, the teacher and MTEA shall be notified of the decision relative to the charges in writing and reasons substantiating such decision. Such decision shall be signed by the superintendent. Where the MTEA requests a delay in conferences beyond the time limits of the contract, all dates used in this paragraph will be adjusted to reflect this delay.
  - b. A non-tenured teacher may appeal the decision through the final step of the grievance procedure in accordance with Part IV, Section M(10).
  - c. The decision for dismissal of the tenured teacher shall be forwarded to the full Board to follow the established procedure, as set forth in the statutes. A teacher who elects to proceed to arbitration shall be considered to have waived the right to pursue this matter in the courts, except as provided in Chapter 298, Wisconsin Statutes.
8. Where the evaluator(s) evaluates a teacher on an unsatisfactory evaluation card and the charges are substantiated, the superintendent or his/her designee may recommend reassignment of the teacher or retention of the teacher in the same assignment. The superintendent or his/her designee shall state the disposition of the recommendation in all records accompanying the unsatisfactory evaluation card. Where the charges are not substantiated, the appropriate evaluation card shall be filed as a replacement.
9. In the event the superintendent decides to recommend that the teacher's contract not be renewed if non-tenured or terminated if tenured for the subsequent school year, he/she shall, by April 1, notify the Board with a copy to the teacher of the recommendation, together with the specific reasons upon which he/she relied. He/she shall notify the teacher that he/she may, within five (5) workdays request a full and fair hearing before the Personnel Committee if non-tenured and before the full Board if tenured. Any hearing so requested

shall be held prior to April 30. The decision of the Committee shall be in

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writing and shall contain the specific reasons for the decision. It shall be served upon the teacher and his/her representative as soon as possible, but in no case later than May 15.

. . .

**NON-RENEWAL OF NON-TENURED TEACHERS HIRED ON OR AFTER  
AUGUST 28, 1996:**

c. First and Second Year Teacher: The administration shall have the authority to non-renew a first or second year teacher provided it has made reasonable efforts at remediation and that its decision is not arbitrary and capricious. A first or second year teacher identified for non-renewal shall be entitled to a conference with the Board. The Board's decision shall be final and binding and shall be served upon the teacher or his/her representative as soon as possible but no later than May 15.

d. Third Year Teacher: The administration shall have the authority to non-renew a third year teacher provided it has made reasonable efforts at remediation and that its decision has a factual and rational basis and is supported by a preponderance of evidence. The decision of the Board may be appealed to arbitration by the teacher in accordance with the provisions of the contract relating to grievance arbitration.

e. The administration shall notify a non-tenured teacher of its decision to non-renew him or her by April 1. He/she shall notify the teacher that he/she, within five (5) workdays, may request a conference with the Board. Any conference so requested shall be held by April 30.

f. Paragraphs c, d, and e of this section shall sunset on June 30, 2001.

11. A non-tenured teacher, hired for the fall semester, who receives an unsatisfactory evaluation card, may, with the consent of the administration, waive the April 1 notice date. June 1 shall become a new notice date. Any new teacher hired for the spring semester who receives an unsatisfactory evaluation card shall have June 1 as the notice date. Where any teacher receives June 1 as his/her notice date, the following time schedule shall prevail:

July 15 — Hearing before the Personnel Committee

July 20 — Decision by Committee

August 5 — Arbitration hearing



12. Day-to-day assignment of teachers may only be used during that period necessary to find another appropriate, professional assignment, except as to teachers who have not been initially assigned to a particular building. When a period of time exists in which it is necessary to make day-to-day assignments of appointed teachers, the following procedures shall be implemented:

- a. The substitute dispatch office shall make every effort to place appointed teachers in appropriate assignments of a longer duration, especially assignments which may develop as vacancies.
- b. The evaluator(s) at a school to which an appointed teacher is assigned shall be notified. The evaluator(s) shall evaluate the teacher on each assignment in accordance with the provisions of the contract.
- c. An evaluation in a long-term assignment, forty-five (45) days or longer, shall comply with the procedures established for regularly assigned teachers.
- d. A teacher in a short-term assignment may be evaluated after one (1) day of service, but shall be evaluated after three (3) days of service. A yearly evaluation based upon a compilation of the individual short-term evaluations shall be made by the MPS Department of Human Resources. Any adverse short-term evaluations shall be made known to the teacher and the teacher shall have an opportunity to have a conference with the evaluator(s) to discuss the evaluation.

. . .

7. MPS uses various evaluation documents to evaluate MPS teachers. The informal evaluation reads as follows:

. . .

TEACHER EVALUATION FORM  
(Filed in Personnel File)

Teacher: \_\_\_\_\_ Grade/Subject: \_\_\_\_\_ Absent: \_\_\_\_\_ days  
School: \_\_\_\_\_ Evaluation Yr: \_\_\_\_\_ Tardy: \_\_\_\_\_ days  
Teaching Experience (including this year) in MPS: \_\_\_\_\_ In this Assignment: \_\_\_\_\_

The evaluator's written evaluation is to address the teacher's strengths as well as areas for growth/improvement in concert with the eleven teacher expectation as deemed appropriate by the evaluator.

OVERALL STATUS:

- \_\_\_\_\_ Exemplary      Observations and evaluation data indicate that the teacher displays outstanding performance skills.
- \_\_\_\_\_ Satisfactory      Observations and evaluation data indicate successful performance.
- \_\_\_\_\_ Needs Improvement      Observations and evaluation data indicate that the teacher is not making satisfactory progress in a number of areas.
- \_\_\_\_\_ Unsatisfactory      Observations and evaluation data indicate that the teacher is not meeting performance expectations.
- \_\_\_\_\_ Recommendation for \_\_\_\_\_ Professional Growth Plan  
Reassignment  
(See Addendum if Checked)

\_\_\_\_\_  
Signature of Teacher      (Date)  
(Signature does not imply agreement)

\_\_\_\_\_  
Signature of Evaluator(s)      (Date)  
(Signature must be original)

Teacher comments may be attached.  
attached \_\_\_\_\_

Check if teacher comments

MPS Principals' informal evaluations are completed at least three times per year for each teacher being evaluated. MPS utilizes a formal or summative evaluation document for its teachers. This document is completed after informal evaluations are completed and this document is based on all evaluations completed that year as well as discussions and a consensus of those who have evaluated that teacher to determine how that teacher has done during the year. The MPS summative evaluation reads as follows:

. . .

Teacher: \_\_\_\_\_ Room: \_\_\_\_\_ Grade/Subject: \_\_\_\_\_ # of Students: \_\_\_\_\_  
School: \_\_\_\_\_ Date: \_\_\_\_\_ Time Entered: \_\_\_\_\_ Time Left: \_\_\_\_\_  
Observer: \_\_\_\_\_  
Objective of Lesson/Skills Addressed: \_\_\_\_\_

Learning Activity:

### 1. Knowledge

E C S NI U NA NO

Comments/Concerns/Commendations/Recommendations

*It is an expectation that every Milwaukee Public School teacher:*  
demonstrates knowledge of  
- subject content,  
- developmental levels,  
- learning styles, and  
- instructional strategies.

- a. assists students toward meeting the district standards, including the K12 goals and the graduation requirements
- b. exhibits accurate and current knowledge of grade level(s) and subject area(s)
- c. uses varied instructional materials and strategies
- d. knowledge and use of current theory, research, techniques with handicapped students

### 2. Planning

E C S NI U NA NO

Comments/Concerns/Commendations/Recommendations

*It is an expectation that every Milwaukee Public School teacher:*  
plans in order to successfully engage every student

- a. develops written lesson plans which are compatible with MPS goals
- b. implements daily written instructional plans.
- c. addresses needs, strengths, learning styles, and levels of achievement of students
- d. organizes materials and resources necessary to effectively teach
- e. establishes appropriate IEP goals

E= Exemplary  
U= Unsatisfactory

C= Commendable  
NA= Not Applicable

S= Some Evidence  
NO= Not Observed

NI= Needs Improvement

### 3. Instruction

E C S NI U NA NO

Comments/Concerns/Commendations/Recommendations

*It is an expectation that every Milwaukee Public School teacher:*  
provides effective instruction.

- a. identifies and shares learning objectives with students
- b. motivates and encourages active participation by students from various cultural, linguistic, racial, and socio-economic backgrounds
- c. provides frameworks for new learning by building upon prior learning
- d. engages students in active practice and involvement in the learning process through projects and activities
- e. provides opportunities for students to reflect on their own learning and performance and to learn from each other
- f. involves all students in dialogue which encourages questioning and higher level critical thinking
- g. creates opportunities for students to apply their knowledge and skills to real life situations
- h. acts as a model, coach, facilitator, and guide
- i. models respect by engaging in active listening and providing prompt and appropriate feedback to students' oral and written work
- j. provides instruction based on the students' developmental levels and learning styles

- k. adapts therapy techniques to individual needs (speech pathologists)

#### 4. High Expectations

E C S NI U NA NO

Comments/Concerns/Commendations/Recommendations

*It is an expectation that every Milwaukee Public School teacher:*  
establishes high expectations for every student's  
- academic achievement and  
- social development; and  
expects every student to become a  
- problem solver,  
- critical thinker, and  
- productive member of society.

- a. recognizes the uniqueness of each student and expects students to achieve
- b. communicates that students are expected to achieve at high levels
- c. engages students in the learning process by providing help, encouragement, and timely feedback
- d. encourages students to critically examine content
- e. empowers students to function as independent cooperative, and responsible learners

#### 5. Attitude

E C S NI U NA NO

Comments/Concerns/Commendations/Recommendations

*It is an expectation that every Milwaukee Public School teacher:*  
demonstrates belief in the potential of students and projects a positive attitude about  
- teaching and  
- students.

- a. serves as a positive role model for all students
- b. sets a positive tone
- c. demonstrates an awareness and understanding of students from various cultural, linguistic, racial, and socio-economic backgrounds
- d. addresses expressions of discrimination fairly, firmly, and consistently
- e. reflects confidence in his/her own ability to teach

#### 6. Classroom Management

E C S NI U NA NO

Comments/Concerns/Commendations/Recommendations

*It is an expectation that every Milwaukee Public School teacher:*  
engages in classroom management techniques that  
- provide an effective and efficient physical setting,  
- maintain appropriate student behaviors, and  
- maximize the use of instructional time.

- a. arranges the room to allow the students to observe the focus of instruction, work without disruption, obtain materials, and move about easily
- b. arranges the room to allow the teacher to monitor the students, minimize disruptive behavior, and move among the students
- c. maintains appropriate student behaviors through techniques, such as establishing clear and consistent expectations and providing appropriate feedback
- d. maximizes instructional time through techniques, such as identifying the objective(s) and purposes of the lesson, providing clear and complete directions, establishing time frame for completion of lesson, using efficient methods for transitions, materials, and other routine matters, preparing sufficient materials in advance of the lessons

**7. Climate**

E C S NI U NA NO

Comments/Concerns/Commendations/Recommendations

*It is an expectation that every Milwaukee Public School teacher:*  
Creates a classroom climate that is nurturing and that fosters  
- mutual respect,  
- cooperation, and  
- fairness.

- a. ensures that the classroom environment is safe, orderly and clean
- b. provides a learning environment that reflects cultural, linguistic, racial diversity
- c. establishes procedures which empower students to function as independent, cooperative, and responsible learners

**8. Assessment**

E C S NI U NA NO

Comments/Concerns/Commendations/Recommendations

*It is an expectation that every Milwaukee Public School teacher:*  
develops a variety of assessment activities to guide planning and future instruction; and accurately evaluates and documents students' performance.

- a. checks for understanding and modifies instruction accordingly
- b. uses assessments that measure higher level thinking skills
- c. administers required citywide and/or local school assessments
- d. ensures that students and parents know and understand classroom assessments
- e. demonstrates an awareness of diverse backgrounds in order to create more effective classroom assessments
- f.
  - 1) uses diagnostic tests appropriately
  - 2) interprets test results appropriately (Ex.Ed.)
  - 3) learns new diagnostic tests

**9. Communication**

E C S NI U NA NO

Comments/Concerns/Commendations/Recommendations

*It is an expectation that every Milwaukee Public School teacher:*  
communicates effectively with students, parents, staff, and community members.

- a. communicates the expectation that students are capable of acceptable conduct
- b. maintains dignity of students in disciplinary situation
- c. follows accepted rules of spelling, punctuation, and grammar in producing records and communications that are legible and accurate
- d. models and reinforces appropriate verbal and non-verbal communications with students
- e. uses appropriate diction, rate of speech, sentence complexity, and vocabulary levels
- f. communicates with parents in a proactive and professional manner
- g. promotes positive communication with community and business
- h. respects confidentiality of privileged information

## 10. Collaboration

E C S NI U NA NO

Comments/Concerns/Commendations/Recommendations

*It is an expectation that every Milwaukee Public School teacher:*  
helps to ensure the overall successful operation of the school by collaborating with

- staff,
- parents, and
- community members, including agencies and business.

- a. encourages and welcomes parents to participate in their child's learning and social activities
- b. communicates with parents on an ongoing basis and provides suggestions for available parent resources
- c. conducts well-planned parent conferences focused on academic achievement and behavior
- d. uses community resources to enhance the quality of learning and to promote and support the school's goals
- e. meets with other teachers to identify solutions to problems affecting the teaching and learning of students
- f. involves support staff when special needs of students must be addressed
- g. interacts effectively and professionally with co-workers and team members

## 11. Professional Growth

E C S NI U NA NO

Comments/Concerns/Commendations/Recommendations

*It is an expectation that every Milwaukee Public School teacher:*  
grows professionally based on self-assessment and input from a variety of sources, such as peers, administrators, students, and parents.

- a. sets professional goals designed to improve and/or expand teaching behaviors and skill levels
- b. engages in activities, such as continuing education classes, inservice classes, professional reading, or participation in professional organizations
- c. demonstrates a commitment to professional excellence

E=Exemplary	Performance is noticeably outstanding in the identified area. The teacher could serve as a role model in this area.
C=Commendable	Performance is strong in the identified area.
S=Some Evidence	There is some evidence that the teacher fulfills this expectation.
NI=Needs Improvement	Performance needs improvement in the identified area. Improvement may be accomplished with intervention.
U=Unsatisfactory	Performance is noticeably deficient and not acceptable. The teacher needs <u>significant</u> improvement which requires formal intervention.
NA=Not Applicable	
NO=Not Observed	

A separate evaluation form is used to evaluate long-term substitute teachers, as follows:

. . .

Teacher: \_\_\_\_\_ Date: \_\_\_\_\_  
Room: \_\_\_\_\_ Grade/Subject: \_\_\_\_\_ Time Entered: \_\_\_\_\_  
Number of student \_\_\_\_\_ Time Left: \_\_\_\_\_

Assess each area and state rationale:

	Exem- plary	Com- mendable	Some Evidence	Needs Improve- ment	Unsatis- factory
1. Ability to manage grade level/subject area. Comments: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Ability to instruct grade level/subject area. Comments: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Ability to communicate appropriately and effectively. Comments: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Ability to project positive attitude and high expectation. Comments: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall Performance	<input type="checkbox"/> Exemplary	<input type="checkbox"/> Commendable	<input type="checkbox"/> Some Evidence	<input type="checkbox"/> Needs Improvement	<input type="checkbox"/> Unsatisfactory

\_\_\_\_\_  
Signature of Evaluator  
(Signature must be original)

\_\_\_\_\_  
School

\* This form is to be completed if day-to-day contracted teacher is in the same assignment for three (3) or more days, but less than 45 days. It can be completed for an assignment that is for less than three days.

Burroughs Middle School Generalist Hartwell has created her own informal evaluation document which she distributes to teachers so that they are aware of how she will approach her evaluation duties. That evaluation form reads as follows:

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INFORMAL OBSERVATION FORM  
2000-2001

Date\_\_\_\_\_ Time\_\_\_\_\_ Room \_\_\_\_\_ #Students\_\_\_\_\_

1. Was the teacher at the door during passing?
2. Is the objective clearly stated on the board and explained to the students?
3. Is there a sponge activity? If yes, what was done with it upon completion?
4. How long was the sponge activity?
5. Was prior knowledge activated?
6. Was homework collected from previous day returned and feedback given to students?
7. Did the teacher do direct instruction on the skill students are to master?
8. Did the teacher model for students during guided practice?
9. Were various strategies used to meet the learning styles of all students?
10. Were students allowed time for independent practice?
11. Did the teacher walk among students monitoring their progress?
12. Were transitions smooth?
13. Are rules and consequences posted so they can be seen from any point in the room?
14. Were discipline problems dealt with quickly and in accordance with pre-established procedures?
15. Did the teacher ask high order thinking questions?
16. Was the teacher enthusiastic about the lesson presented?
17. Did the teacher have a detailed lesson plan?
18. Did the teacher have and use a seating chart?
19. Were worksheets used? If so, what were they and how did they relate to the curriculum?



20. Was student work displayed?

ADDITIONAL COMMENTS .....

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8. The Curriculum Generalists have supervisory responsibilities in sufficient combination and degree to be supervisors.

Based upon the above and foregoing Findings of Fact, the Commission makes the following

#### **CONCLUSION OF LAW**

1. The Curriculum Generalists are supervisors within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore are not municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

#### **ORDER CLARIFYING BARGAINING UNIT**

The bargaining unit described in Finding of Fact 4 is hereby clarified to exclude the Curriculum Generalists.

Given under our hands and seal at the City of Madison, Wisconsin this 6<sup>th</sup> day of April, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

\_\_\_\_\_  
James R. Meier, Chairperson

A. Henry Hempe /s/

\_\_\_\_\_  
A. Henry Hempe, Commissioner

Paul A. Hahn /s/

\_\_\_\_\_  
Paul A. Hahn, Commissioner

MILWAUKEE PUBLIC SCHOOLS

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF  
LAW AND ORDER CLARIFYING BARGAINING UNIT**

**POSITIONS OF THE PARTIES**

It should be noted that the Administrators and Supervisors Council (ASC) did not take a position in this proceeding, although their representative attended the hearings.

**MTEA**

MTEA asserts that the Curriculum Generalists are not supervisors or managerial employees. MTEA argues that the work of school-based employees who facilitate curriculum development has been performed by members of the teacher bargaining unit over many years. In this regard, MTEA notes that its unit description indicates that all Program Implementers and Curriculum Coordinators are to be included in the unit. Over the past 25 years, the Board has employed a large number of Curriculum Coordinators and Program Implementers in the middle and elementary schools. The Board also employed these types of positions in the high schools, but to a lesser degree.

The MTEA contends that the Generalist's duties, functions and responsibilities are remarkably similar to those performed by the University Facilitator at Riverside High School (a bargaining unit position), as well as to those of bargaining unit positions of Middle School Learning Coordinators and Curriculum Implementers (employed in the elementary schools). In this regard, the MTEA notes that Middle School Learning Coordinator Friedrich testified that his duties included school accountant duties, working on the budget, ordering materials, developing curriculum, providing Title I coordination, writing grants, completing some student disciplinary referrals, staff development for in-services, coordinating student performance proficiencies and meeting with parents, as well as modeling instructional methods and recommending teams for team teaching to the Principal. Learning Coordinator Riepenhoff testified that she essentially performed all of the Generalist's job duties listed on that job description except for the supervision and evaluation of teachers.

MTEA argues that the Generalists are not supervisors because they do not possess indicia in sufficient combination and degree to warrant a finding of supervisory status. MTEA asserts that Hartwell and Peterson have not directed or assigned employees, they have not recommended the hire, promotion, transfer, discipline or discharge of any staff members and they do not actually supervise any employees. MTEA asserts that the Generalists simply coordinate activities in their buildings — they do not exercise independent judgment in this regard.

Concerning the evaluation of teachers, MTEA contends that although the District has plans for the Generalists to perform these duties, they have not in fact performed these duties sufficiently to demonstrate their supervisory status. MTEA argues that prospective duties of employees have not been considered by the WERC as determinative, citing CITY OF MILWAUKEE, DEC. NO. 16483 (WERC, 8/78); VILLAGE OF BROWN DEER (PUBLIC SCHOOLS), DEC. NO. 19342 (WERC, 1/82). MTEA points out that there was no evidence proffered by the District that Peterson or Hartwell had in fact disciplined employees, accepted grievances, or processed any misconduct by the staff or that they have approved any absences or leaves for employees.

MTEA alleges that the pay for the Generalist was placed at a grade 6A of the ASC schedule, which provides a salary between \$44,405 and \$64,523 for a 12-month employee. MTEA argues that this salary level is similar to the masters level teacher in the MTEA contract who is paid between \$35,210 and \$53,488 for a nine-month schedule.

MTEA asserts that the Generalists do not formulate policy or exercise discretionary budgetary authority and thus are not managerial employees within the meaning of the Act. In this regard, MTEA notes that there was no evidence that Hartwell has had any input into or control of any policy issues at Burroughs Middle School. Rather, she has functioned much more like a mentor teacher than a manager and her duties coordinating technology at Burroughs have simply been a carry-over from her prior duties as the Technology Coordinator at that school.

In regard to Peterson's duties, MTEA asserts that Peterson has no greater input into policy at Riverside than the Curriculum Coordinators throughout the District have in their schools. On this point, MTEA notes that Middle School Learning Coordinator Friedrich and Peterson's former role at Morse Middle School were similar to Peterson's role as Generalist in the budgetary process at Riverside. The fact that Peterson performs duties of the Title I Coordinator as Generalist is not remarkable because the Curriculum Coordinator at High Mount Elementary (Riepenhoff) performs the same duties at her school. As the Principal is ultimately responsible for policy, Peterson and Hartwell's roles in policy making are no greater than those of other Curriculum Coordinator/Implementers. Therefore, MTEA urges the Commission to place the Curriculum Generalist position in the teacher bargaining unit.

### **The District**

The District argues that the mere overlap between positions of Curriculum Generalist and other curriculum employees in the District who are members of MTEA's bargaining unit should have very little bearing on how the Generalists are classified. Further, the District contends that the greater overlap in duties is between Curriculum Generalist and Assistant Principals, who are excluded from the MTEA's teacher collective bargaining unit. Indeed, the primary duties of the Generalist, in the District's view, are supervisory/managerial in character

and these define the Generalist position — not the minor overlap between the Generalist's duties and those of unit members. Thus, should the Commission place the Generalist positions in a unit, this would “utterly negate the job” and cause the District to eliminate the Generalist position.

The District argues that over the past several years, it has decentralized its operations and that this has resulted in Principals and Assistant Principals having many more duties regarding student disciplinary referrals and budgetary matters. As such, Principals and Assistant Principals have had less time to perform the vital function of evaluating new teachers and mentoring them through their first years of employment with the District. The District notes in this regard that the MTEA collective bargaining agreement specifies that teacher evaluations can not be performed by bargaining unit employees. Teacher evaluations can and do result in significant employment actions, such as transfers, non-renewals and terminations and these evaluations must be done by administrative staff.

The District notes that there are three separate kinds of teacher evaluations: informal observations, which include an administrator's stopping by in a teacher's classroom for less than an entire class period, completing a form and sharing that form with the teacher and retaining a copy of that form for future evaluations; formal observations which must be done three times per year wherein the administrator attends an entire class and completes a five-page form including areas for recommendations, commendations, concerns and comments on 11 listed measurements of the teacher's performance in the class; and the summative evaluations which are placed in teacher personnel files. The summative evaluations are performed using both informal observation and formal observation documents and they can result in the teacher's being transferred, non-renewed or terminated under the MTEA collective bargaining agreement.

The District contends that the single most significant duty of the Generalists is the teacher evaluation function. The Generalist essentially takes the place of Assistant Principals and the Principal in completing these duties. In this regard, the District notes that Burroughs Middle School Generalist Hartwell spends approximately 80% of her time performing teacher evaluations and giving teachers feedback therefrom. Riverside High School Generalist Peterson stated that she spends between one-third and one-half of her time performing teacher evaluation duties and last year sent one teacher to the TEAM program (a mentoring program for teachers who are struggling). During the current school year, Peterson is expected to do all the informal, formal and summative evaluations and to troubleshoot where teachers appear to be struggling but are not scheduled for regular evaluation. In regard to Carr, the acting Generalist at Vincent High School, the District notes that the Principal there made the decision to await the results of this case before assigning him evaluative duties. However, in the interim, the acting Generalist has been performing student disciplinary referrals (normally handled only by Assistant Principals) and has done informal evaluations and provided support to teachers in the evaluation process.

Furthermore, the District argues that the Generalist can issue directives and discipline employees when performing their duties. The District contends that the Generalists will be in charge of the school building during summer programs when the Principal is on vacation.

The District notes that the Generalist position requires a supervisor's license, but that the current Curriculum Coordinator/Curriculum Implementer position does not.

The District argues that although Generalist Peterson spent one-half to two-thirds of her time in non-evaluative duties during her first year, she performs many managerial duties: Peterson is responsible for the Community Learning Center at Riverside; she has acted as the District's administrator representative during the development of Individual Educational Programs (IEPs); she has significant budgetary input as well as Title I coordination duties; she has issued tardy cards and has been in charge of the building in the Principal's absence; she has selected in-service programs without the Principal's approval; and she has chaired departmental meetings in the absence of the Principal.

Contrary to the MTEA, the District asserts that the salary paid to the Generalist is significantly higher than that of MTEA members.

Given all of the record evidence, the District argues that the Generalists' interests and duties are more properly aligned with and similar to those of the Assistant Principals' — not MTEA unit members.

If the Generalist position is found to be a bargaining unit position in the MTEA unit, the District will likely discontinue the position because the primary reason for the position's creation was to relieve overworked Principals and Assistant Principals of their evaluative responsibilities. The District urges the Commission to find the Curriculum Generalists to be supervisors and/or managerial employees.

### **DISCUSSION**

Section 111.70(1)(o)1, Stats., defines a "supervisor" in pertinent part as:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Under that statute, we consider the following factors in determining if the occupants of a position are supervisors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skills or for his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgement exercised in the supervision of employees. CITY OF MILWAUKEE, DEC. NO. 6960-J (WERC, 5/89).

We have consistently held that not all of the above-quoted factors need to reflect supervisory status. Our task is to determine whether the factors support supervisory status in sufficient combination and degree to warrant finding an individual to be a supervisor. CITY OF TWO RIVERS (POLICE DEPT.), DEC. NO. 21959-A (WERC, 2/91).

At the outset of our analysis, it is important to comment on the MTEA argument that we should disregard or discount certain evidence supporting supervisory status because the Generalist's authority is speculative or has not been exercised.

Section 111.70(1)(o)1, Stats., speaks in terms of the "authority" of an individual to act or effectively recommend action. The statute does not require that the actual exercise of authority to be established before an employee can qualify as a supervisor. Thus, our analysis focuses on whether an individual has the authority to take or effectively recommend action. Clearly, evidence as to the actual exercise of that authority provides conclusive support for the existence of the authority itself. Similarly, where the authority is not exercised in a relevant fact situation, the asserted existence of the authority is substantially if not critically undermined. However, where there has been no occasion to exercise the authority in question, it does not follow that the authority does not exist. Rather, in the absence of factual scenarios in which the existence of authority can definitively be tested, we evaluate the existing evidence presented as to the authority of the individuals in question and make a determination. Where there is no evidence presented that calls into question the existence of asserted authority, we have no legitimate basis for concluding that the evidence supporting the existence of authority

is not correct. CITY OF MILWAUKEE, DEC. NO. 17741-B (WERC, 1/91); TOWN OF MADISON, DEC. NO. 27784-B (WERC, 8/97). If a fact situation subsequently arises that calls into question whether the authority exists, the matter can be raised again by a party.

As an example of the application of the foregoing, school Principals testified that the Generalists have the authority to discipline employees who disobey their directives. The MTEA asserts such authority should be disregarded because no Generalist has exercised this authority. The absence of opportunities to exercise authority does not provide a persuasive basis for doubting the truth of the Principals' testimony. Thus, we have concluded that the authority exists. If a fact situation subsequently arises that establishes that the authority does not exist, then the matter can be returned to us for further consideration.

To some extent, both parties have argued that their position in this litigation is supported by the extent of overlap between the Curriculum Generalist's duties and other positions currently excluded from (Assistant Principals cited by the District) or included in (Curriculum Coordinators and Program Implementors cited by MTEA) the MTEA bargaining unit. While the extent of overlap is relevant to our understanding of the parties' positions, we decide this case by measuring the duties of the Curriculum Generalist against the legal standards for determining whether an employee is a supervisor. Thus, the extent of overlap does not play a significant role in our analysis.

At the time of hearing, there were three Curriculum Generalist positions — one at Riverside High School held by Sandra Peterson, one at Vincent High School held by Steve Carr and one at Burroughs Middle Schools held by Lizzie Hartwell. Peterson and Hartwell are presently excluded from the MTEA bargaining unit. Carr is presently included in the MTEA unit because he is a teacher who is temporarily holding the position. Given the contractual prohibition against teachers performing contractual evaluations, Carr does not formally perform that Curriculum Generalist function. If the District is successful in this litigation, the Vincent High School Curriculum Generalist will no longer be part of the MTEA unit.

We base our decision in this matter on a composite of the evidence presented regarding the three Generalist positions.

Looking first at the authority to effectively recommend hiring, promotion, transfer, discipline or discharge of employees, the Curriculum Generalist's evaluation of employees can lead to the employee's transfer, non-renewal or termination. Thus, we are satisfied that this evaluative responsibility translates into the authority to effectively recommend transfer and discharge. Further, the record establishes that Curriculum Generalists have the independent authority to discipline employees who do not obey the Generalist's directions as to curriculum matters.

Turning to the authority to direct and assign the work force, the record establishes that when performing curriculum functions, the Curriculum Generalists have the independent

authority to direct and assign bargaining unit employees. Further, during the summer when the Principal is on vacation, the Generalists will be directing the work of all employees working the building — generally clerical and maintenance employees.

Turning to the number of employees supervised and the number and authority of other supervisors, the record establishes that the number of employees evaluated will vary from school to school and year to year, perhaps with a range as broad as 10-50 employees per year. In addition, Generalists will have the authority to direct the work of other employees as to matters relating to curriculum. Generalists overall supervisory authority is the same as Assistant Principals (of whom there are generally several in a middle school or high school) and less than the Principal.

Regarding the matter of whether the Generalist's pay reflects supervisory status, the record is inconclusive. While the District correctly notes that Peterson's salary jumped at least \$12,000 when she moved from a bargaining unit Curriculum Coordinator position to Curriculum Generalist, she also went from a 196 day work schedule to a year round work schedule. MTEA accurately notes that the salary range for bargaining unit employees with Curriculum Generalist qualifications roughly approximates that of the Generalist.

Regarding the question of whether Curriculum Generalists are primary supervising an activity or employees, we think it clear that it is the latter. Their evaluations play a significant role in District decisions regarding teacher transfer, non-renewal or termination. They have the authority to direct employees to perform work and there are disciplinary consequences for the employee if the work is not thereafter performed. Without question, the Generalists are supervising employees not activities.

As to the amount of time spent supervising employees, the record establishes that it is substantial. Given that the impetus for creation of the position was the evaluation and supervision of teachers which would otherwise not occur and given the testimony of Riverside Principal Zapala, Vincent Principal Erkins, Burroughs Principal Brazil and Generalists Hartwell and Peterson, we find that the Generalists spend or will spend at least 70% of their time supervising employees. While Riverside Generalist Peterson was spending 33% 50% of her time supervising employees at the time of hearing, the record makes clear that her evaluator role would grow substantially in the upcoming school year.

As to the amount of independent judgment exercised supervising employees, we conclude a Curriculum Generalist uses a substantial amount. Whether directing the workforce as to curriculum matters or evaluating employees, the Curriculum Generalist makes independent judgments and decisions.

Considering all of the foregoing, we think it clear that the Curriculum Generalists are supervisors. They exercise independent judgment when evaluating employees and directing their work. The impact of their evaluative role translates into the authority to effectively



recommend transfer, non-renewal and discharge of employees. They have independent authority to discipline employees who do not follow their directives. They supervise large numbers of employees and spend a substantial majority of their time doing so. Thus, the Curriculum Generalists are excluded from the MTEA unit.

Given our conclusion, we need not and do not determine whether the Curriculum Generalists are managerial employees.

Dated at Madison, Wisconsin this 6<sup>th</sup> day of April, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner