

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LARRY J. ROBINSON, Complainant

vs.

**MILWAUKEE PUBLIC SCHOOLS AND
MILWAUKEE TEACHERS' EDUCATION ASSOCIATION**, Respondents

Case 369
No. 56811
MP-3457

Decision No. 29482-F

Appearances:

Mr. Larry Robinson, 9906 West Magnolia Street, Milwaukee, Wisconsin 53224, appearing pro se.

Mr. Grant Langley, Milwaukee City Attorney, 200 East Wells Street, Milwaukee, Wisconsin 53202, by **Mr. Donald L. Schriefer**, Assistant City Attorney, appearing on behalf of the Respondent, Milwaukee Public Schools.

Perry, Shapiro, Quindel, Saks & Lerner S.C., by **Attorney Richard Perry**, 823 North Cass Street, Milwaukee, Wisconsin 53202, appearing on behalf of the Respondent, Milwaukee Teachers' Education Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Daniel J. Nielsen, Examiner: On September 14, 1998, Larry Robinson (hereinafter referred to as either the Complainant or Mr. Robinson) filed with the Wisconsin Employment Relations Commission ("Commission") a complaint of prohibited practices against Milwaukee Public Schools (either "MPS" or "the District") alleging that the District had engaged in prohibited practices within the meaning of Section 111.70, MERA, by non-renewing him as a teacher, and that the Milwaukee Teachers' Education Association ("Association") had engaged in prohibited practices by failing to fairly represent him. The Commission appointed Sharon A. Gallagher, an examiner on the Commission's staff to hear the case and to make and

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issue Findings of Fact, Conclusions of Law and Orders, as appropriate. Examiner Gallagher conducted a hearing on January 21, 1999. At the conclusion of the hearing, Examiner Gallagher dismissed the complaint, based upon her belief that the Complainant was refusing to appear at additional days of hearing. Examiner Gallagher set forth her ruling in written form on February 3, 1999 (Dec. No. 29482-A). The Complainant appealed the dismissal to the Commission, which, on May 7, 1999, reversed Examiner Gallagher, reinstated the complaint and ordered a de novo hearing before another examiner (Dec. No. 29482-B). The Respondents requested reconsideration, and the Commission denied their motion on June 10, 1999 (Dec. No. 29482-C). Daniel Nielsen, another member of the Commission's staff, was then designated as the Examiner (Dec. No. 29482-D).

By agreement of the parties, the record of the hearing before Examiner Gallagher was made a part of the record in this proceeding (Dec. No. 29482-E). Hearings were held on September 27, September 30, November 18, December 15, 1999, and January 6, February 9, February 10, February 11, April 6, April 7, May 8, May 10 and May 11, 2000, in Milwaukee, Wisconsin, during which time the parties presented such testimony, exhibits and other evidence as was relevant. The parties submitted post-hearing briefs, and the Respondents submitted replies. The Complainant waived the submission of a reply brief. The record was closed on August 28, 2000.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

Now, having considered the evidence, the arguments of the parties, the applicable provisions of the statute and the record as a whole, the Examiner makes the following

FINDINGS OF FACT

1. The Complainant, Larry Robinson (hereinafter referred to as either Mr. Robinson or the Complainant) was employed as a public school teacher by the Milwaukee Public Schools from August of 1997 through June of 1998, and was therefore a municipal employee within the meaning of Section 111.70. He is an African-American male, whose mailing address is 9906 West Magnolia Street, Milwaukee, Wisconsin 53224.

2. The Respondent, Milwaukee Public Schools (hereinafter referred to as either MPS or the District), is a municipal employer which provides general education services to 106,000 students in the City of Milwaukee, Wisconsin. It maintains its principal offices at 5115 Vliet Street, Milwaukee, Wisconsin. At all material times, Mr. Joseph Fisher was the President of the Milwaukee Board of School Directors; Dr. Allen Brown was the Superintendent of Schools; Dr. Myra Vachon was the Executive Director for Human Resources; Mr. Steven Huffman was the Leadership Specialist responsible for the 95th Street School; Ms. Arleen Dansby was the Principal of the 95th Street School; and Ms. Tami Doss was assigned half-time

as the Assistant Principal of the 95th Street School. Gerald Fair had been the Principal at 95th Street School before Dansby. He was terminated after being convicted of possession of drug paraphernalia. Marshall Bullock was the principal before Fair. He retired from the District. Fisher, Dansby, Doss, Bullock and Fair are African-Americans. Brown, Vachon and Huffman are European-Americans.

3. The Respondent Milwaukee Teachers Education Association (hereinafter referred to as either MTEA or the Association) is a labor organization maintaining its offices at 5130 West Vliet Street, Milwaukee, Wisconsin. At all relevant times, until September of 1994, Mr. Sam Carmen was the Executive Director of the Association, and Mr. Sid Hatch was an Assistant Executive Director. Carmen and Hatch are European-Americans.

4. The Association is the exclusive bargaining representative for the District's 6,400 non-supervisory regular teaching staff.

5. The Association and the District are parties to a collective bargaining agreement which provides, in Part IV, Section M, for a system of teacher evaluations and a process for appealing unsatisfactory evaluations:

. . .

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 the meaning of any evaluation report by the evaluator(s) before it is submitted to central services. He/she shall be permitted to copy the evaluation report and be allowed forty-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 of 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 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 unsatisfactory evaluation card constitutes a 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 his/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 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.

10.a. Should there be any dispute between the MTEA and the administration concerning just cause for their action, it shall be subject to final and binding arbitration, in accordance with the final step of the grievance procedure. The parties to this contract shall make all reasonable efforts to conclude the arbitration hearing prior to June 15. The arbitrator shall be requested to issue his/her decision prior to July 15.

b. Should there be any dispute between the MTEA and the administration concerning the administration's unsatisfactory evaluation and recommendation for non-renewal of any non-tenured teacher, hired after the ratification of the 1990-92 Board/MTEA contract but before August 28, 1996, it shall be subject to final and binding arbitration in accordance with the final step of the grievance procedure. In arbitration, the administration shall be required to establish that there exists a factual and rational basis for the unsatisfactory evaluation and recommendation for non-renewal of the non-tenured teacher which is measured by a preponderance of the evidence. The parties to this contract shall make all reasonable efforts to conclude the arbitration hearing prior to June 15. The arbitrator shall be requested to issue his/her decision prior to July 15. Part IV, Section M(10)(b), shall cease to exist effective June 30, 1995.

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 the 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 the 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

August 15 — Arbitrator's decision

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:

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- 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 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.
13. Teachers shall have the right to see all information in their personnel folder, relating to their performance during employment in the Milwaukee Public Schools, including all evaluation records and information about a teacher's performance placed into files other than the personnel folder, such as in the general correspondence file, where indexed to the personnel file.

When any document is retained by the administrator, the administrator shall do one (1) of the following:

- a. Give notification to the teacher of the document.
- b. Indicate on the document, "Teacher not notified — not indexed to personnel file," date and sign such notation.

Any document so labeled or filed without a teacher's knowledge shall not be used against the teacher without first notifying the teacher. The pre-employment recommendations and the pre-employment practice teaching evaluations are to be confidential and not subject to review by the teacher.

Any recommendation letter of a principal, written specifically as a part of the application procedure for a non-unit position, shall not be considered as a part of the teacher's evaluation record and normally need not be shown to the teacher. It is understood that the MTEA, as the bargaining agent for all teachers, shall have the right to review a teacher's personnel folder when the need arises, with the teacher's consent, and such review shall be considered as a function of the collective bargaining agent's responsibilities.

. . .

Item 10(c), which provides for the non-renewal of first and second year teachers where the administration has made “reasonable efforts at remediation” and makes a non-arbitrary, non-capricious decision, and does not provide for an appeal to arbitration, was added in negotiations for the 1995-97 contract. Prior to that contract, non-tenured teachers had the right to arbitration over non-renewals and the standard was whether there was a factual and rational basis for the decision.

Part VII, Section K of the contract forbids discrimination on any prohibited basis and refers such complaints to the prohibited practice processes of the Wisconsin Employment Relations Commission:

. . .

K. NON-DISCRIMINATION CLAUSE

The MTEA and the Board agree that it is the established policy of both parties that they shall not discriminate against any employee on the basis of sex, race, creed, national origin, marital status, political affiliation, physical handicap, or union activities.

The Board agrees that where women and minorities are concerned, the principle of equality of treatment shall be maintained.

Grievances involving this section shall be presented to the Board. If the matter is not satisfactorily resolved within thirty (30) days of being filed with the Board, the MTEA may proceed in the following manner. Alleged violations of this section shall not be arbitrable. They shall be submitted to the WERC for determination as prohibited practices (contract violation) pursuant to Section 111.70(3)(a)(5), Wisconsin Statutes. They shall not be handled pursuant to Section J above.

. . .

Part XIV of the contract establishes a joint mentoring program to assist new teachers:

MENTOR PROGRAM

1. CITY-WIDE MENTOR PROGRAM

- a. A joint mentor board composed of seven (7) teachers selected by the MTEA and six (6) administrators appointed by the superintendent will be responsible for the establishment and the definition of the mentor role within

the meaning of the contract and the method for selection and identification of mentors.

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- b. The Board will provide funds for eighteen (18) full-time mentors. The mentors will serve new teachers and interns.
 - c. The joint mentor board will determine which new teachers shall be served in the mentor program.
 - d. The workload for each mentor shall be determined by the joint mentor board.
- 2. Mentors shall be chosen by the joint mentor board.
 - 3. The following criteria shall apply to mentor selection:
 - a. Minimum of five (5) years successful teaching experience in the Milwaukee Public Schools.
 - b. Appointment for one (1) year, renewable by the joint mentor board.
 - c. Each mentor may work as a mentor for a maximum of three (3) out of any five (5) years.
 - d. Three (3) letters of recommendation at least two (2) of which must be from fellow teachers.
 - 4. The mentor shall retain his/her right to the teaching assignment held at the time of selection, however, this right shall not extend beyond the end of the school year in which the mentor assignment began.
 - 5. If a substitute is assigned to replace the mentor in his/her teaching assignment, the substitute shall be entitled to teacher equivalent salary and benefits for the duration of the assignment.
 - 6. No mentor shall be eligible for any administrative/supervisory position for one (1) year following the end of the mentor assignment.
 - 7. No mentor, who becomes a supervisor/administrator, may have any involvement/responsibility in the evaluation of any non-tenured teacher with whom he/she worked.
 - 8. All decisions of the joint mentor board on any subject, without limitation by enumeration, including the selection of all mentors, shall require the affirmative vote of nine (9) members of the joint mentor board.

9. Nothing in this section shall preclude Board involvement without joint mentor board approval in local school teacher assistance/orientation type inservice programs.

[Joint Exhibit No. 1]

. . .

6. In the first semester of the 1996-97 school year, the Complainant worked as a student teacher in the Grantosa Drive School classroom of teacher Yvonne Carter. Carter had worked with the Complainant over the preceding summer when, at her suggestion, he volunteered at Maple Tree School. When he student taught, the Complainant was closely supervised by Carter. A successful student teaching experience was a degree requirement of the Complainant's program at the University of Wisconsin-Milwaukee, and at the end of the semester, Carter recommended a passing grade for the Complainant, and provided him with a letter of reference.

7. The Complainant worked as a substitute teacher with the Milwaukee Public Schools during the 1996-97 school year. The following summer, he was told he would be hired as a regular full-time teacher. He started at the end of August and was assigned to the 5th Grade class at the 95th Street School. This assignment was in part a response to a request by that school's principal, Arleen Dansby, that the District assign an African-American male teacher to the school. On his arrival, the Complainant was the only African-American male teacher at the school.

8. The Complainant was recommended for non-renewal in January of 1998, based upon Dansby's conclusion that he was not meeting the standards of the teaching profession.

9. August 26, 1997 - The First Teacher Workday

A. August 26, 1997, was the first workday for teachers at the 95th Street School. On that date, a "Welcome Back" meeting was held for staff members, and Dansby distributed orientation materials, including a Staff Handbook, containing the school's mission statement, information concerning discipline reporting procedures, assertive discipline guidelines, classroom management policies, lesson planning and other topics. The Handbook also contained a list of "Non-Negotiables" – items that are considered necessary for the creation of a positive learning environment.

B. In the August 26 meeting, the Complainant was assigned to a four member team of teachers, who were to meet for two hours each week to review information provided by Dansby, and work cooperatively to support one another. Cecelia Kloster was the head of the Complainant's team, and was assigned to be his "buddy teacher," an in-house resource for new teachers to go to with problems and questions.

10. August 27th was the first day of school. Mr. Robinson was assigned a 5th Grade classroom with approximately 35 students. This was a large class, though not unusual for 95th Street School.

11. On August 28th, Mrs. Ziegman, a parent at the school, called Dansby and told her she was withdrawing her child from school. She explained that the child was afraid of the new teacher, Mr. Robinson. She offered no further explanation. Later in the year, Mrs. Ziegman told Dansby that the child reported being pushed up against a locker by Mr. Robinson, but that she wanted to leave well enough alone and did not wish to pursue any charges.

12. In the course of the school year, Dansby concluded that the Complainant was having difficulty in managing his classroom, maintaining discipline, planning, delivering instruction and a host of other areas. Dansby and/or Doss visited the Complainant's classroom on a daily basis to observe, evaluate and offer advice and assistance. On most days that she was at 95th Street School, Doss made multiple trips to the Complainant's classroom. In addition, as detailed below, the Complainant received assistance through the Mentor Teacher Program, as well as training opportunities, and assistance from the central office in the form of a conflict management facilitation by Derek Brewer.

13. The Mentoring Program:

A. Before school started, Mr. Robinson had asked teacher Lessie Ray to serve as his mentor teacher. The mentor teacher program in the Milwaukee Schools releases experienced teachers to work with new teachers, observing them in class and advising them on effective teaching techniques and any other concerns the mentor or the new teacher may have. The mentor teacher has a confidential relationship with the new teacher, in that nothing the mentor observes may be used for purposes of evaluation or discipline. Ray had 10 other mentees in the 1997-98 school year, including another first year teacher at 95th Street School. Ray's first visit to the Complainant's classroom was on September 3rd. She also met with Dansby on the 3rd. The mentor spent all or part of 19 days with Mr. Robinson in the first semester of the 1997-98 school year. This was substantially more than she devoted to any of her other mentees. The Complainant withdrew from the mentoring program in early 1998, when he became angry with Ray for suggesting that he keep a log of what he observed in other teachers' classrooms.

B. The mentor teacher's work with Mr. Robinson was summarized by Principal Dansby in January of 1998, following a meeting between Ray and Dansby, during which Dansby raised her concerns about his performance and Ray advised her of the areas in which she had provided support for him. Ray did not relate the substance of her communications with Mr. Robinson, nor offer any evaluation of him in the course of her discussion with Dansby. Dansby's summary read:

Mr. Larry Robinson's Mentor Teacher Support Summary

The Mentor Teacher Program provides support for first year teachers. Through conferences, observations, and classroom visits, mentors assist in the following key areas. Instructional support by giving information about teaching strategies and the instructional process. The mentor teacher also observes classes and gives feedback. In the area of classroom management, the mentor teacher gives guidance and ideas related to discipline, scheduling, planning and organization of class time. In addition, the mentor teacher helps the new teacher arrange, organize and analyze the physical setting of the classroom. Further more, the mentor teacher provides: assistance and support in demonstrating various teaching techniques; locating and disseminating materials and resources, cultural awareness of students, off site visits to other teachers' classrooms, emotional support, discussion session for all new teachers. Mentor Teacher's assistance is based upon a half day support per week. Overall the mentor /teacher relationship is built on trust and confidentiality.

Mr. Robinson's mentor teacher support at 95th Street School began on September 3, 1997. The mentor teacher signed in on the school's visitors' log during the 1997-98 school year on 9/3; 9/11; 9/18; 9/22; 9/26; 9/30; 10/6; 10/8; 10/16; 10/23; 11/4; 11/10; 11/20; 11/24;12/4; 12/11; 1/6; 1/15; 1/22. The mentor teacher usually stayed the entire day in Mr. Robinson's class because of the great need that was evident in instructional delivery and classroom management. Ms. Dansby spoke to the mentor teacher on many occasions regarding proper support for Mr. Robinson.

The mentor teacher has provided support in these areas during the month of **September:**

(9/3; 9/11; 9/18; 9/22; 9/26; 9/30)

Emotional Support:

1. Discuss racial and male gender issues.
2. Lesson development
3. Preparation procedures
4. Being an advocate for oneself
5. Lesson plan: The difference between lesson plans and lesson planning
6. Lesson plan and planning: how it should be done, objectives, preparation of materials, step by step instruction, assessment, etc.
7. General discipline techniques (ignoring, no arguing with students, no touching)
8. Parent Involvement (how to work with parents) Numbers 2 - 7 are still on going issues for Mr. Robinson and the mentor teacher.

The mentor teacher has provided support in these areas during the month of **October:**

(10/6; 10/8; 10/16; 10/23;)

1. Basic information on how to handle Parent Teacher Conferences.
Do's: student progress, work samples, etc.
Don'ts: use excuses for lack of progress, blame, etc.
Portfolio - work samples to support grades
2. Lesson development
3. Preparation procedures
4. Being an advocate for oneself
5. Lesson plan: the difference between lesson plans and lesson planning
6. Lesson plan and planning: how it should be done, objectives, preparation of materials, step by step instruction, assessment, etc.
7. General discipline techniques (ignoring, no arguing with students, no touching)
8. Parent Involvement (mock parent teacher conferences / importance of establishing relationships)

Numbers 1- 7 are still on going issues for Mr. Robinson and the mentor teacher.

The mentor teacher has provided support in these areas during the month of **November**:

(11/4; 11/10; 11/20; 11/24)

1. Building rapport
2. Respect:
 - Modeled do's and don'ts of building respect
3. Emotional Support:
 - Use of words (once spoken, can't take back)
 - Tone of voice (provide examples of do's and don'ts)
 - How children view teachers (treatment)
 - Can learn to treat children well

Numbers 1- 3 are still ongoing issues for Mr. Robinson and the mentor teacher.

The mentor teacher has provided support in these areas during the month of **December**:

(12/4; 12/11)

1. Emotional Support continues
2. Instructional Support
 - a. Lesson development
 - b. Preparation procedures
 - c. Being an advocate for oneself
 - d. Lesson plan: The difference between lesson plans and lesson planning
 - e. Lesson plan and planning: how it should be done, objectives, preparation of materials, step by step instruction, assessment, etc.
 - f. How to read your class, when to stop a lesson and move on.

Numbers 1-2 are still ongoing issues for Mr. Robinson and the mentor teacher.

The mentor teacher has provided support in these areas during the month of **January:**

(1/6; 1/15; 1/22.)

1. Emotional Support continues
2. Instructional Support
 - a. Lesson development
 - b. Preparation procedures
 - c. Being an advocate for oneself
 - d. Lesson plan: The difference between lesson plans and lesson planning
 - e. Lesson plan and planning: how it should be done, objectives, preparation of materials, step by step instruction, assessment, etc.
 - f. How to read your class, when to stop a lesson and move on.

Numbers 1-2 are still ongoing issues for Mr. Robinson and the mentor teacher.

The mentor teacher will be working with and supporting Mr. Robinson **until June 1998.**

1. Principal's list of expectations given to Mr. Robinson on November 3, 1997.
See attachment.
2. Emotional Support continues
3. Instructional Support
 - a. Lesson development
 - b. Preparation procedures
 - c. Being an advocate for oneself
 - d. Lesson plan: the difference between lesson plans and lesson planning
 - e. Lesson plan and planning: how it should be done, objectives, preparation of materials, step by step instruction, assessment, etc.
 - f. How to read your class, when to stop a lesson and move on.
 - g. Classroom management

[Joint Exhibit #3 – pages 140-142]

C. As a result of her work with Mr. Robinson, Ray concluded that he would never be a successful teacher. She did not share this conclusion with Dansby, but did tell this to Association Representative Sid Hatch when he contacted her in late January of 1998 about Mr. Robinson's suggestion that she be called as a witness on his behalf in the non-renewal process. Mentor teacher Johnson Hunter, who had also worked with the Complainant, likewise told Hatch that the Complainant was not a competent teacher, but this conversation was held after the non-renewal process was completed.

14. Training Opportunities and Instructional Assistance. In addition to the mentor teacher's assistance and the weekly team meetings, Mr. Robinson was allowed to attend a variety of in-service and other programs during the first semester, designed to improve his

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professional skills. On September 15th and 16th and October 8th and 9th, Mr. Robinson was released to attend Efficacy Training, which is intended to provide general assistance, including human relations training, and is premised on the theory that all children are capable of learning. On November 11th, he attended a workshop on teaching science. This workshop also addressed classroom management and maintaining discipline. On November 17th, he attended a Writing Assessment Scoring workshop, intended to familiarize teachers with the requirements of the Writing Assessment tests administered to 5th graders. On December 5th, Mr. Robinson was released to attend an in-service session on teaching science in the 5th Grade. On December 9th, he was released to accompany Ray to Parkview Elementary School and River Trail Elementary School, to observe effective 5th Grade teachers and try to learn their teaching techniques. Dansby met with him after the Efficacy Training and the observations at the other schools, and her impression was that he had not retained the substance of either training opportunity.

15. Classroom Visits, Observations and Counseling

A. In the course of the first semester, Dansby and/or Doss visited the Complainant's classroom every day. Some visits were very quick observations, while others were more lengthy. Many of Doss's visits were in response to specific situations, primarily discipline problems that the Complainant was experiencing with his students. On September 4th, Dansby visited the Complainant's classroom and noted that things were going well. On the 8th she and Doss visited the classroom and noted that the students had books piled on their desks, reducing the space available for them to work. They discussed this with the Complainant on the 10th and the 11th, offering suggestions to him on how the classroom might be arranged and additional space made available on student desks. On the 12th, Dansby, who was seated in her office three classrooms away, heard the Complainant yelling at his class. On the 19th, Dansby walked into the room and found that the Complainant was yelling at the students, who did not appear to be paying any attention to him. That same week, Dansby heard the Complainant address a student as "boy," and she admonished him to learn the students' names and use their names when speaking with them. She also observed him grab a student and cautioned him not to do that. Reports of him grabbing students continued, and in the course of the semester, Dansby twice cautioned him that he was going to "behave himself right out of a job" if he continued to grab students.

B. Toward the end of September it became obvious to the Complainant's mentor that his relations with the students and the parents were not going well. Classroom discipline was a particular problem. She suggested to him and to Dansby that the school sponsor a 5th Grade orientation session with Mr. Robinson and the parents. Dansby agreed and set up the meeting for after school on September 30th. She told the specialist teachers who taught the children to be present and she attended the session herself. At the session, the parents and the Complainant discussed his goals for the school year and the parents offered their support.

C. Dansby and Doss visited the classroom together on October 6th to offer advice and assistance to Mr. Robinson. The following day, Dansby cautioned him not to grab

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students and gave him advice on how to deal with discipline problems in the classroom without becoming physical with the students. She repeated this advice again in mid-November.

D. Dansby and Doss continued to visit the Complainant's classroom on a daily basis. Both became increasingly concerned at the disorganization in the Complainant's instruction, noting that he often seemed to lose his train of thought while speaking and changed topics abruptly without any evident purpose. On one occasion, after another teacher had assisted him in preparing a science experiment for his class and the students had become excited about seeing the experiment, the Complainant was observed to start the experiment, then suddenly stop, and go on to another subject without ever going back to the experiment. Doss and Dansby also noted that he was not responsive to students' questions, sometimes seeming not to notice that students had their hands raised. They also consistently observed that there was little discipline in the class and that the Complainant seemed to have an adversarial relationship with his students.

E. On October 27th, Dansby met with a group of parents who presented her with a stack of papers that had not been graded. She promised to look into it and counseled the Complainant that he needed to be more timely in providing feedback (see Finding of Fact #17(A), below).

F. On October 28th, Dansby was scheduled to do an observation of the Complainant teaching a reading lesson. She was called away from the building, so Doss met with him to reschedule. He expressed reluctance, since he had prepared the lesson, and Doss agreed to do the observation. She summarized her observations in a memo to Dansby:

On October 28, 1997, Mr. Robinson approached me, and stated you were going to observe him today. I informed Mr. Robinson at that time that you were not coming in. He expressed that he was disappointed, because he had really prepared for this lesson. I asked Mr. Robinson if he would like me to do the observation, during the time he had scheduled with you and he said yes.

At 9:45 a.m., I went in to observe Mr. Robinson teaching a reading lesson. I observed the following:

- Mr. Robinson used no visual or instructional aides.
- The lesson would have flowed better if more planning had been involved.
- No evidence of written plans.
- Mr. Robinson did ask some good "why" questions.
- He needed to project excitement to his students when he is speaking to them.
- Mr. Robinson did not provide time for review or reinforcement of the concepts taught.
- The climate in the classroom did not foster a mutual respectful environment.

- The teacher did most of the talking allowing little opportunity for students to express their ideas.

I spoke with Mr. Robinson later to share with him what I observed in his classroom. I also suggested some different teaching techniques for improvement in his reading instructions. He thanked me, and stated he would try to implement the suggestions in the future.

[Joint Exhibit #3 – page 217]

While Doss did discuss the evaluation with the Complainant, she did not note any change in his performance and became convinced that he was unwilling to implement the suggestions that were given to him. In her subsequent visits to his classroom, she observed that he seemed to lose his focus in mid-sentence, as if he had forgotten what he was saying, and that he would abruptly change from one subject to another without a logical pattern. This confused the students.

G. Dansby was concerned that her informal conversations with the Complainant about conditions in his classroom and the lack on instruction going on in the 5th Grade were having no effect, and that he was simply seeming to agree with her criticisms and suggestions, but not actually taking them to heart. She decided to reduce some of her concerns and suggestions to writing, and on November 3rd, she sent Mr. Robinson a memo, containing tips and strategies to be followed to improve classroom management and the general learning environment for the 5th Graders:

TO: Mr. Larry Robinson
FROM: Ms. Dansby
RE: Classroom Management

Teaching successfully at 95th Street School can be achieved. You have the abilities to reach students academically, parents with helpful ideas to stimulate learning for their child and staff as a team player. To be successful at 95th Street School, you need to achieve the following:

- Respect all children. (Respect is earned, not given freely.)
- Know your material. (Lessons should be relevant and stimulating enough to engage all students)
- Always be prepared.
- Be flexible - catch those teachable moments!
- Prepare all materials for daily lessons ahead of time.
- Grade and return all school and homework within a reasonable amount of time. The graded work is your students' feedback on how well they are doing day to day. If it's important enough to assign, it's important enough to grade.

- Maintain a positive learning environment. Don't interact with your students on their level.
- Be a good listener for your students, parents and colleagues
- Call on students when their hand is raised. If it's not the appropriate time, make an effort to find out what the student needed at a later time. Always get back to those students who needed your attention.
- Observe and reflect daily upon the relationship between your professional conduct and your student behavior.
- Talk to colleagues daily about the day's activities. Your buddy teacher is Mrs. Cecilia Kloster. Your team will support all of your professional efforts to improve. As life long learners, we all learn to improve in our profession.
- Read your staff bulletin, school memos and other district memos that are given to you which are directly related to successful instruction and school operations.
- Be a team player. Everyone must carry out their own responsibilities.
- Work your assigned duties and be on time. Supervision is right up there with relevant classroom instruction.

Things which will hinder your professional development:

- Not providing the best education for all students.
- Disorganized, irrelevant lessons, lack of materials and proper student seating.
- Ineffective use of time.
- Focusing on small issues instead on focusing on important issues.
- Lack of professional relationships with students, parents and staff.
- Not addressing concerns of students and parents when they arise.
- Not listening and being disrespectful.
- Not adjusting schedules, lessons, and attitudes towards students, parents and staff when necessary.

The above lists are helpful hints which should continue to guide your professional growth in becoming a good teacher. I will continue to support your professional development with resources and advice. Please feel free to discuss the above with me. *Thank you!*

[Joint Exhibit #3 – page 253]

When the Complainant received this memo, he became very agitated and came to Dansby's office, demanding to know "Is this documentation?" She told him no, that it was a memo intended to help him, and he repeated "Is this documentation?" and left her office.

H. On November 3rd, another of Mr. Robinson's students was withdrawn from the school. The parents explained that they feared the child would not be prepared for middle

school if he remained in Mr. Robinson's classroom. Prior to the 1997-98 school year, no child had ever been withdrawn from 95th Street School because of parental dissatisfaction.

I. By November, Tami Doss was very concerned that the Complainant's class seemed to be in a state of constant chaos, and that he did not seem to have any effective plan for keeping students on task or for addressing misbehavior. Earlier in the year she had counseled him on how to use Incident Referral Forms, the documentation for problem behaviors by students at 95th Street School. She also provided him with information on the use of positive reinforcement instead of negative reinforcement, and gave him a book on assertive discipline strategies and a chart she had used for enforcing discipline in her classroom the year before. On November 17th, Doss sent Mr. Robinson a memo summarizing their meetings on improving classroom discipline:

Dear Mr. Robinson,

We met several times for the purpose of improving the discipline problems in your classroom. On Friday afternoon, November 14th, a meeting was held with you and the administrators. The purpose of that meeting was to allow you to share with us ways we, as administrators, could better assist you in improving your classroom discipline techniques.

Mutual plans were established for specific ways in which you could better organize and maintain your classroom both to eliminate some discipline problems and provide a more positive learning environment.

We agreed that you would have one goal per month to work on. The goal for this month is for you to "ESTABLISH A RELATIONSHIP WITH YOUR STUDENTS".

A conference has been scheduled for December 12, at 3:00 P.M., with you and the administrators to establish if improvements have been made with your relationship between you and your students.

We sincerely hope that you will be able to take the necessary actions to establish a relationship with your students.

Sincerely,
/s/ Ms. Doss
Assistant Principal

cc Principal, Ms. Dansby
See Attachment: How To Deal With Discipline

[Joint Exhibit #3 – page 318]

Attached to this memo were five pages of printed suggestions and exercises used to improve classroom discipline. [Joint Exhibit #3, pages 319-323] Mr. Robinson confronted her after she gave him the memo, angrily telling her “I know what this is. This is documentation!” Since they were standing in the hallway, surrounded by children, she told him it was not the time to discuss it, but he repeated that “This is documentation!” Discipline in his classroom did not improve after Doss’s memo.

J. In early December, a student from Mr. Robinson’s class approached Doss with a sheet Mr. Robinson had given out to his students. The student was confused about what she was supposed to do with it. The sheet was a critique of the school district’s scheduling practices for semester break:

The calendar at 95th Street is not well planned and results in much wasted time.

This year the first semester does not end until January 15, and winter vacation lasts through January 4. This means that there are only ten days of school between the end of winter vacation and the end of the semester. During this “lame duck” period no one does any serious work; the students just mark time, and the teachers spend their class periods in review and “enrichment” activities.

It would be much more efficient to have the semester end at winter vacation. Then when students return in January, they would be ready to start serious work on new classes. Furthermore, summer vacation could begin a week or two earlier, giving students a better chance to obtain summer jobs.

[Joint Exhibit #3, page 325]

Doss gave the sheet to Dansby, who asked Mr. Robinson what it was. He said it was a writing assignment, and she asked him why it did not have any instructions to the children. She also advised him that the subject matter was inappropriate for children at the 5th Grade level.

K. On December 11th, Mr. Robinson was teaching under the observation of mentor teacher Hunter Johnson, who had been invited in by Lessie Ray to assist him. One student was making noise, and Mr. Robinson told him to move to a quiet area of the class. The student refused, and Mr. Robinson went to physically escort him. The student became very agitated and swung and kicked at Mr. Robinson, landing a blow to his chest. Mr. Robinson filed a form reporting an assault, and sent the child to the office. The child was suspended. [See Finding of Fact #17(B)] In another incident during the semester, Mr. Robinson claimed that a child had thrown a pencil at him. The child denied it, and said the pencil slipped out of his hand. Mr. Robinson alleged another attempted assault by one of his students as well.

L. On January 5th, Dansby observed another reading lesson presented by the Complainant. She summarized her observations for him in a January 7th memo:

This summary is based on the observations made in your classroom on Monday, January 5, 1998 from 9:25 a.m. to 10:40 a.m. relative to the eleven teacher expectations as appropriate.

Comments:

Your overall reading lesson was average. You provided positive feedback regarding academic participation and appropriate behaviors to your students on a consistent basis. Your instructional tone was much lighter a [sic] appealing to your students; demonstrated by the way they in turned answered your questions.

Recommendations:

1. Have your students participate in a brainstorming activity which focuses upon places students would like to visit. This provides a purpose for reading the selection assigned.
2. Overall, the lesson was not academically stimulating and the pace needs to be increased.
3. The title, author and illustrator should have been discussed before reading the story.
4. You should continue moving on to the next student when a student doesn't know where the class is at in the reading of the story. But also go back to that student after 1 or 2 students have read. This is a nonverbal way of letting the student know you expect them to know where the class is in the reading and that the student will be called upon at anytime.
5. You should also continue to relate your life experiences to your lessons. This will allow your students to get to know you as you get to know your students.
6. Remember, all academic lessons being taught in MPS today must be relevant and meaningful for all students.
7. Plan ahead - know your lesson. Expect the unexpected. Unfamiliarity of the lesson causes frustration for you and your students. Always be prepared!!!
8. Lessons should be more student centered, less adult centered.

If you have any questions or if you would like to discuss this observation, please contact me to schedule a conference.

[Joint Exhibit #3 – page 232]

The Complainant did not respond to this memo in any way. Dansby conducted two more informal observations of his class in January, providing him with feedback on his performance. He did not respond to her comments.

M. Between January 14th and January 20th, three more students in Mr. Robinson's class were withdrawn from 95th Street School by their parents, all of whom cited concerns about their children's education in his classroom.

N. In late January, Dansby asked for copies of the Complainant's lesson plans. She had previously done sporadic reviews of these plans and had noted that they seemed vague and scattered. Since there is no prescribed format for lesson plans, she did not focus attention on them when she conferred with the Complainant during the semester, choosing instead to discuss actual classroom instruction. The excerpts Dansby reviewed in January covered the weeks from December 15 through the week of January 19th. Dansby noted that he scheduled only two science classes in three weeks, despite orders to teach science every day in order to prepare students for the District-wide science proficiency test at the end of the year. She also noted that the lessons did not seem to follow a logical sequence and that the Complainant was teaching the third spelling lesson, which is normally taught in the third week of school, in mid-December.

16. The Involvement of Derek Brewer.

A. In December, Dansby contacted Derek Brewer, a staff development employee who had been one of the Complainant's instructors in Efficacy Training. The Complainant had previously approached Brewer to discuss his problems at 95th Street School and Brewer had listened to his various concerns. Among the concerns he raised were the physical layout of the school, other teachers coming into his classroom, a special education teacher feeding children chocolate cake, parental resistance, the way children went to the cafeteria and the way they lined up for going to recess. The Complainant never told Brewer that he thought there were any racial aspects to his problems with the parents or the administrators.

B. In addition to his other duties, Brewer served as a facilitator for conflict management sessions designed to help resolve difficulties between students and teachers, and this was why Dansby contacted him in December. She asked Brewer to come to the Complainant's class and Brewer agreed. Brewer came to the school on January 12th. His general procedure is to meet separately with the students and the teacher, to identify concerns and have them list things that can be done to improve the learning environment. Brewer met with the students and Ms. Doss, and Doss summarized the session with the students in a memo to Dansby a week later:

RE: Derek Brewer Conflict Management Session with Room 3 Students and Teacher on January 12, 1998

The presentation began by Derek introducing himself. He shared with the students that Ms. Dansby thought they were very smart. Derek proceeded to write on the board Strong, Smarter, Better. He explained to the class that he was here to help them get "Stronger. Smarter. and Better." [sic]

Learning Strategies were written on the board. Derek asked the students, "What is Learning?" The student gave answers from the dictionary. [Student H] gave an example of what he thought learning was. (ex. training a dog to get a stick) Derek elaborated on the difference between learning and training. He stated that students must use tools (weights) to build up their brain. "As adults you will face problems that are not in the textbook." "You must learn and develop strategies to solve problems."

Derek asked the students that if 10 meant a perfect classroom, describe a 10 classroom.

Students Responses:

- cooperation between the teacher and the students
- students paying attention
- good sportsmanship
- nothing getting in the way of learning
- listening and focusing on what you have to do
- everybody using strategies to learn
- teacher explaining things so children can learn
- taking turns
- everyone getting along/not fighting
- no negative reports from substitute teachers
- all children are learning and behaving.

Derek drew a number line on the board from 1 to 10, 1 represents the worst classroom and 10 represents the perfect classroom. He later asked each student how they would rate their class. Derek average the ratings, it was 6.1 between okay and good.

Derek stated that they needed a plan to make the 5th Grade class a ten.

The following are suggestions the students stated would make their classroom a ten.

1. cooperate
2. listen
3. cooperate with teacher
4. more thinking
5. students need to gain some knowledge
6. learn
7. better teacher
8. pay attention
9. no fooling around
10. more studying
11. be more skilled
12. more learning

The students were told to choose three from the list and rank them in the order of importance.

1. better teacher
2. gaining more knowledge
3. paying more attention

The students all agreed almost unanimously that the above three would help make their classroom a ten.

Derek asked the students what could the teacher do to help make their classroom a “10”.

- teach
- allow students to go to the bathroom
- more activities
- give us (students) opportunity to try problems
- on our own
- no yelling
- a teacher that doesn’t grab you, especially when you’re just asking a question
- a teacher who will listen to your problems
- a teacher who will allow you to talk out your problems
- more polite (ex. thank you, please.)

Derek asked for 4 monitors to help monitor the class to see if they were using the strategies to help make their classroom a “10”.

The four students were chosen to be monitors. [Student L], [Student M], [Student C], and [Student with no letter assigned].

Derek asked the students what they could do to help Mr. Robinson, so that their class could become a ten.

- help him find a new job
- stop teaching
- stop talking
- stop fooling around
- pay more attention
- following instructions

Derek stated to the class that he would ask Mr. Robinson to select 5 strategies he could do to help make the classroom a ten.

Derek told the class he would return within 2 weeks to meet with the monitors.

[Joint Exhibit #3 – pages 131-133]

While Brewer was meeting with the students, Dansby and the Complainant were meeting with some parents who had complained about him grabbing their child. That meeting ended before Brewer finished with the class, so Dansby had the Complainant wait for Brewer in the teacher's lounge. After the session with the students, Brewer met with the Complainant and Doss. As they started meeting, the Complainant asked that Doss leave the room and she did so. Brewer and the Complainant then identified steps that the Complainant could take to improve the classroom. To follow-up on Brewer's session, Dansby prepared charts to hang in the Complainant's classroom showing the steps the students were going to take and the steps the Complainant was going to take. She went to Mr. Robinson's class and reviewed the charts with Mr. Robinson and his students and told them to review them at the end of each day. Although these reviews took place on the first day or two following the session with Brewer, students came to Dansby a few days later and complained that Mr. Robinson was not letting them review the points anymore.

17. Parent Contacts and Complaints

A. In September and October, Dansby received complaints from parents of Mr. Robinson's students about ungraded papers and difficulty in obtaining assignments when children were absent. Dansby met with parents on October 27th to discuss the ungraded papers and thereafter, cautioned Mr. Robinson to provide more prompt feedback on assignments. The complaints escalated and began to include complaints about the grabbing of children in November and December. In December, Dansby told the complaining parents to put their complaints in writing. In response, written complaints were received from eight parents. Three were African-American, one was Hispanic and four were European American. Three of the complaints alleged that he was grabbing and shoving students, one alleged that he told students that another student was seeing a psychologist, one that he had called a child "ugly," and all complained that the children were not learning anything. Dansby spoke with the parents, and on January 15th, sent the Complainant a letter, transmitting the complaint letters and her disposition of the complaints. The disposition was a directive to Mr. Robinson to reflect on the complaints.

B. On December 12th, a parent filed a complaint that her son had been grabbed by Mr. Robinson, leaving bruises on his arm. Another parent also alleged that her child had been grabbed. Dansby had the 5th Grade students prepare statements reflecting what they had witnessed of Mr. Robinson's behavior in this incident and five students confirmed that he had grabbed a student who was "popping" papers in the class. Based on the complaints, Dansby issued a "certain facts" letter to Mr. Robinson on December 19th. A "certain facts" letter is the form letter used to advise a teacher that an investigation is being initiated and that the allegations triggering the investigation could lead to discipline. The letter advises the staff member that they have the right to be represented by the Association, legal counsel or any other person. A conference was set with Dansby for January 8th. This conference was later rescheduled to January 12th. On January 5th, Mr. Robinson contacted Sid Hatch, a member of

the Association's staff, to request representation at the conference. Hatch, Dansby and Mr. Robinson met and Hatch pointed out that another teacher, Johnson Hunter, who was present on that day had written a statement saying the child had swung and kicked at Mr. Robinson when he tried to move him to a quiet area of the room. Dansby agreed to resolve the case without formal discipline and gave the Complainant a verbal reprimand. Dansby then forwarded the letters to Mr. Robinson, together with a disposition asking him to reflect upon the complaints. Mr. Robinson replied to the disposition with a letter in which he cited students who were behavioral problems as the root of his difficulties and asserted that Ms. Ray and mentor teacher Johnson Hunter both believed he was doing a fine job. He also stated that he believed the parental complaints were largely the result of the parents' unfamiliarity with new teaching techniques. Dansby responded by letter on January 23rd:

. . .

Thank you for your response to my disposition. I understand your position regarding disruptive students, your assault and the support of your mentor teacher. The concerns of the parents regarding teaching and learning within your classroom still needs to be address. It is important that you address the concerns of the parents and make appropriate changes to bring about effective teaching and learning within your classroom. Further, I would appreciate a list of suggestions you will be implementing to improve the teaching and learning within your classroom by Friday, January 30, 1998.

Major concerns listed by parents are:

- low academic progress for their child and other children in the classroom.
- inappropriate comments made towards children.
- refusal to accept completed work.
- returning of completed work ungraded.
- the constant calling home with one concern and in the process of the conversation, changing what you had said previously.
- giving the impression of being disorganized and confused when you converse with parents about various classroom issues.
- providing unclear answers to parents' questions when they question you about assignments and classroom behavior regarding their child.
- failure to help students when they ask for assistance.
- maintaining a negative learning environment within your classroom.
- breaching confidentiality regarding one of your students.

I am pleased to see and hear you have refrained from grabbing students. I would appreciate immediate response to the above pending concerns.

[Joint Exhibit No. 3, page 365]

C. In connection with parental complaints, in mid-January Dansby had the students in Mr. Robinson's classroom write statements concerning what had been happening in their class. The statements were subsequently provided to Mr. Robinson: 1/

1/ In order to protect confidentiality, students whose names were regularly mentioned in the course of the proceeding had letters assigned to their names, and the transcript was edited to remove their names and substitute the letter. Some students whose statements are excerpted below were not assigned a letter, and that is noted above their statements, or the statements attributed to them by other students.

[Student N]:

About the middle of the year, Mr. Robinson was talking to [Student I] and then [Student I] said no and Mr. Robinson was chasing [Student I] around the room and he pushed [Student I] into some desks then [Student I] got up and said let's fight.

Mr. Robinson grabbed me and pushed me into a door.

. . .

[Student H]:

He said he if I don't work on his side he will make sure I will never come back to the school.

. . .

[Student without an assigned letter]:

One day Mr. Robinson came into the girls bathroom tellen us to hurry up.

Mr. Robinson never lets us get a drink of water when we come in from gym.

Mr. Robinson never has let us talk to him or ask him questions.

Mr. Robinson gives us a week's worth of home work and he wants us to have it in the next day.

. . .

[Student T – relating what Mr. Robinson said to other students or other students complained about]:

[Student E] "If you be good and help me out I'll give you good grades.

[Student S] "We have to be back by 12:00 but sometimes we can't get back by then."

[Student I] "He grabs children. He calls my mom and accuses me of things I didn't do."

[Student T] "He doesn't let us ask questions, he tells us 'I don't need to hold a conversation with you.'"

[Student N] "He told me to stop doing what Mr. Miller had told me to do."

[Student L] "He lied to the sub. He said [unreadable portion] He grabbed boys [unreadable portion]."

[Student J] "He said if I was good I could go to [unreadable portion]. I was good and he told me I couldn't go."

[Student E] "He grabbed me."

[Student without an assigned letter] "He would not let us go wash our hands when we work."

[Student without an assigned letter] "[Unreadable portion] He says 'boy, you better sit down.'"

[Unreadable portion]

. . .

[Student without an assigned letter]:

Last year in 1997 Mr. Robinson said that I didn't finish my Reading home and said he would call my mom. But he didn't call my mom about the finish homework."

[Student E]:

He said when we grow up we were going to jail.

[Student B]:

When we are bleeding he says it isn't his problem. He let [three female students] grade his papers. He threw me into a chalkboard. He told my mom that I was running around the room and I was yelling, knocking down chairs when I had my hat on too long so he doesn't feel stupid for calling. He said we're going to jail when we grow up. He told us we're stupid fools. He told me that if I have good grades he's going to make them D's.

[Student without an assigned letter]

Mr. Robinson call my mom to tell her I'm not paying attention but I look at at [sic] all the assignment.

He writes like a crazy person and I ask him what is that word, he tells [Student T] tell, but [Student T] doesn't know the word either.

He spits in my food and makes me lose my appetite and then begs for my food.

[Student P]:

What happened with me is that I had like a double shirt on and I took the shirt on the bottom and put it near my mouth then he's like "stop showing your

underwear I'm going to call your mom." And then he's like pulling his sweater halfway up his stomach which is really gross. I told my mom and she was really mad but he never called.

[Student L]:

I want some learning in my classroom

1. Mr. Robinson always gives us the same assignments over and over again like multiplying and division, when Mr. Ebert had us past that!
2. Mr. Robinson takes photos and said we are going to jail when we grow up.
3. Mr. Robinson said the word "bitch."
4. I don't like my teacher.
5. When he grabbed [Student F] he had black and blue marks on him.

[Student without an assigned letter]:

Sometimes Mr. Robinson says we are going to jail. When I ask questions he says he is going to call my house.

[Student Q]:

In the lunchroom Mr. Robinson said I was talking about him and I wasn't talking about him.

In the hall I went back to the classroom to give Senorita Bostrum a letter and Mr. Robinson told me to get back to the hallway.

[Student S]:

When people are bad they get their names on the board and they can't go to their jobs so one day everybody went to their jobs but not me so I looked on the board but my name was not on the board so I said why I can't go, my name's not on the board. He said I have you in my head. Then I asked what do you mean you have me in your head then he sent me to the office and told Ms. Dansby I was talking back.

One day he told the whole class that everybody was going to go to jail and we told Ms. Dansby and we told our parents but he said he didn't.

Kindergarten people have to leave at 10:50 for some reason now we can't leave until 10:55 then our boss ask us why we late and we say because of Mr. Robinson. I told Mr. Robinson that is I be late I am going to lose my job, but he don't care.

[Student J]

He threatened [Student L's] mom and said Ms. Oster will do what I say.

[Student F]:

When I said I hate him, he said I hate my mom and my dad.

3 weeks ago Mr. Robinson told me to do something. I was doing it what he told me to do. He said he was going to call my mom and dad.

[Student H summary of other students' complaints]

He threw my spelling paper away. I found it in the garbage. He says I never turned in the work that I did.

He says get in the classroom, boy!

Sent out of class.

If you don't read it you'll get a U. He lifted me up off the ground.

He told us about our problems but Mr. Robinson he doesn't let people explain things, He hollers first.

He grabs children. He call my mom and accuses me of things I didn't do.

He says [Student K] threw the pencil at him.

He told my mother that I was running around the room knocking chairs over. I was not.

He called me ugly. Sent me out of class.

[Student without an assigned letter]

One time, he grabbed me really hard and when I try to get away he swang all around and when [Student B] tried to get away from. When he grabbed him he picked him up and slammed him into the chalkboard. [Student F] got bruises on this one time I had in November.

[Student M]

He always puts his hand on my brother for no reasons and doesn't let people go to student leadership council meetings. I don't like that.

[Student without an assigned letter]

Sometimes I do not raise my hand because I think he will yell at me or tell me to go out and the hall because that is what he do to everyone.

When people go up to do a math number, when do not go right away, he would give it to someone else and said we have a problem.

[Complainant's Exhibit #76]

D. In late January and early February, after grades were assigned for the first semester, another round of parental complaints were received. One of them detailed several concerns, including an incident in which the complaining parent's daughter dropped a feminine napkin under her desk. The Complainant spotted the napkin, picked it up, opened it in front of the class and asked the girl if it was hers. When she said it was, he gave it to her and told her to take it to the office. This same parent complained that the Complainant tried to intimidate her by letting her know that he had seen her in the principal's office when she went to complain about him. She also recited an incident when she asked that her daughter be moved to a different seating group in the classroom and the Complainant told her that there was "no good group" in the class, and that "people say I'm bad when these kids are the ones who are bad." Three other parents complained about unexpectedly poor report cards for their children, noting that the children had previously had good grades, and that the Complainant never

warned them of any problems and could not explain the basis for the grades when he met with them. One noted that he reviewed the child's math homework himself and had his son correct mistakes before it was handed in, so he knew it was correct, yet the Complainant gave his son "C's" for this work. Another complained that, while the child's grades were good, the Complainant noted that she had not completed work in each area. The parent asked why she was never told of this. She also expressed concern about a notation that her daughter was disrespectful and had behavior problems, when she was not aware of any problems and had never observed such behaviors from the child. Dansby forwarded the complaints to the Complainant, together with a directive that the letters to be stapled to the report cards in the children's files.

18. The Non-Renewal Process.

A. On December 18th, Dansby sent the Complainant a letter, warning him that his performance was not acceptable, and that if it did not improve by January 20th, he would receive an unsatisfactory evaluation for the year:

. . .

During the months of September through December of the 1997-98 school year, formal and informal observations were made of your classroom. Specifically, I observed you 3 to 4 times every week (September 1, 1997 - December 18, 1997) at various times.

These observations represent a reasonable sampling of your teaching performance and included all aspects of your assignment, morning and afternoon. I have communicated to you verbally and in writing my expectations of successful teaching at Ninety-fifth Street School. I have also expressed my concerns regarding some deficiencies, available assistance, suggestions for improvement, and have given you a reasonable amount of time to make the necessary improvements. Letters summarizing our conferences were given to you on November 3, 1997 and November 17, 1997.

Unfortunately your overall teaching performance has not improved to a satisfactory level at this time. Therefore, this letter serves as official notification that failure to achieve a satisfactory level of achievement by January 20, 1998, will result in the issuance of an unsatisfactory evaluation.

You can prevent the unsatisfactory evaluation by using the following resources to improve your teaching performance: staff handbook, staff bulletins and your November 3, 1997 letter. What you decide to do professionally will determine your 1997-98 school year evaluation outcome.

. . .

[Joint Exhibit #3 – Page 380]

B. Dansby observed the Complainant's room again on January 5th, 8th and 13th. On January 20th, she sent him a letter advising him that she would be submitting an unsatisfactory evaluation of his performance:

. . .

This letter is to inform you that an unsatisfactory evaluation will officially be submitted to the Department of Human Resources.

A copy of your unsatisfactory evaluation will be given to you on January 26, 1998, at 2:45 p.m. in my office. Part IV, Section M of the Contract Between the Milwaukee Board of School Directors and the Milwaukee Teachers' Education Association (MTEA), will govern the due process of teacher performance evaluations. If you wish, you may be represented the MTEA, legal counsel, or another person of your choice.

If you do not concur with the unsatisfactory evaluation, a conference will be held on Wednesday, January 28, 1998 at 3:00 p.m. in my office. At that conference, you may be represented by the MTEA, legal counsel, or another person of your choice.

After the conference, you will be allowed forty-eight (48) hours to study my comments and respond to them in writing. The unsatisfactory evaluation will then be forwarded to the Department of Human Resources along with my recommendation for termination from the Milwaukee Public Schools.

. . .

[Joint Exhibit #3 – page 383]

C. Mr. Robinson attempted to reach Sid Hatch at the MTEA after he received Dansby's letter, but Hatch was not in. Mr. Robinson left a message and Hatch called him back the following day. A meeting was set for January 29th between Hatch, Dansby and Mr. Robinson to review the evaluation. The evaluation itself was provided to Mr. Robinson on January 26th:

. . .

Despite what appears to be a heartfelt commitment, Mr. Larry Robinson is not making a satisfactory contribution to the educational program of his students. While he possesses certain qualities, he fails to meet the standards of the teaching profession. The following is an explicit justification for this recommendation. Mr. Robinson has demonstrated that he fails to apply the

teaching skills required to develop, implement, assess and modify appropriate curricula necessary to effectively and successfully educate the students he instructs. Furthermore, Mr. Robinson lacks the additional professional skills needed to manage student behavior.

This is evidenced by:

- failure to develop and implement written lesson plans which address the academic needs, strengths, learning styles and levels of achievement of his students;
- failure to organize, prepare and have available materials and resources necessary to effectively teach;
- failure to establish procedures which empower students to function as independent, cooperative and responsible learners;
- failure to apply organization skills in completing necessary record keeping;
- failure to manage and appropriately control off task behavior of students.

Because of Mr. Robinson's failure to improve in the above areas, he is being recommended for termination.

Recommended Status for Next Year:

. . .

Non-Renewal/Dismissal — Observations and evaluation data support that compliance with performance expectations has not been fulfilled.

. . .

[MTEA Exhibit #1 – page 15(a)]

D. Hatch spoke with Mr. Robinson by telephone before their session with Ms. Dansby on January 29th. In the Milwaukee Public Schools, a principal seeking to non-renew a teacher must support the recommendation with documentary evidence, referred to as the Principal's Anecdotal. Hatch advised Mr. Robinson that he would have Dansby go through her Anecdotal and would just listen to her presentation, then adjourn the meeting to further review it and plan a response. Hatch advised Mr. Robinson that the collective bargaining agreement had been changed in the last round of negotiations, to provide an arbitrary and capricious standard for non-renewal of first year teachers, and to foreclose appeals to arbitration. Since the new contract was not yet printed, Hatch provided the Complainant with a copy of the ratification document, which set forth the new provisions. Hatch and Robinson listened to Dansby's presentation and received copies of her Anecdotal, which contained nearly 400 pages of documentation, including the materials provided to him at

notes from her observations and Doss's, copies of parental complaints, copies of misconduct materials, excerpts from his lesson plans and memos sent to him in the course of the year. The Anecdotal did not contain the student statements that Dansby had collected in January. Hatch's impression after Dansby's presentation was that the case was extremely strong and very well documented. He advised her that the evaluation was not acceptable and that Mr. Robinson wished to go to hearing before a leadership specialist, as provided in the labor agreement.

E. Hatch asked Mr. Robinson to identify witnesses who could contradict Dansby and testify to his teaching abilities. Mr. Robinson told him he should speak with Lessie Ray and Mark Ebert. Mr. Robinson said that Ray would testify that he was a good teacher and that Ebert would testify that the students had been very ill-behaved the year before and had forced him out of classroom teaching. Hatch contacted Ray and Ebert. Ray told him that she had very serious concerns about his abilities and expressed doubt that the Complainant would never be a successful teacher. Ebert told him that some of the students were difficult, but that the class was nothing out of the ordinary and that these students played no role at all in his decision to become a technology specialist. Hatch also spoke with Derek Brewer, just to get an overall picture of the conflict management sessions he had conducted. Following these interviews, Hatch decided that he could not make a case that the Complainant was a good teacher and that he should instead focus on trying to attack Dansby's evidence. He also spoke with Mr. Robinson to raise the possibility of a negotiated resignation, whereby Mr. Robinson might receive special consideration in areas such as insurance or severance benefits. Mr. Robinson told him he did not wish to resign.

F. On February 2nd, Dansby gave the Complainant a letter, reassigning him from the 5th Grade class for the month of February. He was instead assigned to observe other teachers at 95th Street School, note what techniques they used for effective teacher and to keep a journal of his observations. While this letter stated that he would be returned to the classroom after these observations, in fact he never did return to the classroom. In March, he was given day to day assignments in the District, traveling to various schools and observing teachers. Starting in early February, he was replaced by substitute teacher Marvin Knighton, an African-American male. Knighton advised Dansby that he had to teach the students to pay attention, but that there were no particular problems with the class. Knighton was well received by the other faculty, the parents and the students. Knighton was subsequently replaced by an African-American woman, who finished out the year. She experienced no notable difficulties with the class or the parents.

19. The Hearing Before Huffman

A. Leadership Specialist Steven Huffman convened a hearing on Dansby's recommendation for non-renewal on February 12th. The hearing continued on February 19, 20 and 23rd. The process before Huffman consisted of an opening statement by each party, followed by the Principal's presentation of her Anecdotal in support of non-renewal. Dansby

and Hatch made opening statements and Dansby proceeded with her evidence. Hatch questioned her closely on each exhibit and challenged her inclusion of parental complaints,

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asserting that they were raised at too late a date for the Complainant to make any meaningful response. He also argued that they represented only a small number of dissatisfied parents, and were not a valid sampling of the parents of the Complainant's students. He accused Dansby of supervising the Complainant from a distance and failing to provide adequate support to him during the school year. Hatch did not raise any of the parental complaints against the Complainant regarding physical abuse of students and continued to strenuously object to any reference to such complaints. Neither did he mention the Complainant's allegation that students had assaulted him, other than the single incident witnessed by Johnson Hunter. Hatch succeeded in having the parental complaints and all information about allegations of assault or other misconduct by Mr. Robinson excluded from the Anecdotal.

B. Huffman concluded that the Principal's evidence showed poor performance by the Complainant, despite extensive remediation efforts. Accordingly, he concurred in the recommendation for non-renewal and stated his findings in a letter dated March 4th [MTEA Exhibit #1, page 17]. In this letter, he advised the Complainant and Hatch that, if his determination was unsatisfactory, further hearing would be held before Cynthia Gallant, the Acting Director of Staffing Services. Dr. Myra Vachon, the Executive Director of Human Resources, was subsequently substituted for Ms. Gallant.

C. Following the hearing before Huffman, Hatch asked Mr. Robinson if he had any complaints or concerns about the representation he was receiving or the way the case was proceeding. Mr. Robinson raised no complaints. He did not at any time urge Hatch to raise allegations of racism or question Hatch's decision to have all parental complaints excluded from the record.

20. The Hearing Before Vachon

A. Myra K. Vachon convened a hearing on the Complainant's evaluation on March 24th. The hearing before Vachon lasted approximately nine hours over two days, concluding on the 25th. As Executive Director of Human Resources, Vachon sat as the Superintendent's designee. The administration proceeded with its proof, with Huffman making an opening statement regarding the findings at his level, and Dansby reviewing the materials remaining in her Anecdotal. As Dansby proceeded with her presentation, Hatch aggressively questioned the relevance and adequacy of the documentary evidence against the Complainant as well as Dansby's credibility as an observer. Hatch also complained that many of the parental complaints were simply the result of a small group of disgruntled parents and not a true representation of the Complainant's performance. At one point, in response to an objection by Hatch, Vachon recessed the proceedings to allow her to clarify the scope of the privilege surrounding a mentor teacher's observations of a mentee. In the hearing before Vachon, Hatch was convinced that the evidence would sustain an unfavorable evaluation, but he hoped for a disposition that would retain the Complainant for another year, perhaps in a different school.

B. At the conclusion of the hearing, the Complainant made a personal closing statement. Although Hatch believed that he made a favorable impression at the beginning of

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his statement, he was concerned as he went on that he was beginning to ramble, discuss irrelevant points and display anger. Hatch cut him off by asking him specific questions, and thereafter the hearing concluded.

C. After the hearing, the Complainant told Hatch he objected to being cut off in the middle of his statement. Hatch explained to him the tactical reasons for having cut him off.

D. Vachon reviewed the materials presented to her and met with Superintendent Alan Brown. She recommended to the Superintendent that he concur in the recommendation for non-renewal, but that the charge of poor record keeping not be sustained. The Superintendent agreed with her recommendation and she drafted a letter for his signature:

. . .

Dear Mr. Robinson:

A hearing was held on March 24 and March 25, 1998, under Part IV, Section M of the contract between the Milwaukee Board of School Directors and the Milwaukee Teachers' Education Association to consider the unsatisfactory evaluation issued to you by your principal, Ms. Arleen Dansby. It was Ms. Dansby's recommendation that you not be renewed as a teacher with the Milwaukee Public Schools.

Present at the hearing, in addition to you and my designee, Dr. Myra Vachon, Executive Director, Department of Human Resources, were: Mr. Steven Huffman, Leadership Specialist, Department of Leadership Services; Ms. Arleen Dansby, principal at Ninety-fifth Street School; and Mr. Sid Hatch, your representative from the Milwaukee Teachers' Education Association.

Following opening statements, Mr. Huffman and Ms. Dansby presented documentation to support that the administration made reasonable efforts at remediation and that its decision to issue an unsatisfactory evaluation was not arbitrary and capricious. According to the documentation, the unsatisfactory evaluation was based on your failure to develop and implement written lesson plans which address the academic needs, strengths, learning styles and levels of achievement of your students; failure to organize, prepare, and have available materials and resources necessary to effectively teach; failure to establish procedures which empower students to function as independent cooperative and responsible learners; failure to apply organization skills in completing necessary record keeping; and failure to manage and appropriately control off [sic] task behavior of students.

The documentation showed that you were informed about the evaluation process and that you were observed by Ms. Dansby or the assistant principal almost daily. Specifically, three (3)

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formal and three (3) informal observations were conducted, in addition to approximately seventy (70) walk-through visitations. Ms. Dansby and Ms. Doss, the assistant principal, communicated to you verbally and in writing relative to your deficiencies and provided support to you. Examples of support included a buddy teacher provided from the school; a mentor teacher assigned through Central Services; oral and written feedback; visits to classrooms in other schools; inservice/training on efficacy, Scholastic Reading Series, grade 5 science curriculum, assertive discipline, and conflict management as well as a variety of articles and handouts (many of which were from team planning time). Specifics regarding support provided to you by your mentor teacher during the 19 visits to the school are confidential as Mr. Hatch stated during one of his objections. However, documents were provided which show that the type of support given to new teachers occurs in broad areas of emotional support and instructional support (giving information about teaching strategies and instructional classroom management as well as guidance and ideas related to discipline, scheduling; planning and organization of class time).

During observations in your classroom, Ms. Dansby witnessed a lack of planning and preparation, ineffective use of time, confusion and unclear directions, disorganized and irrelevant lessons, as well as inattentive students displaying a variety of disruptive behaviors. Based on a review of your lesson plans, Ms. Dansby concluded that science was taught only once during three weeks at a time when you should have been preparing your students for the science assessment, and that students were not assessed to determine their understanding of mathematics concepts before going on to new mathematics concepts. In addition, when reviewing student and school data, Ms. Dansby concluded that you were not setting expectations for your students and empowering them to be successful and that your students were not completing assignments or making effective effort to achieve at the expected level.

During his testimony, Mr. Huffman stated that Ninety-fifth Street School is a small school with 337 students on Third Friday. He added that the school has a caring, nurturing environment where excellent teaching has resulted in the high levels of student achievement. He stressed that the size of the school allows for frequent face-to-face interactions, and that supervision was not done “at a distance” as you and Mr. Hatch stated. He further added that you had some responsibility for following through on recommendations and seeking assistance. Ms. Dansby stated that making the final decision was a very serious, difficult decision and that she had hoped that there would be some indication of improvement up until the time she wrote the unsatisfactory evaluation.

During the hearing, Mr. Hatch continually challenged the testimony and documentation. He adamantly objected to the process, the forms that were used, and the brief in-service that was provided relative to the evaluation

process. In addition, he challenged other types of documentation that were included, the degree and type of support provided to you as a first year teacher,

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as well as Ms. Dansby's credibility relative to issues such as appropriate follow-through on parent complaints, discipline referrals, and testimony with regard to when the decision was made to issue the unsatisfactory evaluation. Mr. Hatch also added that, as a first year teacher, you should have been given some latitude and more support in the caring, nurturing environment. In addition, you expressed your frustrations relative to the size of your class, limited assistance you received, losing credibility with your class, as well as your belief that you had done a great job and that your students were learning.

After giving serious consideration to all of the documentation presented by Ms. Dansby and Mr. Huffman and reviewing responses of Mr. Hatch and yourself, it is my opinion that you have performed unsatisfactorily in the areas specified on the evaluation which was issued to you. Insufficient documentation was provided to determine unsatisfactory performance with regard to failure to apply organizational skills in completing necessary record keeping.

Furthermore, upon reviewing the standards as set forth in the master contract, Part IV, Section M (10)(c) as well as documentation presented by Ms. Dansby, I have concluded that due process requirements were met, reasonable efforts at remediation were provided, and the decision to issue an unsatisfactory evaluation to you was not made in an arbitrary and capricious manner. Therefore, by copy of this letter in accordance with Part IV, Section M 10(c), of the contract, the Board of School Directors is hereby notified that I am recommending your non-renewal as a first year teacher from the Milwaukee Public Schools at the end of the 1997-1998 school year for the reasons stated above.

You may, within five (5) working days, request a conference with the Board. Any conference requested shall be held prior to April 30, 1998. You may be represented by the Milwaukee Teachers Education Association, legal counsel, or person of your choice.

. . .

[MTEA Exhibit No. 1, pages 21-23]

The letter was sent with Brown's signature on March 30th.

21. The Hearing Before the Board of School Directors.

A. The Complainant demanded a hearing before the Board of School Directors and the hearing was set for the evening of May 7th. The Complainant and Hatch met at the MTEA

Administration. The members of the School Board were present, but Hearing Officer Alan Brostoff presided. Hatch continued to attack the sufficiency of the principal's evidence, criticizing her supervision and the level of support offered to the Complainant during the course of the year. Schriefer attempted to call Lessie Ray as a witness and Hatch successfully blocked him, arguing that this would compromise the confidentiality of the mentoring program and that the Association would terminate the program if the Board allowed Ray to testify.

B. The Complainant brought a shopping bag with him to the hearing, filled with teaching materials he had prepared during the year. He asked Hatch to present the material to the Board, to show that he was a competent teacher. Hatch waved him off, since his strategy continued to be to attack the principal's evidence, rather than try to affirmatively prove to the Board that the Complainant was a good teacher. Hatch was concerned that the materials would have little probative value and that reviewing them would take a great deal of time and try the Board's patience.

C. The hearing before the Board lasted 5 hours, which is extremely long for this type of conference. At one point, during a break, Schriefer and Hatch engaged in banter in the hallway, with each accusing the other of being a pit bull.

D. By the end of the hearing, only five of the seven School Board members remained. The Complainant was allowed to make a closing statement. Hatch had instructed him not to argue about the merits of Dansby's case, but to instead make an appeal for a second chance. He started in that vein, but as with the hearing before Vachon, started rambling somewhat and Hatch cut him off by asking him specific questions. The Board retired to consider the case. Board President Joseph Fisher argued for the Complainant, conceding that the evidence showed he was doing a poor job, but that it appeared there might be a personality conflict between him and the principal, and that it would be fair to give him a layoff for the remainder of the year and a second chance in a different school in the 1998-99 school year. Fisher persuaded one other member of the Board, but the remaining three voted to non-renew the Complainant's contract.

22. Post Hearing Events

A. On May 17th, the Complainant sent Hatch a letter asking him to pursue the case to arbitration. That same day he sent a letter to the District, demanding arbitration on a claim of racial discrimination. Hatch spoke with the Complainant and reminded him that arbitration was not available for non-renewals of first year teachers. The Complainant raised the possibility of a discrimination case and Hatch told him the contract did not provide arbitration for those claims either. Instead, the contract referred discrimination claims to a WERC examiner. Hatch suggested that he might wish to take a claim to the State Equal Rights Division or the Federal EEOC. The Complainant insisted that he wanted the Association to pursue the discrimination claims for him. Hatch conferred with Association Executive

Director Sam Carmen and they agreed to arrange for a meeting with Hatch, Mr. Robinson and Richard Saks, an attorney with the law firm representing the Association, who specialized in employment discrimination claims.

B. The meeting with Saks took place on June 18th. Mr. Robinson described his version of events, including his theory that the parents of his students conspired with one another to have him fired. He did not provide any evidence of this and conceded that four of the complaining parents were European American, three were African-American and one was Hispanic American. At the end of the meeting, Saks said he would prepare a written analysis of the Complainant's prospects for a discrimination case.

C. On August 3rd, Saks issued an opinion letter, in which he concluded that there was no realistic possibility of prevailing on a claim of racial discrimination. Saks found no proof of racial animus in Dansby's recommendation, nor in the complaints of the parents. He noted that half of the complaining parents were racial minorities and that their complaints seemed focused on legitimate concerns about their children's well-being and educational progress. Saks also noted that the Complainant had never raised a claim of racial discrimination at any time before the Board's decision to non-renew him. Given the lack of any evidence, he strongly recommended that the Association not pursue a discrimination case. [META Exhibit #1, pages 32-36]. The Association concurred and declined to file a complaint case on the Complainant's behalf.

23. On September 14, 1998, the instant complaint of prohibited practices was filed, alleging that the District violated the contract by non-renewing his contract and discriminating against him on the basis of race and age, and that the Association had failed to fairly represent him:

(1) The purpose of my complaint is to allege that the Milwaukee Public Schools (The Board) and the Milwaukee Teacher Education Association (MTEA) didn't grant me due process by virtue of not noting discriminatory practices or double standards in its policies as it relates to my person, race, and my age. It also didn't allow me equal consideration to complete supposedly a year long Board-sponsored mentoring program provided first year teachers. It too didn't allow me a chance to implement the ideas learned during the part of the mentoring program in which I took part. Additionally, it didn't allow me a chance to use much of the other intense training through which it place a first year teacher. The principal, Ms. Arlene [sic] Dansby (Ms. Dansby), put me in a school-to-school training program and never allowed me to return to my classroom. In fact, Ms. Dansby informed me that the reasons for my removal from the classroom were for parent complaints made the very beginning of the school year to January 1998 to the school's supervisor, Mr. Steve Huffman (Mr. Huffman) and the school district's superintendent, Mr. Allen Brown (Mr. Brown). Ms. Dansby said to me that this discipline process through which I was placed was totally out of her hands but was the responsibility of those

above her. About the first of November 1997, Ms. Dansby informed me that I was important to her program and no matter how disgruntled parent didn't want me assigned to the school she would fight for my position. Never-the-less, Ms. Dansby had to lay a paper trail for my termination.

(2) In the initial stages when asking the MTEA representative, Mr. Sid Hatch, to argue my grievance on the above bases, he refused. Instead, Mr. Hatch said the case had to be argued on the merits of the evaluation. Also, Mr. Hatch kept asking me if I knew someone in The Board's infrastructure who could help my cause, eliminate this problem. When I asked Mr. Hatch if I could simply be assigned another school, Mr. Hatch said another MPS (Milwaukee Public Schools) principal wouldn't want an incompetent teacher. Then Mr. Hatch ask me what I was going to do for employment, saying African-American males are needed in other district around MPS, specifically the suburbs.

(3) Because I was recruited as an African-American male, it's clear on its face that I accepted a teaching position with The Board August 27, 1997 in its Ninety-fifth Street School fifth (5th) grade classroom, and at the same time entered a mentoring program of my own volition that proceeded the beginning of the school year, August 27, 1997 and was to conclude the end of the school year, June 14, 1998. Yet, The Board allowed Ms. Dansby, Mr. Hoffman, Ms. Mira Vachon, the human resource administrator, and Mr. Brown to process a negative evaluation the middle of the school year, January 1998, recommending the non-renewal of my contract. It is also true that these same people allowed Michelle Bialles, a much younger person and a new teacher assigned to Ninety-Fifth Street School the same year as I and who went through some of the same professional training as I, to complete the mentoring program. By and large, the mentor teacher, Ms. Lessie Ray (Ms. Ray), who was assigned to my classroom, never suggested to me anything was wrong with my work that would led to non-renewal of my contract. I only received praise for my work from Ms. Ray and another mentor teacher, Mr. Johnson Hunter, who evaluated my work the same day I was assaulted by a student who had a discipline problem and whose parents were among the complainers.

(4) On the other hand, Ms. Dansby pulled me out of the mentoring program and my classroom beginning February 2, 1998 with intention of my returning March 1, 1998, only she didn't allow me to return apparently for reason I have already explained. I remained in this "make shift" training program until April of the 1997-1998 school year.

. . .

24. That during the hearing in this matter, the Complainant variously asserted that Dansby was supportive of his teaching, but was compelled to seek his non-renewal by political

pressures from the central office; that Ray was supportive of his teaching but was compelled to testify that he had problems because of pressures from her employers; that the discharges of former principal Gerald Fair and the building engineer demonstrated a pattern of bias against African-American males; that the white parents at 95th Street School conspired to have him discharged because of his race and/or gender; that the minority parents who complained about him were either parents of badly behaved children or influenced by the fact that white parents gave them rides to school; that his case was a high profile, political “hot potato” for the administration; that he had never been given any information on the disciplinary policies to be used for disruptive students; that he was hampered by the lack of a mission statement for the school; that his classroom lacked the basic resources needed to teach; that the Spanish teacher disrupted his class by holding a fiesta for the students; that the special education teacher disrupted his class by feeding his students chocolate cake; and that his difficulties in the class were the result of a small group of disruptive students. None of these allegations were proved.

25. That the decision of Principal Arleen Doss to pursue non-renewal of the Complainant’s teaching contract was not motivated by his race, his age or his gender. Instead, the decision was based upon the Complainant’s poor performance as a teacher during the 1997-98 school year, and this poor performance was exhaustively documented by the Principal’s Anecdotal.

26. That the decision of Principal Arleen Doss to pursue non-renewal of the Complainant’s teaching contract was neither arbitrary nor capricious.

27. That the decision of Principal Arleen Doss to pursue non-renewal of the Complainant’s teaching contract was preceded by reasonable attempts at remediation, including assistance from a mentor teacher, advice from the assistant principal and the principal, numerous in-service and other training opportunities, release time to observe other teachers, intervention by Derek Brewer and assistance and support from his in-school team.

28. That the decisions of Steven Huffman, Myra Vachon, Alan Brown and the members of the Milwaukee Board of School Directors to accept Dansby’s recommendation that the Complainant’s teaching contract not be renewed were not motivated by his race, his age or his gender. Instead, the decisions were based upon the Complainant’s poor performance as a teacher during the 1997-98 school year and this poor performance was exhaustively and persuasively documented by the Principal’s Anecdotal and demonstrated in the proceedings before them.

29. That the decisions of Steven Huffman, Myra Vachon, Alan Brown and the members of the Milwaukee Board of School Directors to accept Dansby’s recommendation that the Complainant’s teaching contract not be renewed were neither arbitrary nor capricious.

30. That the Complainant exhausted his contractual remedies by pursuing his non-renewal before the Board of School Directors, and did not have grievance arbitration available to him.

31. That MTEA Representative Sid Hatch aggressively pursued the Complainant's case in the meetings with Dansby, Huffman, Vachon and the Milwaukee Board of School Directors. Hatch's strategic choice to undermine the principal's evidence and seek leniency, rather than to attempt to affirmatively prove that the Complainant was a competent teacher, was a reasonable choice under circumstances.

32. That MTEA Representative Sid Hatch was never asked during the non-renewal process to allege racial, gender or age discrimination as a basis for attacking the non-renewal recommendation and that the Complainant never made any such allegations until after the Board of School Directors voted to non-renew his contract.

33. That there is no evidence of racial, gender or age discrimination in the criticisms leveled at the Complainant by the students, the parents or the Administrators of 95th Street School.

34. That the Association did not breach its duty of fair representation to the Complainant in challenging his non-renewal before Dansby, Huffman, Vachon and the Milwaukee Board of School Directors.

35. That the Association did not breach its duty of fair representation to the Complainant in determining that it would not file a racial discrimination complaint against the District following the non-renewal decision. This decision was based on the lack of any plausible argument in favor of such a complaint.

36. That the Complainant, Larry Robinson, has failed to provide proof by a clear and satisfactory preponderance of the evidence, of any violation of Section 111.70, MERA.

On the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. That the Complainant, Larry Robinson, is a municipal employee, within the meaning of Section 111.70 (1)(i), MERA.

2. That the Respondent, Milwaukee Public Schools, is a municipal employer, within the meaning of Section 111.70 (1)(j), MERA.

3. That the Respondent, Milwaukee Teachers Education Association is a labor organization within the meaning of Section 111.70(1)(h), MERA.

4. That by the conduct described in the above Findings of Fact, the Respondent School District did not commit prohibited practices within the meaning of Section 111.70(3)(a), MERA.

5. That by the conduct described in the above Findings of Fact, the Respondent Association did not commit prohibited practices within the meaning of Section 111.70(3)(b), MERA.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

IT IS ORDERED that the instant complaint of prohibited practices be, and the same hereby is, dismissed in its entirety.

Dated at Racine, Wisconsin, this 6th day of December, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Daniel J. Nielsen /s/

Daniel J. Nielsen, Examiner

This decision was placed in the mail on the date of issuance (i.e. the date appearing immediately above the Examiner's signature).

MILWAUKEE PUBLIC SCHOOLS

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

CONTENTIONS OF THE PARTIES

The Complainant

The Complainant asserts that the principal, Ms. Doss, deliberately interfered with his efforts as a teacher and undermined his standing in the classroom and his ability to control his students. He further asserts that his non-renewal was the result of pressure brought by white parents, assisted by a small number of complicit minority parents, who did not want an African-American male teaching at the school and that Dansby, Doss and others in the administration were also hostile to him because he was an African-American male. The poor evaluation by Dansby was, in the Complainant's view, merely a device for justifying his removal rather than being an accurate portrayal of his work as a teacher.

The alleged classroom management problems experienced by the Complainant were actually the result of a small group of disruptive students. These students were chronic behavior problems and had been for many years. The 4th Grade teacher who had the class in the previous year, Mr. Ebert, failed to discipline the class, leading to worse behavior problems when the Complainant inherited the class in the 5th Grade. His mentor teacher, Lessie Ray, recognized the problem and Dansby admitted it as well. It was the parents of these misbehaving students who led the parental campaign to have the Complainant fired.

The discipline problems were exacerbated by Dansby's failure to ever counsel the Complainant on the systems for disciplining students. It was up to his fellow teacher, Ms. Rehm, to first show him an incident referral form and tell him how to use them. This did not happen until well into the school year. When he did attempt to discipline students, Dansby interpreted it as a lack of classroom management ability. She then interfered with his relationship with Ms. Ray by inquiring about his work, in violation of the principle of mentor-teacher confidentiality. She and Doss went so far as to rearrange his classroom furniture while he was gone one day, leading to even greater disruption among the students. Dansby would occasionally suspend one of the misbehaving students, but she had no consistent plan for dealing with them or following up on the suspensions. Simply put, she provided no support whatsoever to the Complainant.

Dansby actively undermined him in many ways during the course of the year. She called over the public address system into his room one day near Christmas, telling him that a student he had sent to the office was his responsibility and not hers. This undercut him with the other students. She twice solicited letters from students criticizing the way he taught and

belittling him. She and Superintendent Brown bowed to political pressure by encouraging letters from majority parents requesting the Complainant's removal from the school. Significantly, not a single minority parent asked that the Complainant be removed. Dansby never discussed the parental complaints with the Complainant and never did anything to correct the misunderstandings of the parents, who failed to see that their children's misbehavior was the underlying problem.

As with the claims of poor classroom management, Dansby's claims that the Complainant was a poor teacher do not hold up under scrutiny. From the beginning of the year, the Complainant was forced to deal with an overcrowded classroom, without adequate books or instructional materials. The room lacked basic science equipment and the Complainant's requests for equipment were ignored. The Complainant's skills as a teacher were demonstrated by the fact that he was able to create his own lessons and materials and carry on teaching without even minimal support. Significantly, these materials were confiscated after the Complainant was removed from the classroom, and thus, he has denied evidence of his own outstanding efforts. Dansby's criticism of his teaching was more attributable to her own failure to understand different philosophies of education than to any deficiencies in his own skills. Indeed, it is absurd for Dansby to label the Complainant a failure as a classroom teacher when it was clear during the hearing that she did not even know the basics of his teaching philosophy.

Dansby's assessment of the Complainant's teaching skills is directly contradicted by the assessment by Yvonne Carter, his cooperating teacher from the prior year. She testified that he was well organized, hard-working and a good teacher. Indeed, even the partial lesson plans in the record show that the Complainant had a well thought out and organized approach to teaching. The Complainant was able to testify to the intricacies of Bloom's Taxonomy and other important teaching techniques, while Dansby was clearly unfamiliar with them. The drop in student test scores, which Dansby relied on heavily as evidence of the Complainant's deficiencies, certainly cannot be attributed to him. He was only allowed to teach these children for a single semester. No inquiry was made into the poor preparation these students had from prior instructors.

While Dansby claims to have tried to provide assistance to the Complainant, the record reveals that this was just a red herring. Dansby provided copies of handouts she distributed and claimed these should have informed the Complainant of the resources available to him and the proper procedures for maintaining classroom control. However, these handouts by themselves are useless. Dansby refused to meet with the Complainant and discuss his performance. She gave him no on-going feedback, even though she claims to have observed him during the year. Dansby called in Derek Brewer to meet with the Complainant's students, supposedly for a conflict management session, but she excluded the Complainant from his own classroom during Brewer's session with the students and the sessions provided no substantive benefit. She sent him to other schools and other classrooms starting in February, supposedly so that he could view the practices of other teachers. However, she never allowed him to

return to his own classroom to apply anything he might have learned. Thus, these efforts at assistance were a smoke screen to disguise her actual intent. That intent was made obvious by Dansby's confiscation of his lesson plan book and his journals.

Not only were the substantive claims made by Dansby untrue and unfair, the process used to review the unfavorable evaluation was seriously flawed. Huffman and Vachon, two of the reviewing officials, never attempted to get at the truth of the matter, instead relying on the materials presented by Dansby. Indeed, they refused to let the Complainant speak on his own behalf during their hearings. Neither of them visited the Complainant's classroom or interviewed any witnesses that might have been favorable to the Complainant. Vachon allowed Lessie Ray to breach confidentiality by providing information to the administration, even though she was a mentor teacher.

The unfairness of the process was greatly increased by the failure of the MTEA, principally Sid Hatch, to properly represent him in the evaluation and appeal process. He notes that Hatch did not visit the school to observe him at work in the classroom, did not present witnesses on his behalf and did not present exhibits that could have shown his efforts as a teacher. Hatch refused to provide evidence of the disruptive students in the classroom or of the unfair complaints brought by parents against the Complainant. Hatch was instead intimidating and demeaning to the Complainant and ignored his suggestions as to how to proceed with the case. He refused to pursue the racism at the core of the parents' campaign against the Complainant. Further, Hatch agreed to allow the various hearings to be held away from the school, so that evidence would not be readily available. When the Complainant brought evidence with him to the Board hearing, Hatch simply waved it off. Hatch's indifference to the Complainant's situation is demonstrated by the fact that, at one point, he actually suggested that the Complainant resign rather than being non-renewed. Hatch also fraternized with the City Attorney's representative during the Board hearing, another indication of his failure to take the Complainant and his case seriously. After these half-hearted efforts resulted in a close vote by the Board to non-renew the Complainant, Hatch tried to dissuade him from going to the WERC by having an attorney write an opinion saying he had no discrimination case. The Complainant had to engage in self-help, going to the NAACP which was able to refer him to the Commission.

It is a basic tenet of constitutional law that a public employee must be given due process, including an evidentiary hearing, before being terminated. Moreover, state law prohibits a termination that is motivated, even in part, by prohibited discrimination. Here, the District engaged in disparate treatment of the Complainant by terminating him, when other teachers with problems in their classrooms were not terminated. Dansby kept records and files on the Complainant, other than those normally kept on other teachers. The administration followed up on these discriminatory acts with an appeal process that denied the Complainant even the most basic of due process rights.

It is clear that the Complainant's case was a hot political issue in the District and that administrators at every level, up to the Superintendent, were involved. The District and the

MTEA were engaged in bargaining over what to do with so-called bad teachers and the Complainant was the test case. Moreover, the elected Board, fearing the organized efforts of the white parents at 95th Street School, brought pressure to bear on its administrators to sacrifice the Complainant to appease those parents. Despite these political pressures, the President of the Board, Joseph Fisher, ultimately voted in the Complainant's favor at the Board hearing. Fisher explained that he felt the Complainant's problems were due to personality conflicts with Dansby and being new to the system. This assessment is borne out by the Complainant's success as a teacher before and after leaving 95th Street School. The record of this hearing is filled with commendations from his cooperating teacher, principals he had worked with and education professionals who have reviewed his work. Indeed, he is currently a much admired teacher with the Archdiocese of Milwaukee.

For all of these reasons, the Complainant asks that the Examiner conclude that the District violated the collective bargaining agreement when it non-renewed him and that the Association violated its duty of fair representation. He asks that he be reinstated and made whole for his losses.

The Respondent District

The standard for non-renewal of a first year teacher is whether, after reasonable attempts at remediation, the Administration has made a non-arbitrary, non-discriminatory decision that the teacher should not be retained. The record reflects that the Complainant was an abysmally bad teacher and richly deserved to be non-renewed. From the start of his employment at the 95th Street School through his last day, the Complainant had significant performance problems. His classroom was marked by an almost complete lack of actual instruction and learning and discipline problems so pronounced that other teachers complained. He himself caused these problems. The lack of discipline resulted from his refusal to treat his students with respect or dignity. Instead, he yelled at them and grabbed at them, despite warnings that grabbing children was strictly prohibited. The lack of learning was caused by his inability to effectively plan his lessons, to maintain his train of thought, to be aware of what was going on around him, or to alter his teaching style when it became obvious that simply lecturing to the children was not effective.

Extraordinary efforts were made to salvage the Complainant, but he proved immune. Assistant Principal Tami Doss, who was at the 95th Street School an average of two and a half days a week, was in the Complainant's classroom a minimum of four times a day. Indeed, Doss testified that she spent the great majority of her time at 95th Street School dealing with the Complainant and his class. Doss frequently met with the Complainant to assist and advise him, to no effect. She characterized his classroom as being total chaos. This was the same observation made by his mentor teacher, Lessie Ray. She also noted his tendency to blank out and lose his place while teaching and to suddenly shift from topic to topic, confusing the students. While she spent more time with the Complainant than with any of her other mentees, he proved incapable of changing his confrontational and adversarial mode of interaction with

the children. Indeed, Ray was very concerned about his extremely emotional nature and inability to control himself. She found him unpredictable and prone to becoming very upset at little or no provocation. His students were afraid of him, as were some of the other staff members. Indeed, he had several outbursts directed at her for no reason and angrily withdrew from the mentoring program after she suggested he log things he had learned from observing other teachers.

The parents of the Complainant's students noticed early on that there were problems with his classroom. Parents complained of a negative learning environment, of ungraded papers, of disrespectful treatment of their children and of name calling and actual physical abuse. The physical abuse principally consisted of grabbing students, and there were multiple incidents. There were also many examples of the Complainant humiliating students, calling them "boy" instead of using names and in one especially egregious case, holding up a sanitary napkin a girl had accidentally dropped and asking her about it in front of the entire class, then ordering her to go to Dansby's office. These complaints were evenly distributed across European-American, African-American and Hispanic parents and reflected their legitimate concerns for the well-being and even the safety of their children. Things got so bad that a letter was sent to the Superintendent, describing the sudden change in 95th Street School from a good experience for children to a harmful environment. When confronted with these complaints, the Complainant did not deny any of them. He merely replied that there were some problem children in the class and that his mentor teacher was helping him to respond. In essence, he blamed the children rather than accept any responsibility. The extent of the problems in his classroom is illustrated by the fact that one out every six children in his class was withdrawn from 95th Street School by their parents during his semester of teaching. These were children who had been at the school for several years and these six children were the only ones that had ever been withdrawn from the school because of parental dissatisfaction.

Contrary to the Complainant's dark view of the District's decision, the problems with the Complainant's performance were not simply identified after the fact to justify his non-renewal. They were fully documented during the course of his brief and disastrous teaching career. The first significant documentation concerns the unprecedented late September decision to hold a 5th Grade orientation meeting, to introduce the Complainant to the parents and try to build some support for him. The meeting itself was successful, but there was no follow-up by the Complainant and he made no changes in his classroom style to capitalize on his chance for a fresh start.

In late October, Doss performed an announced evaluation of the Complainant in a subject area selected by him. She noted that he failed to use instructional aids, showed no evidence of pre-planning, failed to involve students, showed no enthusiasm and provided no time to reinforcement of the concepts. She also noted a lack of mutual respect in the classroom. Dansby followed-up with a November 3rd memo to the Complainant offering numerous observations and suggestions for improvement. The memo repeated suggestions and observations that Dansby had already made verbally on numerous occasions, to no effect. Among them were his failure to provide an education to his students, his disorganization,

irrelevance of his lesson plans, failure to make adjustments when his techniques showed no results and refusal to listen to the concerns of parents and students. While she offered to meet with him to discuss the memo, his response was to confront her, demanding to know “Is this documentation? Is this documentation?”

Two weeks later, on November 17th, Doss sent him a memo summarizing meetings they had and setting a goal for him of improving his relations with students. His response was identical to his response to Dansby’s memo. He confronted Doss in front of his students and yelled “I know what this is. This is documentation!” He consistently refused to recognize the substance of the administrator’s concerns and focused solely on what he perceived to be criticism.

Just two weeks after this, the Complainant assigned his students to write an essay about the inappropriateness of school policy, promoting his theory that the first semester should end at Christmas. This utterly confused the 5th Graders who received the assignment.

On December 18th, another observation of the Complainant’s class revealed that his students continued to suffer from a lack of quality instruction. Principal Dansby provided another memo to the Complainant, noting his persistent problems despite numerous communications and suggestions from Dansby and Doss. She again pointed him to the resources available to him and cautioned him that if he did not improve by January 20th, she would give him an unsatisfactory evaluation.

A pre-announced formal evaluation was conducted on January 5, 1998. Dansby observed that the students were uninvolved in the lesson, which was too slowly paced to hold their attention. She summarized her observations and asked him to respond, but he declined. On January 9th she sent him yet another memo, referring him to the school Handbook and asking him to review sections he did not seem to have comprehended. Four days later, she again cautioned him against simply lecturing to students and urged him to involve the students more in his instruction. She reminded him that his lesson plans had to be done for the entire week and that he should not make so many negative comments to the children in his class. The lesson plans in the record support her observation that he did not plan appropriately. They reflected no strategy for educating the students, jumped to new lessons before the prior lessons were understood, made no use of instructional aids and showed a disregard for the proper sequencing and development of subject areas. In a three week period, they showed the Complainant teaching science three times, even though students were supposed to have daily lessons in that area. A January 16th evaluation showed a continuation of his tendency to use lecturing as his only teaching technique and that he did not do that effectively.

Throughout his brief career at 95th Street School, the Complainant’s refusal to accept guidance and help, together with his own lack of teaching skill, utter disrespect for students and bizarre behavior, made him manifestly unsuited to teach children. His supervisors made every effort to provide assistance. Indeed, their efforts were extraordinary. Dansby met with him constantly, giving him suggestions, written materials and strategies for improvement. She

explained to him how he could get materials and resources he wanted. She assigned him a buddy teacher. She assigned him to a team of teachers, who could have provided advice and guidance if he had taken advantage of the opportunity. She arranged for him to attend four days of efficacy training, a day of reading and writing training and several days of in-service training offered within the District on science, instructive writing, effective teaching practices and classroom management. She also arranged for him to attend an in-service on the new reading materials at the school, but he declined. On December 19th she made a workday available to him to observe other teachers, but the next day she met with him and he seemed to recall nothing that he had observed. None of these extra efforts had any impact on his teaching. She arranged for Derek Brewer to meet with him and his class to work on conflict management. Again, there was no effect. He actively resisted every effort to assist him, responding with hostility and emotional outbursts, blaming others for his problems.

Mentor teacher Lessie Ray spent 19 days in his classroom with him, before he summarily quit the mentoring program. She gave him constant advice and counseling, working particularly hard to help him create a rapport with his students and their parents. She went so far as to organize a meeting with parents in early October, a session that Dansby not only attended, but where she actively provided support for the Complainant. This meeting had no lasting impact.

Assistant Principal Tami Doss was in the Complainant's room at least four times a day, providing support and assistance. She provided him with materials and classroom management information, even though he already had a great deal of material available that he never used. As with the efforts of Dansby and Ray, the Complainant frequently responded with hostility and defensiveness. While the entire staff at the 95th Street School made efforts to assist him, he was either unwilling or unable to learn effective teaching techniques and unable to control his emotional outbursts. The administration made incredible efforts at remediation, but the Complainant refused to be helped.

The documentation is exhaustive and it proves conclusively that the Complainant was not a competent teacher and was incapable of even maintaining a semblance of control in his classroom. It also proves that the administration did everything humanly possible to remediate the Complainant, correct his defects and give him every chance to succeed. Rather than acknowledge any defect in his performance, the Complainant blamed everyone else. He blamed his students for being bad kids. He blamed a complex and absurd conspiracy of white parents to get rid of him, even though the complaints came from white parents, African-American parents and Hispanic parents. He claimed that Dansby, Doss, Ray, Huffman, Vachon and all of the others who found his performance deficient, including the Superintendent, were a part of this conspiracy. This conspiracy was supposedly motivated against him by the fact that he was an African-American male. Yet his replacement was Father Knighton, another African-American male. Father Knighton was well received and successful. He had no problems with the students, the parents, the faculty or the administration. The Complainant cited the dismissal of two earlier staff members, a principal and a building engineer, as somehow proving bias against black males. The building engineer was discharged

for drug dealing and was a white man. The principal was African-American and was also discharged for a drug conviction. If anything, these incidents show an even-handed response to drug offenses between white men and African-American men.

The Complainant also claimed that he was never given the resources needed to succeed. Ray testified that his classroom was stocked with everything he needed to teach. Doss echoed this testimony. When Father Knighton took over the classroom, he reported to Dansby that there were many materials just sitting in the room that appeared not to have ever been used. Clearly, he had all of the resources he needed, but as Dansby testified, the materials do no good if you don't use them.

The Complainant also points miscellaneous other reasons that others were to blame for his problems. He cites the size of his class as a reason that he could not succeed. His class was large, but not unusually so, and his performance did not improve as the class size dropped when parents withdrew their children from the school. He claims that he was crippled by the lack of a mission statement for the school. While it is not clear how this could be, it is simply untrue. The School Handbook contained a mission statement, as well as a description of the discipline procedures he claimed he was never given. It appears that he was either lying or that he never bothered to read what he was given. He claims that an "assault" by one of his 5th Graders somehow affected his performance, but cannot explain why this was, or how it came to be that a small child felt it necessary to "assault" a very large adult male. He claimed that another teacher fed his children chocolate cake early one day. He failed to explain how this could have undermined his performance for the entire semester, or even a single day. All of these explanations are simply beside the point. The Complainant refuses to understand that he was non-renewed because he was a bad teacher, one who frightened and abused his students, who did not teach them anything over the course of a semester and who alienated everyone he came into contact with. The District not only had the right to non-renew him – it was obligated to do so.

The Complainant also extends blame to the Association, arguing that it failed to aggressively represent him. To the contrary, the evidence shows that Hatch succeeded in removing most of the parental complaints and misconduct information from the Principal's Anecdotal in the appeal process, and actually persuaded two members of the School Board to vote against non-renewal. He did this in the face of documentation that the Association conceded was very strong and in spite of the fact that all of the witnesses the Complainant suggested be called said they would testify against his retention.

Under well established law, the Complainant cannot succeed in his contract claim unless he first proves a failure of the duty of fair representation. He has failed to prove that the Association provided anything less than excellent representation to him. Thus, his claim against the Association must be dismissed, and with it, the claim against the District must fall. For all of these reasons, the District asks that the complaint be dismissed in its entirety.

The Respondent Association

The Respondent Association asserts that it provided thorough and aggressive representation to the Complainant and that his complaint must be dismissed. The evidence against the Complainant was overwhelming. Dansby had carefully documented his failings, and they were glaring. The Complainant never advised Hatch of any of this until he received Dansby's January 20th letter advising him that she intended to seek his non-renewal. By that time, the Administration's case was essentially complete. In the face of this, Sid Hatch met with him on the 28th and then accompanied him to a conference with Dansby to see what evidence she had. Experience suggests that a lengthy meeting before seeing the evidence is not productive, since it tends to focus on issues other than those that will be presented by the principal. Instead, Hatch's practice is to receive the principal's evidence and then seek a recess to review it.

In this case, Hatch reviewed Dansby's materials and listened to her explanation. He realized that her presentation was very well organized and that her evidence was quite strong. Accordingly, he decided to proceed to a second step hearing before Huffman. Before that hearing, he spoke with the witnesses that the Complainant suggested, including Derek Brewer, Lessie Ray and Mark Ebert. Brewer expressed the opinion that the Complainant had serious deficiencies as a teacher. Ray told him that the Complainant could not be a successful teacher under any circumstances and Ebert told him that the students in the Complainant's class had not posed any unusual discipline problems when he taught them the year before. Given this information, Hatch raised the possibility of the a voluntary resignation with the Complainant. He routinely does this when the evidence against a teacher is strong, so that the teacher will know all of his options. The Complainant rejected this option, so Hatch explained the non-renewal process to him and proceeded to hearing before Huffman.

Hatch represented the Complainant in 14 hours of hearing over four days before Steve Huffman. In this hearing, he focused on having materials that Dansby included in her Anecdotal removed. He succeeded in having the information concerning parental complaints and misconduct proceedings removed from the binder. He did this because he realized that this material was extremely prejudicial to the Complainant and because the Association always took the position that it was the assessment of educational professionals that should be considered in non-renewals, not the opinions of laypersons. He explained this strategy to the Complainant and the Complainant made no objection. Indeed, the Complainant never complained about Hatch's overall strategy until after the process was completed.

Once Huffman approved the non-renewal recommendation, Hatch continued to attack the principal's credibility and documentation in nine hours of hearing before Dr. Vachon. At the end of this proceeding, the Complainant made a statement on his own behalf. The Complainant did well initially, but then began to ramble and, rather than lose the favorable impression he had been seeking to make before Vachon, Hatch cut him off and brought the hearing to a close. The Complainant told Hatch he did not like this, but this was a reasoned and professional judgment by an experienced union representative.

Hatch continued his vigorous representation before the Board. While the Complainant sought to have him present some educational materials and handouts as evidence at the Board level, Hatch was presented with this material just before the hearing and had no chance to evaluate it. The Complainant also suggested that some parent complaints be introduced before the Board. Hatch rejected this, because he knew that the Board would look unfavorably on the Complainant if it knew about the level of parental complaints and charges of physical abuse. Instead, he continued to pursue his strategy of attacking the principal's credibility and to persuade the Board that the Complainant's failing were similar to those of many first year teachers, and that a transfer or some step short of non-renewal would be the better outcome. He also continued to argue for a much higher standard of proof than the "arbitrary and capricious" standard set by the contract. It is clear from the Board's 3-2 vote that Hatch succeeded in persuading the Board to apply a high standard of proof to the principal's evidence and Fisher testified that he was persuaded by Hatch's argument in favor of giving the Complainant a second chance. Given the strength of the principal's case, the fact that Hatch nearly won the case is a testament to his professional skill.

After the Board's non-renewal decision, the Complainant asked the Association to take the case to arbitration. Hatch explained, as he had before, that arbitration was not available. It was at this point that the Complainant, for the first time, made a claim that the non-renewal was orchestrated by white parents for racial reasons. He then asked for arbitration of a racial discrimination claim under the contract. Even though arbitration is not available for discrimination claims, which must be pursued through a complaint procedure before the WERC, and even though the record contained no evidence of racial discrimination, the Association submitted the matter to their attorneys for an evaluation of the case. In a written analysis, Richard Saks, an attorney with great experience in discrimination law, determined that there would be no reasonable likelihood of success before the WERC or the EEOC. Thus, the Association advised the Complainant that it would not proceed.

The Association's representation of the Complainant was professional, vigorous and effective. While it was proceeding, he had no problems with Hatch's decisions or strategies. After the Board's adverse decision, he decided that a better strategy would have been to try to depict the two African-American evaluators, Dansby and Doss, as being somehow racially biased against him and to portray the parents at 95th Street School as part of a ludicrous racist conspiracy against him. As part of this suicidal strategy, the Complainant decided that Hatch should have presented evidence to the Board of the parents' repeated complaints about his poor teaching and abusive behavior – materials that Hatch fought vigorously to have removed from the Anecdotal. Given that there was not a scintilla of evidence to support any of these claims, that such arguments would have eliminated any chance of the Board giving him a second chance and that making these facially untrue and morally reprehensible claims would have permanently alienated the District, Hatch understandably would not have adopted such a strategy, even if the Complainant had suggested it to him. The Complainant never did suggest such a strategy and he cannot now complain of Hatch's decision not to make these assertions on his own.

DISCUSSION

This case involves the non-renewal of a first year, probationary teacher in the Milwaukee Public Schools. The contract contains a standard for reviewing such decisions. It is (1) whether there have been reasonable efforts at remediation and (2) whether the decision to non-renew was arbitrary or capricious. The stated basis for the District's decision was poor performance, including the inability to organize his instruction, an inability to effectively instruct students and an inability to manage his classroom and his students. The Principal, Arleen Dansby, supported her decision with a Principal's Anecdotal, documenting the support given to the Complainant, the difficulties he experienced, both in the classroom and in his relations with administration, parents and students, and the evaluations of his performance during the year. Once the non-renewal process was commenced in late January of 1998, the Complainant was removed from classroom teaching and assigned to observe other teachers in the District for the balance of the year.

The Complainant challenged his poor evaluation, assisted by the Association and its representative, Sid Hatch. They participated in meetings with Dansby, her supervisor, the Superintendent's designee and, ultimately, the School Board. The School Board voted 3 to 2 to non-renew his contract. The Complainant now asserts that the decision to non-renew was arbitrary, capricious and discriminatory. He challenges the accuracy of Dansby's Anecdotal and the motives of the District's representatives, alleging that his performance was better than portrayed and that race and gender played a part in the non-renewal decision. He also asserts that the Association failed to fairly represent him in the non-renewal process and afterwards.

The Nature of the Case

The Complainant asserts that his non-renewal was contrary to the contractual standard and was in violation of the contract's provisions prohibiting racial discrimination. Section 111.70 (3)(a)5 makes it a prohibited practice for a municipal employer to violate a collective bargaining agreement. Section 111.70 (3)(b)4 is a parallel provision, making it a violation of MERA for a labor organization to violate the contract. However, where the parties have negotiated a contract which includes grievance arbitration as the mechanism for enforcing contractual rights and the grievance procedure has not been exhausted, the Commission will not exercise its discretion to hear claims of 3(a)5 and 3(b)4 violations. 2/ Instead, the Commission will honor the parties' contract and the grievance procedure will be presumed to be the exclusive venue for these claims. The exception to this principle is that a Complainant may proceed with a 3(a)5 claim if he can demonstrate that he has been prevented from effectively protecting his contractual rights because the Union has failed in its duty to fairly represent him. 3/ Thus, the merits of a contractual claim will normally only be reached if the Complainant first proves a violation of Section 111.70(3)(b)4.

2/ *JT. SCHOOL DISTRICT NO. 1, CITY OF GREEN BAY, et. al., DEC. NO. 16753-A (WERC, 12/79); WAUPAN SCHOOL DISTRICT DEC. NO. 22409 (WERC, 3/85); MILWAUKEE COUNTY SHERIFF'S DEPT., DEC. NO. 27664-A (CROWLEY, 10/93).*

3/ *MAHNKE v. WERC*, 66 Wis.2d 524 (1975).

The Complainant's situation is out of the ordinary in that he was a first year teacher hired after August 28, 1996, and pursuant to Section M, 10(c) of collective bargaining agreement, was not entitled to proceed to grievance arbitration over an unsatisfactory evaluation. That provision states only that the Board's decision shall be final and binding. While Section 10(c) does not expressly state that there is no appeal to arbitration for non-tenured teacher hired after August 28, 1996, Section 10(a) expressly provides arbitration to those non-tenured teachers hired before that date. Thus, the statement that the Board's decision is final and binding and the failure to expressly provide for arbitration necessarily leads to the conclusion that grievance arbitration will not be available for teachers such as the Complainant. The Association and the District, who are the parties to the contract, agree that this is the correct interpretation of that provision.

Absent recourse to the grievance procedure, the usual policy of deferral to arbitration does not apply to the Complainant's non-renewal and he is, therefore, entitled to have his claim that the contract was violated heard by the WERC even if he does not first prove a violation of the Union's duty of fair representation. In the same vein, the Complainant's claim of racial discrimination is not subject to arbitration. By the terms of the contract, violations of that protection are referred to a WERC hearing examiner rather than an arbitrator. Accordingly, the Examiner will consider the claims of a violation of the duty of fair representation, a violation of the contract's standards for non-renewal and a violation of the contract clause prohibiting racial discrimination as free-standing claims, and each claim will be assessed on its independent merits.

The Decision to Non-Renew

By contract, the decision to non-renew a first year teacher cannot be arbitrary or capricious and cannot be made unless there have been reasonable efforts at remediation. A decision is arbitrary if a reasonable person could not rationally have arrived at it. 4/ The decision of the School Board to approve the non-renewal here was reached after a lengthy hearing in which the Principal's Anecdotal was reviewed and both sides vigorously argued the case. The information in the Anecdotal to support the non-renewal was not simply adequate to that task. It was absolutely convincing.

4/ See, for example, *Black's Law Dictionary, Fifth Edition: Arbitrary. Means in an "arbitrary" manner, as fixed or done capriciously or at pleasure. Without adequate determining principle; not founded in the nature of things; nonrational; not done or acting according to reason or judgment; depending on the will alone; absolutely in power; capriciously; tyrannical; despotic; . . . Without fair, solid, and substantial cause; that is, without cause based upon the law, . . . not governed by any fixed*

rules or standard. Ordinarily, "arbitrary" is synonymous with bad faith or failure to exercise honest judgment and an arbitrary act would be one performed without adequate determination of principle and one not founded in nature of things.

. . .

Arbitrary and capricious. Characterization of a decision or action taken by an administrative agency or infer court meaning willful and unreasonable action without consideration or in disregard of facts or without determining principle. . . . [Citations omitted].

The administration bears the burden of showing that there have been reasonable efforts at remediation and that the decision to non-renew the teacher was not arbitrary or capricious. As to the first element, the record demonstrates a remarkable commitment of time and resources to aiding the Complainant. In approximately 90 days as a classroom teacher, the Complainant spent 8 days in training and observation of other teachers, had a mentor teacher's assistance for 19 days, had weekly meetings with his in-house team and had daily input from the principal and assistant principal. The mentor teacher and principal arranged for a first ever orientation session with his students' parents to try to let him build rapport and gain the parents' support. While the Complainant claims that he was given inadequate support, it is in fact hard to imagine a public school making any greater commitment of its limited resources of administrative time and substitute budget to a single teacher. The record of efforts at remediation in this case easily establishes the first element of the Administration's case for non-renewal.

The second element of the Administration's burden is to show that the decision to non-renew was neither arbitrary nor capricious. The case against the Complainant is that he spent a great deal of time yelling at and trying to discipline his students rather than instructing them and that when he did instruct them, his presentation was disorganized, confusing and inadequate. Certainly, this case is supported by the testimony of Dansby and Doss, the two administrators who observed him on a daily basis in the classroom. Both expressed the opinion that he was deeply committed to being a teacher, but did not seem to like children and was volatile and unpredictable in his dealings with children, parents and other faculty members. Both commented that he was very good at securing teaching resources, but was not capable of effectively using them. Both agreed that he was unwilling to listen to any criticism or advice. These opinions are amply documented in the Principal's Anecdotal.

To the extent that this case pits the professional opinions of Doss and Dansby, supported by Dansby's documentation, against the personal opinion of the Complainant that he was a good teacher, the choice of the School Board to accept the Administrators' opinion rather than the Complainant's is, on its face, not arbitrary. It must be stressed that the standard applicable to these decisions is extremely deferential to the opinions of the Administrators and that the contract is not violated in these cases even if the Examiner

concludes in a given case that the administrators were probably wrong. This is not such a case. The evidence affirmatively and overwhelmingly supports the decisions of the principal, the hearing officers and the School Board.

The Complainant acknowledges that there might have been some problems in his class, but he argues that Dansby and Doss overstated them and, to the extent that there were problems, he attributes these to forces outside of his control. He claims that Dansby and Doss overstated the problems because of hostility to him or pressure from above. As for the cause of his problems in class, he blames the students, his faculty colleagues, his principal, a lack of resources, a clash of educational philosophies and inadequate opportunity to demonstrate his skills. He also cites a coordinated effort by white parents to force him out because of his race, a violation of due process in his appeals and a failure of the Association to assist him. As discussed in greater detail below, none of these claims are supported by the evidence.

The Complainant asserts that the evaluations and testimony of Dansby and Doss did not truthfully represent his career and this presents an issue of credibility. Aside from his theory that there was a conspiracy of white parents against him, and that this created pressure on the administrators, he does not identify the reasons for Doss and Dansby to seek his ouster. Nor can I identify any reason for the two administrators to conspire against him. While it was clear during the course of the hearing that Dansby did not particularly care for the Complainant, that is a snapshot of their relationship after she recommended his non-renewal, shepherded the recommendation through the hearing process in the face of Sid Hatch's attacks on her credibility and through the hearing process before the Examiner, including many contentious hours on the stand during which the Complainant himself was consistently hostile to her. Thus, I do not find any basis for believing that Dansby's assessment of the Complainant was motivated by any personal hostility. As for Doss, there was nothing in her demeanor on the stand that would cause the Examiner to question her credibility.

The Complainant's credibility is a more involved question. Having observed him over the course of 13 days of hearing, it is clear that he is an extremely emotional and proud person, who was deeply offended by the non-renewal of his contract. He also appeared to be deeply suspicious and highly resentful of any adverse testimony or evidentiary ruling. At many points he reacted far more strongly to adverse rulings or unfavorable testimony than was reasonably warranted. Across the eight and a half months of the hearing before this Examiner, he consistently demonstrated a marked tendency to suddenly lose his train of thought and to abruptly change topics in the midst of lines of questioning. At several points, he also made untrue allegations about the rulings and instructions he had received from the Examiner, apparently in hopes of making a record for appeal. To the extent that the Complainant's behavior in this hearing was consistent with the classroom behavior described by Doss and Dansby, it enhances the credibility of their evaluations and reduces the credibility of his denials.

Turning to the specific excuses and explanations offered by the Complainant, none hold up under scrutiny:

The Students Were The Problem

The Complainant's theory that most of his problems were caused by the students themselves is undercut by the bulk of the record evidence showing that no other teacher had problems with these students. The substitute teachers who covered his classes when he was at training opportunities, the specialists, such as the Spanish teacher, who taught the class on a regular basis, the teachers who had the students in prior years and the teachers who followed the Complainant in this classroom, all reported no problems with these students or with their parents. The evidence shows that the students performed well for these teachers and that this class was not considered to pose discipline problems. Indeed, Doss taught the students in 3rd Grade and she testified that it was an exceptionally talented and well behaved class. The Complainant continuously alleged that Mr. Ebert, who had the class in 4th Grade the year before, had found them almost impossible to deal with, and had told him this class had driven him from classroom teaching. Ebert testified that the students were no particular problem, and that they had nothing to do with his move from the classroom. Following this testimony, the Complainant's theory became that Ebert had failed to discipline the class in 4th Grade and thus, set the stage for his problems when they reached 5th Grade. As with many of the Complainant's allegations, aside from his own charge, there is no evidence in the record to support the claim.

Certainly there is evidence in the record that some students in the 5th Grade class posed discipline problems for the Complainant. He claims to have been attacked by several of them and there is evidence of one incident where a student kicked and swung at him. No teacher should have to tolerate that, but these are 5th graders and the Complainant is a large man, well over six feet tall and weighing about 200 pounds. The administration poses the reasonable question why a 5th Grade student would feel it necessary to physically confront someone so much larger than he. One likely answer is the Complainant's apparent habit of physically confronting his students. The record is filled with evidence that the Complainant's mode of discipline featured a great deal of yelling and grabbing at students. Routinely using that method of discipline is a fair guarantee that sooner or later at least some of the children will respond in kind.

The Faculty Were The Problem

The Complainant argues that he was undermined in his teaching efforts by other staff members, including a Spanish teacher who held a fiesta for his students and another teacher who fed his students chocolate cake one morning. His theory is that these activities excited his students and made them more difficult to manage later in the day. The evidence is that the fiesta was something that offered to all classes and that the chocolate cake was a reward the children had earned for their performance. These activities were not confined to his classroom and there is no evidence that other teachers experienced negative effects from these activities in their classrooms. Even assuming that the folk wisdom about feeding children sugar is true and that the children then become hyperactive, and also assuming that a fiesta with dancing would

excite the children, these were two days out of an entire academic semester. The two incidents cannot explain why the Complainant had problems teaching and controlling his class on a day in and day out basis.

Principal Dansby Was The Problem

The Complainant also claims that Dansby undermined him by berating him over the public address system for sending a student to the office, failing to explain disciplinary procedures and forms to him, failing to give him any feedback on his performance and inciting students against him. Dansby denies the first charge and there is nothing aside from the Complainant's general assertion to suggest that it happened. As to the next two allegations, they are actively contradicted by the evidence. The faculty Handbook that the Complainant was given on the first teacher workday contains an extensive discussion of student discipline procedures and a copy of the incident referral forms used at the school. Doss testified that she met with him repeatedly on discipline strategies, provided him with a great deal of material on the subject and early in the year briefed him on the proper usage of disciplinary procedures and forms. This is confirmed by her November 17th memo to him. Dansby and Doss both testified credibly that they observed and counseled the Complainant on a daily basis and the Principal's Anecdotal is replete with letters and memos documenting an enormous amount of advice and feedback to the Complainant. The Complainant's claim that no one explained discipline to him or gave him any support or feedback is simply untrue.

The claim that Dansby incited students against the Complainant springs from her having collected witness statements from them after parental complaints, including several allegations of outrageous misconduct, were received. The contract requires that the principal investigate such allegations and securing witness statements from students is a reasonably necessary part of such an investigation. The evidence is that Dansby did not collect the statements from the students as part of an effort to incite them against the Complainant, but rather as a routine step in fairly investigating the complaints against him. The statements themselves show that the students had many grievances against the Complainant without encouragement from Dansby. Contrary to the Complainant's claim that Dansby stirred up the students against him, the evidence is that she met with the class several times to stress to them the importance of respecting their teacher and brought in Derek Brewer to aid in repairing his relationship with the students.

A Lack of Resources Was The Problem

The Complainant asserts that he lacked the basic resources necessary to teach his class. Yet every other witness familiar with his classroom testified that there was an abundance of teaching materials and instructional aids in his class. Moreover, he presented instructional aids that he claimed to have created himself to make up for the lack of resources in his classroom and held these forth as evidence of his skills as a teacher. Some of these materials were

identified by others as simply being rewrites of materials provided to him by the school district and others appeared never to have been used. However, even if they were used and even if they were completely original, the Complainant cannot on the one hand point to lack of resource materials as an explanation for his class's learning problems, while on the other claiming that he deserves credit creating the needed resource materials. He either had resource materials or he did not. Either way, a lack of resources in the classroom does not explain the discipline problems or the lack of focus in his planning and presentation. In any event, I credit the other witnesses on this point and find that there was no significant lack of teaching resources in the Complainant's classroom.

Differing Educational Philosophy Was The Problem

The Complainant devoted a good deal of effort in his examination of Dansby and others to inquiring about their awareness of educational philosophy in general and his in particular. He attaches great significance to the fact that none of the administrators could identify his educational philosophy, asserting that they could not possibly evaluate his performance as a teacher without knowing his philosophy. Likewise, he attributes the parental complaints to the parents' inability to understand new teaching methods and philosophies. It is still not entirely clear from the record what his philosophy is, but it is sufficient to note that his personal educational philosophy cannot trump the reasonable performance expectations of the employer. Whatever philosophy one follows, the School District has the right to expect that the students will learn something in the course of the year and that the teacher will maintain some sort of decorum in the classroom. The criticisms of the Complainant's performance had nothing to do with a failure to understand his philosophy. Instead, they sprang from the outcomes being realized in his classroom. If his educational philosophy embraced a failure to teach coherently and an inability to establish any workable rapport with students, parents, other faculty members and administrators, it was incumbent on him to find a new philosophy.

Failure to Let Him Finish The Year in His Classroom Was The Problem

The Complainant asserts that it was unfair to remove him from the classroom in early February, since it denied him the opportunity to show what he had learned through his observations of other teachers and to demonstrate that his teaching was acceptable. Without going on at undue length, there is no merit to this argument either as a matter of law or as a matter of fact. He was non-renewed on the basis of his work through the end of January. That is the standard period for the assessment of a first year teacher and that is the evidence that was evaluated by each of the reviewing officers. Thus, developments after the evaluation period would not have been relevant. Moreover, given Dansby's reasonable concern that his efforts in the 5th Grade classroom were actively harmful to his students and that the students were utterly unprepared for advancement to the middle school, her decision to remove him from the classroom was neither unreasonable nor unfair.

Conclusion on the Merits of the Non-Renewal Decision

The School District has the right to non-renew a first year teacher if the evidence shows reasonable efforts at remediation and the decision is not arbitrary or capricious. The evidence in this case shows that the administrators at 95th Street School made extensive efforts at remediation on the Complainant's behalf, but that these efforts had little or no effect. The record evidence further shows that the Board of School Directors made a non-arbitrary decision to accept the professional judgment of their administrators, inasmuch as that judgment was based on regular observations of the Complainant's performance and was supported by extensive documentation in the Principal's Anecdotal. 5/ Moreover, the record affirmatively demonstrates that the administrators' judgments were reasonable and accurately reflected the Complainant's classroom performance in the first semester of the 1997-98 school year. The various explanations offered by the Complainant for the problems in his classroom are merely assertions, unsupported by credible evidence and in most cases actively contradicted by the credible record evidence.

5/ Again, while the Examiner has gone into great detail in making factual findings and in addressing the many arguments made by the Complainant, the standard for review is very deferential, and affirming the Board's decision would not require that the Examiner address most of these issues. By and large, these arguments were not made to the Board, and the Board's failure to consider them would not be subject to attack as arbitrary. Arguably, the only relevant evidence on the merits of the non-renewal decision in this case is the transcript of the Board proceedings and the exhibits introduced at their hearing.

Since the decision to non-renew the Complainant's teaching contract was consistent with the contractual standards for such decisions, I conclude that the Milwaukee Public Schools did not violate the collective bargaining agreement and accordingly have dismissed this element of the complaint.

Due Process Protections

The Complainant asserts that he was denied due process in the hearings before Huffman, Vachon and this Examiner. With respect to the process before the administrators, he points to their failure to make independent inquiries about his teaching abilities or to observe him in the classroom, admitting information from his mentor teacher and refusing to let him speak on his own behalf. With respect to the hearing before the Examiner, the Complainant simply makes general reference to his difficulties with the Examiner and asserts that he will raise those matters with the Commission.

The hearing officers in the non-renewal process sit to examine the principal's evidence against the teacher. They are not advocates and they do not seek to compile evidence

themselves. That is the norm for any reviewing official in an appeal and any different approach would bring into question the neutrality of the hearing officer and raise the prospect of the accused having to answer additional charges or respond to new and shifting evidence after the non-renewal recommendation was made. Far from being a violation of due process, the practice of having hearing officers consider only the evidence brought to them by the parties is a basic guarantee of due process.

The admission of the information that Dansby secured from the mentor teacher about what issues had been addressed with the Complainant in the course of the mentor-mentee relationship was over the strenuous objections of Hatch. The objection was that such exchanges had to be treated as privileged if the mentor program was to be effective, lest new teachers be afraid that their communications with the mentor be used against them later. That objection is valid, but Huffman explained that he did not weigh the substance of the discussions between the mentor and the Complainant and admitted Dansby's summary solely to show that the mentor had expended a great deal of time and effort on improving the Complainant's performance. Given that one part of the principal's burden is to show that reasonable efforts at remediation have been made, the involvement of the mentor and the degree of effort put in by the mentor would be relevant considerations before the various reviewing officers.

As for the Complainant's charge that he was not allowed to speak in the hearings, both Huffman and Vachon denied this and the evidence is that he did make a statement before Vachon, although Hatch cut him off when he began to ramble and, in Hatch's view, hurt his own case. This may have offended the Complainant, but it is the type of judgment that an advocate is frequently called upon to make. The opportunity to be heard does not always mean that it is a good idea to be heard, particularly where the other party bears the burden of proof and the strategy is to attack the sufficiency and credibility of that party's evidence. A rambling or disorganized presentation by the Complainant would simply reinforce Dansby's allegation that he was a disorganized and incoherent teacher and cutting off such a statement was a prudent tactic by Hatch. Again, the Complainant might not have liked it, but it does not raise any issue of due process.

The Complainant also generally complains of his treatment by the Examiner. To the extent that he reserves his right to raise any such complaints before the Commission, he is perfectly entitled to do so. From the Examiner's perspective, while there were many points of contention in the course of the 13 days of hearing, they were primarily attributable to the Complainant's extremely emotional and volatile nature, his unfamiliarity with the process and his persistent unwillingness to listen to the explanations given by the Examiner.

The Claim of Racial Discrimination

The Complainant asserts that racial discrimination underlies his problems and that there was a concerted effort to remove him because he was a black male. The only support for this

claim is his own perception, a perception that he only articulated after the non-renewal proceedings were completed and it became apparent that his only chance for a review of his case was under Part VII, Section K, of the contract, providing for WERC review of discrimination complaints. The general setting of the Complainant's case and the sequence of events do not in any way suggest discrimination. He was sent to 95th Street School after Principal Dansby specifically requested that the District assign an African-American male teacher to the school. If she were biased against African-American males, she need not have made such a request. Dansby and Doss, who were the two administrators who pursued his non-renewal, are both African-American. Contrary to his theory of a white parent conspiracy, the complaints about his performance and behavior came from a mixed group of parents, half of them European American and half of them members of ethnic minorities, primarily African-American. The complaints they made were, in fact, true. Their children were receiving confusing and disorganized instruction and were being subjected to a teacher who was prone to emotional outbursts, including very aggressive and inappropriate behavior, such as grabbing students. On the face of it, there is no overtone of racial discrimination in the complaints against the Complainant or in the non-renewal process.

Neither is there anything in the results of the non-renewal to suggest animus against African-American males. The substitute teacher who replaced the Complainant in February of 1998 was Marvin Knighton, an African-American male. He was well received by administration, parents, students and other faculty. There were no complaints against him. The permanent replacement for the Complainant in the 1998-99 school year was an African-American male named Kelly James. He was likewise well received at the school. Had there been some sort of hostility to African-American males at 95th Street School and had the removal of the Complainant been a manifestation of that hostility, one might reasonably expect that it would have reduced the number of African-American males at 95th Street School. It did not.

Finally, the Complainant insisted during the hearing that his termination was part of a pattern of discharging African-American males, citing the discharges of a former principal and a former building engineer. This charge was wholly unproved. The principal was discharged for possession of drug paraphernalia, while the engineer was discharged for selling drugs within 100' of the school. The principal was an African-American male. His predecessor was another African-American male, but he left the job through retirement, after a successful tenure. The building engineer was a white man. The grounds for discharge in both cases easily fall within the scope of "just cause" and there is nothing to even suggest that they were racially motivated.

In summary, there is no evidence -- none -- that race or gender played a role in the non-renewal of the Complainant. Instead, I find that it was based solely on the legitimate and non-discriminatory belief by the administration that he was a very poor teacher. Accordingly, this portion of the complaint is dismissed in its entirety.

The Association's Duty of Fair Representation

The Association is the exclusive representative of the employees. This exclusive status confers certain legal rights on the Association and carries with it corresponding responsibilities, chief among them the duty to provide fair representation to each of its members. Fair representation is not, however, perfect representation, nor is it a guarantee that every individual member will be satisfied with each act or decision taken by the labor organization. The Commission and the courts have recognized that:

The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. ... Just as a union must be free to sift out wholly frivolous grievances which would only clog the grievance process, so it must be free to take a position on the not so frivolous disputes. . .". 6/

6/ *HUMPHREY V. MOORE*, 375 U.S. 335 (1964); *See also, MILWAUKEE COUNTY, DEC. NO. 28754-B (MCGILLIGAN, 1/97)*.

In the same vein, a Union or Association must have considerable latitude in choosing the strategies and tactics it will employ in pursuing grievances on behalf of its members. The measure of fair representation cannot be, and is not, whether the representation is successful. The duty is satisfied so long as a labor organization represents its members' interests without hostility or discrimination, exercises its discretion with good faith and honesty and acts without arbitrariness in its decision making. Thus, the legal formulation for a breach of the duty of fair representation is whether the Union's actions are arbitrary, discriminatory or taken in bad faith. 7/

7/ *VACA V. SIPES*, 386 U.S. 171 (1967); *MAHNKE v. WERC*, 66 Wis.2d 524 (1975); *GRAY V. MARINETTE COUNTY*, 200 Wis.2d 426 (Ct.App. 1996); *MILWAUKEE COUNTY, DEC. NO. 28754-B (MCGILLIGAN, 1/97)*.

The Complainant asserts that Hatch failed to properly represent him in the non-renewal process. On the contrary, the evidence is that Hatch provided very effective, if ultimately unsuccessful, representation. The Complainant's objections to Hatch's efforts appear to be entirely after-the-fact complaints about strategy and tactics that were not voiced during the non-renewal process itself and thus, could not have been responded to by Hatch. Looking at the specifics of his complaints, the Complainant criticizes Hatch for:

1. Suggesting that he might choose to resign rather than fight the non-renewal;

2. Failing to observe him in the classroom so he could personally witness the Complainant's effectiveness as a teacher;
3. Failing to call witnesses on his behalf, including Ray, Carter, Brewer and Ebert;
4. Failing to introduce evidence of parental complaints against him;
5. Failing to assert an argument that the non-renewal effort was racist in nature;
6. Failing to provide the Board with samples of instructional materials that the Complainant had brought with him to the Board hearings.

Taking these complaints in order, the first is an obvious option that almost any representative would make an employee aware of before proceeding to hearing. The testimony of Hatch, as well as general experience in the field of labor relations, indicate that an employee facing a strong case for dismissal might be able to secure a better outcome by trading a resignation for concessions in areas such as salary continuation, insurance coverage, neutral references and the like. An experienced Union representative such as Hatch would arguably have been remiss in his duty to the Complainant if he had not raised the possibility of a negotiated resignation with him.

The next two allegations appear to spring from a misunderstanding of the non-renewal process. Non-renewal recommendations are assessed on the basis of documentation provided by the principal in support of her evaluation. She bears the burden of proving the case and the hearings do not generally feature the presentation of witness testimony from the Association. Although it is possible to present testimony, it is clear that Hatch did speak to Brewer, Ray and Ebert and determined that any statements from them would support Dansby's non-renewal recommendation. The testimony presented in this proceeding confirms his judgment. None of them would have supported his claims to have been a good or even an adequate teacher and none of them would have blamed the students for his classroom problems. The decision not to present either statements or testimony from these individuals was a prudent and understandable choice by Hatch. As for Hatch's failure to observe the Complainant in his classroom, it is not at all apparent what purpose would have been served by such an observation. Hatch's personal opinion would not likely be accepted as persuasive by Dansby, Huffman or Vachon. Moreover, the Complainant was relieved of his teaching duties within days of Hatch first becoming aware of the principal's unfavorable evaluation. Thus, in addition to observations by Hatch having been pointless, there was almost no opportunity for him to personally observe the Complainant's classroom.

The Complainant's desire to have parental complaints introduced into evidence was clearly an after the fact decision. Hatch fought vigorously to have these documents removed from the Principal's Anecdotal, arguing that parents could not properly evaluate the performance of an educational professional, and the Complainant made no objection at the time. Moreover, given the extremely damaging nature of these complaints, including allegations of physical abuse of students, their inclusion in the record as Association materials would almost certainly have foreclosed any possibility of leniency by the School Board. As a strategy for rebutting the claims that he was not a competent teacher, introduction of the parental complaints would have been suicidal. They detail the parents' perceptions that he was inconsistent and arbitrary in his grading, difficult to communicate with, vindictive and abusive

to the children and was generally failing to prepare their children for middle school. The only scenario in which the parents' complaints could have aided the Complainant is that discussed, and dismissed, above – his claim of a racially motivated conspiracy against him. The evidence shows that he never suggested the racial discrimination theory to Hatch during the appeal process, so Hatch's failure to pursue the theory can hardly have been negligence on his part. Even if he had suggested it to Hatch, given the utter lack of credible proof in support of the theory, Hatch would have been foolish to pursue it. As Hatch himself testified, this is a powerful charge and if made but not proved, it would generate a backlash. The Complainant is the only one who sees racism in the complaints of the parents and the actions of the administrators. As previously observed, many of the complaining parents were themselves African-American. Dansby and Doss, the two administrators who pursued his non-renewal were themselves African-American. The teacher who replaced him at 95th Street School and who enjoyed great success and popularity with the same students, parents, faculty and administrators that the Complainant could not work with, was himself African-American. Even if he had been asked to do so, Hatch could not have made a rational argument, much less an effective argument, that the Complainant was the victim of a racially motivated conspiracy.

As for Hatch's decision not to present handouts and other instructional aids that the Complainant brought to the Board hearing as evidence, this represented a reasoned judgment that they would have little persuasive value. The essence of the case against the Complainant was that he was a poor teacher, who could not manage a classroom and could not instruct children. Hatch decided that the fact that he may have prepared handouts for his students to use would do little to refute the voluminous documentation prepared by Dansby and that taking several hours to present this material might have alienated the Board members in an already lengthy proceeding. The Complainant may not have agreed with that judgment, but it was certainly a rational choice and it does nothing to show that the Association acted arbitrarily or in bad faith in representing him before the Board.

In addition to specific complaints about Hatch, the Complainant suggests that the Association was institutionally predisposed not to represent him. The Complainant presented evidence of a cooperative effort between the District and the Association to identify and remove bad teachers and suggested that this shows that the Association lacked commitment in pursuing his case. The program he refers to, the TEAM program, is aimed at assisting tenured teachers who are having problems, primarily long term teachers suffering from burn-out. The program provides mentoring assistance and close coordination with the administration. If the mentoring assistance does not resolve the teacher's problems, he or she is subject to non-renewal. This program has nothing at all to do with first year teachers, and is not the same as the mentoring program the Complainant participated in. It has no relevance to his case and its mere existence cannot be interpreted as drawing into question the Association's commitment to pursuing his case.

Finally, the Complainant asserts that the Association proceeded in bad faith in declining to pursue a separate racial discrimination claim on his behalf after the non-renewal decision was reached. On the contrary, the record evidence shows that the Association went to extraordinary lengths to determine whether there was any plausible claim to be made on his

behalf. It engaged the services of a well regarded attorney in the field of discrimination law to review the entire record and render a written opinion. That opinion concluded, with ample justification, that there was no plausible case to be made that anyone had discriminated against him on the basis of his race or gender. As noted at several points above, I reach the same conclusion.

Hatch's efforts on the Complainant's behalf appear to have been well thought out and vigorously pursued. Far from being a failure of the duty of fair representation, the Association's efforts in this case appear to have been a textbook example of how to effectively pursue a difficult case and render a difficult employee in the most favorable possible light. The fact that Hatch was able to persuade two members of the Board of School Directors to vote to renew the Complainant's contract was, given the evidence against him, little short of a miracle. The Complainant's accusations against Hatch and the Association have no basis whatsoever and this aspect of the complaint is accordingly dismissed in its entirety.

CONCLUSION

The Complainant has the burden of proving by clear and convincing evidence that the District did not have a rational basis for deciding to non-renew him as a teacher, and/or that the decision was motivated by racial discrimination and/or that the Association failed to fairly represent him. He has failed to carry that burden on any point. Instead, the record affirmatively demonstrates that the administration acted reasonably in terminating his teaching contract, as he was not a competent teacher in the 1997-98 school year and extensive efforts at remediation had no effect. The record also affirmatively demonstrates that the complaints against him had nothing to do with his race or gender and were instead based on his remarkably poor performance as a teacher. The record further shows that the Association made extraordinary efforts to represent him and expended considerable resources in both staff time and legal bills to assess and pursue his case. He was afforded every opportunity to defend himself and rebut the charges and the fact that those efforts were unsuccessful cannot be attributed to negligence by the Association or unfairness in the procedures. In short, after fourteen days of hearing and considerable reflection and study, the Examiner can find no evidence at all that the Complainant was treated unfairly by his supervisors, the District administration, the School Board or the Association. Accordingly, the complaint is dismissed.

Dated at Racine, Wisconsin this 6th day of December, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Daniel J. Nielsen /s/

Daniel J. Nielsen, Examiner

DN/ans

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