

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION**

In the Matter of

QUINCY COMMUNITY ACTION  
PROGRAMS, INC.

Employer<sup>1</sup>

and

SERVICE EMPLOYEES  
INTERNATIONAL UNION, LOCAL 888,  
AFL-CIO

Petitioner

Case 1-RC-21716

**DECISION AND DIRECTION OF ELECTION**<sup>2</sup>

The Service Employees International Union, Local 888, AFL-CIO (Union) seeks to represent a unit of approximately eighty (80) full-time and part-time employees and substitute employees employed by Quincy Community Action Programs, Inc. (QCAP or Employer) in its Head Start program at six Massachusetts locations. Specifically, the Union seeks to include lead teachers and lead teacher substitutes, teachers and teacher substitutes, classroom aides and classroom aide substitutes, bus drivers and bus driver substitutes, bus aides and bus aide substitutes, family resource specialists, family service workers, health assistants, nutrition assistants, the receptionist at the Employer's Eldridge School facility, and the bilingual

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<sup>1</sup> The name of the Employer appears as amended at hearing.

<sup>2</sup> Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

translator.<sup>3</sup> The sole issue in this proceeding is the supervisory status of the lead teachers in the Head Start Program.

QCAP contends that its 16<sup>4</sup> lead teachers are statutory supervisors by virtue of their authority to assign work to and responsibly direct, discipline, and evaluate the Employer's 30 teachers and 11 classroom aides. Therefore, the Employer contends they must be excluded from the proposed unit. I find, in agreement with the Union, that the lead teachers are nonsupervisory employees and I will include them in the unit found appropriate.

## **ORGANIZATIONAL STRUCTURE OF THE EMPLOYER**

QCAP, headquartered in Quincy, Massachusetts, is a private, non-profit agency that operates, among other programs, a Head Start program for early childhood education and related services to low- and moderate-income families. The Employer operates Toddler/Early Head Start programs for children aged 15 months to 3 years and Pre-School Head Start programs for children aged 3 to 5 years at six Massachusetts locations: the Weymouth Naval Air Base in Weymouth, the Eldridge School in Braintree, the Germantown facility in Quincy, the Gould School in Hull, the North Quincy High School in Quincy, and the Braintree High School in Braintree.

QCAP is headed by an Executive Director, who reports to a Board of Directors. The Head Start Policy Council, which is composed of parents and community representatives, has the ultimate policymaking authority over the Head Start programs, including the approval of all hiring and termination decisions. The Head Start Program Director, who reports to the Policy Council, directly supervises the Assistant Program Director, the Early Head Start Coordinator, the Education Coordinator, the Family Services Coordinator, the Transportation Coordinator, and the Children's Services Coordinator.

Angela Card, who serves in two capacities at QCAP, is the Education/Early Head Start Coordinator and is one of four education specialists. As Education/Early Head Start Coordinator, Card supervises the education specialists and is responsible for the overall program curriculum, providing training and professional development to program staff, and ensuring that developmentally appropriate practices are in place and that the program is complying with state and federal regulations.

The four education specialists directly supervise the 16 lead teachers, whose status is at issue in this case. The education specialists assist the lead teachers with classroom issues, including problem solving and ensuring that classroom management reports, lesson plans, child

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<sup>3</sup> Although the Eldridge School receptionist and the bilingual translator were not included in the original unit description contained in the petition filed by the Union, the parties stipulated at the hearing to their inclusion in the bargaining unit.

<sup>4</sup> It appears that there are also two lead teacher substitutes. Other than noting their existence, however, there was no position taken on the record regarding their status, nor was there any testimony on whether they fulfill any of the duties that the Employer maintains make the lead teachers statutory supervisors. In light of my finding that the lead teachers are not statutory supervisors, the substitute lead teachers are likewise included in the unit found appropriate.

assessments, bimonthly staff evaluations, and other required paperwork are completed correctly and in a timely manner.<sup>5</sup> Card works out of QCAP's Germantown facility.

The other three education specialists are Janet Widdop, Nancy Botelho, and Katherine Young. Widdop serves as education specialist for the Braintree High School, North Quincy High School, and the Gould School locations. Botelho is education specialist at the Eldridge School location. There is nothing in the record indicating whether Botelho is education specialist at more than the Eldridge School location. Nor is there any indication where Young serves as education specialist.

At the Germantown facility, Card is the highest-ranking employee on site. Her job duties as Education Coordinator require her to travel to other job sites. When she does so, she must complete paperwork through the Office of Child Care Services (OCCS) designating an administrator in her absence. She has, at one time or another, designated each of the three lead teachers in Germantown as site administrator in her absence. In order to serve as site administrator under such circumstances, the lead teachers must be certified as "director qualified," meaning that they must have completed a course in day care administration. Not all of the lead teachers are "director-qualified."

Staffing and work schedules vary at QCAP's different Head Start facilities, depending on the number of classrooms and whether the facility offers full-day or part-day programs. The Germantown facility, for example, has three full-day programs, employing three lead teachers, seven teachers (including a teacher floater<sup>6</sup>), and three classroom aides. Each of the classrooms is staffed by a lead teacher and an opening teacher, who work from 7:00 a.m. to 2:30 p.m., an afternoon or closing teacher who works from 10:30 a.m. to 6:00 p.m., and a closing aide, who works from 1:00 p.m. to 6:00 p.m. Between 2:30 and 6:00 p.m., there is no lead teacher overseeing the classroom.<sup>7</sup> North Quincy High School, Braintree High School, Weymouth Naval Base, the Gould School, and the Eldridge School all have part-day programs, also referred to as ACF classrooms, with variable staffing patterns. Some of these classrooms operate from 8:30 a.m. to 12:30 p.m., while others operate from 10:00 a.m. to 2:00 p.m.<sup>8</sup>

Union witness Amelia Hunter has worked for QCAP for more than seven years, including three as a lead teacher at the Weymouth facility. Before assuming her current position at

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<sup>5</sup> At the hearing the parties stipulated that the Education Specialists, Education Coordinator, and Transportation Coordinator, which is currently unfilled, are supervisory positions within the meaning of Section 2(11) of the Act and I so find.

<sup>6</sup> A teacher floater is assigned to a site, but not a particular classroom, and on any given day will be placed in whichever classroom needs additional coverage.

<sup>7</sup> Although QCAP witness Angela Card testified that she does not consider teachers to be the supervisors of the aides between 2:30 and 6:00 p.m. after the lead teacher leaves for the day, the job descriptions for the Preschool Teacher and Toddler Teacher both state that the teacher "assume[s] the responsibility of the classroom in the absence of the Lead Teacher."

<sup>8</sup> Although the record contains details concerning the staffing of the Germantown facility, it does not contain similar details with respect to the other 5 facilities.

Weymouth, Hunter worked as a teacher at the Braintree and Germantown facilities. At Weymouth, Hunter works with two teachers and a classroom aide. Hunter and one of the two teachers work from 7:00 a.m. to 2:30 p.m. The second teacher works from 10:30 a.m. to 6:00 p.m. The aide works from 8:30 a.m. to 4:00 p.m.

Union witness Kathleen Spencer has worked for QCAP since 1989. She was initially employed as an aide, then as a teacher, and from 1997 until present has worked as a lead teacher at the Snug Harbor School,<sup>9</sup> North Quincy High School, and the Eldridge School.

## **SUPERVISORY STATUS OF LEAD TEACHERS**

The parties agree that the Employer's lead teachers do not have the authority to hire, discharge, transfer, lay off, recall, promote, adjust grievances, or to effectively recommend any such actions. The parties disagree, however, whether lead teachers possess the authority to discipline, evaluate, assign, and/or responsibly direct employees.

### **Authority to discipline**

The Employer's employee handbook sets forth a three-tiered progressive disciplinary system. Under this system, the first step is job counseling; the second is a written warning; and the third is "suspension for investigation." The termination policy, which is set forth in a separate section of the handbook, provides that only QCAP's Executive Director, or its Associate Director or Program Director with the agreement of the Executive Director, may discharge QCAP employees. The Policy Council must approve all termination decisions.<sup>10</sup>

The handbook states, under the heading "Job Counseling,"

Job counseling may be given to an employee who is failing to perform his/her job duties adequately. The employee's supervisor will present his/her concerns about the employee's performance or behavior, and the employee is offered the opportunity to present his/her response. Actions that can be taken to correct the employee's performance will be discussed and agreed upon. Notes describing a counseling session are kept by the supervisor, and no further action is taken if the deficiency is corrected.

If a lead teacher witnesses inappropriate conduct by a staff person, (s)he is responsible for intervening and making a written record of his/her observations in the form of a contact note or log to permit the Education Specialist to follow up on the incident. Education Coordinator

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<sup>9</sup> Until about May 2003, QCAP operated a Head Start program at the Snug Harbor School in Quincy.

<sup>10</sup> The handbook provides that, "[i]n the case of Head Start personnel, the Head Start Policy Council must be consulted in the decision-making process, prior to the point of seeking its approval. The decision cannot be finalized to dismiss a Head Start employee until Policy Council agreement is obtained. If the Policy Council does not approve, the proposed action cannot be taken until agreement is reached between the Policy Council and the person initiating the dismissal."

Card cited an example of a lead teacher, Kathy Donnelly, who submitted a written account of her observation of a staff person who fell asleep during rest time. Card followed up with the staff person.<sup>11</sup>

Once a lead teacher brings an issue of concern about a staff member to the attention of the Education Specialist, the next step in the disciplinary process is a counseling memo. Lead teachers do not have the authority to draft counseling memos. Rather, their only role in this step is one of information-gathering.

Teachers who observe inappropriate behavior by either a lead teacher or an aide may bring it to the attention of the Education Specialist, who will make a preliminary determination about whether follow-up is required and, if so, will ask the teacher to document his or her observations. As with the lead teacher, the teacher's report to the Education Specialist may serve as a basis for disciplinary action against the lead teacher.

Lead teachers are not consulted by their superiors for their opinion regarding the appropriate level of discipline for a staff member. They do not possess the authority to issue written warnings or higher-level discipline. Moreover, the employee handbook provides that "[t]he authority for disciplinary action rests with Program Directors, the Associate Director, and/or the Executive Director, depending on the action taken."

### **Authority to assign and responsibly direct**

The duties and responsibilities of lead teachers include curriculum planning and implementation; establishment of a safe, healthy learning environment in compliance with applicable health, safety and sanitary regulations; observation and monitoring of children's progress; observation, direction, supervision, and evaluation of classroom staff; completion of required record keeping; participation in staff, team, and supervision meetings; and adherence to the NAEYC Professional Code of Ethics.

The Employer's job descriptions for lead teachers provide that a Bachelor's or Associate's degree in Early Childhood Education (ECE) and a Child Development Associate (CDA) are preferred qualifications. They further require lead teachers, at a minimum, to have a high school degree or equivalent, a specified number of credits in courses related to their position, and 27-36 months of work experience, including at least nine months experience with preschoolers, infants, or toddlers (depending on the age group of the classroom).<sup>12</sup>

Lead teachers spend most of their time in the classroom teaching and working with children. All classrooms follow essentially the same schedule, although the timing of particular activities varies from classroom to classroom. A typical day begins at 7:15 a.m. As students arrive, they engage in "free play," choosing their own areas of play. At about 9:00 a.m., the

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<sup>11</sup> The record does not indicate what discipline, if any, was issued.

<sup>12</sup> The primary difference in qualifications between teachers and lead teachers is the amount of coursework they are expected to have completed in related fields.

children clean up, wash their hands, and eat breakfast. The children who finish eating first engage in an activity on the floor until the others have finished. At about 9:40 a.m., the children have “circle time,” which involves singing, some talking, and listening time. They might learn about the calendar and/or hear a story. After circle time, the children have the option to engage in “free play” again, or to do an art project. At about 11:00 or 11:30 a.m., all of the children participate in small group or gross motor time, during which they do physical exercise while listening to a record or tape. Before lunch, the children meet again in a small circle and wash their hands. They eat lunch at around noon. After lunch, they play with “manipulative toys,” blocks or Lincoln Logs, and then go to the bathroom, in preparation for their naptime. They nap until about 3:00 p.m. If they do not fall asleep within about 45 minutes, they are given a toy to play with and rest quietly while the others sleep.<sup>13</sup>

The record keeping aspect of the lead teachers’ position includes the completion, for each child, of a Child Observation Record (COR), which consists of anecdotal observations that are used in assessing the child’s developmental progress. Under the COR system, the school year is divided into three assessment periods during each of which the teaching team completes certain required paperwork, including maintaining anecdotal observations on each child in the class in that child’s COR booklet.

Spencer testified that she meets with the teachers and aides in her classroom at the beginning of the program year to decide as a team which staff member will maintain anecdotal notes on each child. At the end of each assessment period, the team reconvenes to determine whether a particular staff member will continue maintaining anecdotal notes on the same child, or whether they will rotate that responsibility.

Teachers are expected to, and do, assist the lead teacher to plan and implement the classroom curriculum, complete required record keeping, and maintain a safe, healthy learning environment in compliance with applicable health, safety, and sanitary regulations. They are expected to supervise and evaluate classroom staff and volunteers, as designated by the Education Specialist.

Since teachers may, in some instances, have more formal education and experience in particular areas than lead teachers, they may teach subjects in their area of expertise, subject to the lead teacher’s assessment that the proposed lesson or activity is safe and appropriate for the children. Both lead teachers and teachers are expected to be familiar and run their classrooms in compliance with federal and state regulations that govern the program’s operation, as well as the accreditation standards of the National Association for the Education of Young Children (NAEYC).

According to Card, lead teachers are expected to initiate teaching team meetings. In Lead Teacher Spencer’s classroom, the lead teacher, teachers, and aides meet weekly to plan the curriculum for the coming week, incorporating into their curriculum subjects in which the children have expressed an interest, as well as parental suggestions. The lead teacher, teachers, and aide decide together which lessons to present, at what time, and who will lead each activity.

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<sup>13</sup> The record did not indicate which activities the children engage in after they wake up from their naps.

Lead Teacher Hunter testified that, in her classroom, the morning teacher, who has a degree in education, prepares most of the lesson plan and curriculum, and leads discussions about the curriculum in team meetings.<sup>14</sup> She testified that the aide in her classroom enjoys doing science and cooking projects, and leads those activities. In the past, Hunter had aides who wanted to be teachers, and they assisted in completing the paperwork. Hunter's current aide chooses not to do so. The teachers in Hunter's classroom complete much of the COR paperwork, as they attended a recent training (which Hunter did not attend) regarding a new system that QCAP implemented this year. She testified that the teachers and lead teacher are jointly responsible for making sure the paperwork is completed.<sup>15</sup>

Hunter testified that if the lead teacher, teacher, and aide disagree as to who will perform a particular activity, they decide as a team who is best suited to perform the task. She testified that she has never had to direct a team member to perform a task against his or her will.

A lead teacher or teacher who observes an unsafe condition in the classroom is responsible for bringing it to the attention of the appropriate authority. Although Spencer testified that the lead teacher has the authority to require children to vacate the classroom in the event that a serious safety issue arises, Hunter's testimony indicated that such authority might, under certain circumstances, be subject to the approval of supervisors or managers higher-up in the chain-of-command. For example, Hunter testified that on a number of occasions when she recommended closing the classroom due to temperature control issues, she was overruled by Ann Leister, the Assistant Program Director.

If a child is injured in the classroom, the lead teacher, teacher, or aide who witnessed the injury completes an injury form. The form must be signed by the Education Specialist, the parent, and either the lead teacher or a teacher.

Although the Employer's witnesses testified that the lead teacher is ultimately held accountable for what occurs in the classroom, including the teachers' and aides' carrying out of certain classroom responsibilities, this contention is not fully supported by the record. Education Specialist Widdop testified that if, for example, a child is injured by an electrical outlet that is left uncovered after the lead teacher has left for the day, the Education Specialist discusses the matter with the teacher involved, the matter becomes part of the lead teacher's bimonthly evaluation, and, if the problem is ongoing, the lead teacher may be subject to discipline. No evidence was presented to indicate that any lead teacher had, in fact, ever been disciplined or otherwise held accountable for incidents that occurred in a classroom outside of his or her scheduled work hours.

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<sup>14</sup> Hunter testified that she has no degree.

<sup>15</sup> The only instance that Widdop cited when questioned about whether she knew of any lead teachers who completed paperwork without assistance from the teachers in their classroom involved a new assessment. She explained that the lead teacher had chosen to do the paperwork herself because the teacher was new.

The “Lead Teacher/Teacher Supervision Tool,” which is used by the Employer to conduct bimonthly evaluations of lead teachers and teachers, indicates that both teachers and lead teachers both are expected to “ensure that all outlets are covered at all times.” In addition, the job descriptions provided by the Employer for lead teachers require them to “establish and maintain a safe, healthy learning environment in compliance with ACF and OCCS health and safety and sanitary regulations.” The job descriptions for teachers and classroom aides contain the same language, except that teachers and aides are merely required to “maintain” and not to “establish and maintain” a healthy learning environment.

Card testified that the lead teachers are responsible for finding substitutes for teachers and aides who are absent from work. Both Spencer and Hunter testified to the contrary, that is, it is the staff members’ responsibility to find coverage for themselves if they will be absent from work.

The “Absence Procedures for Education Staff” promulgated by the Employer provides that a staff member who is absent must notify both the lead teacher and/or teacher, and the Education Specialist. It further provides that the staff member is responsible to find appropriate staff coverage, and that “If you are unable to do so you must notify your Education Specialist to help you.”

Spencer testified that it is typical for a lead teacher who is absent from work to have an aide or teacher cover for him or her. She testified that she had arranged for her classroom aide to cover for her while she was serving as a witness at the representation case hearing.

Teachers and aides complete their own time cards and submit them to the lead teachers, who initial them if the hours recorded on the time card are correct. Since teachers and aides work set hours every week, the lead teacher’s initial the time cards to show that the hours recorded conform to the teachers’ or aides’ scheduled hours. If an aide or teacher stays an extra hour, (s)he will only sign off on the time card if the Education Specialist had authorized the staff member to work outside of his or her scheduled hours. If (s)he finds that the hours recorded on the time card differ from the staff member’s scheduled hours, (s)he will note it on the time card.

Lead teachers do not have the authority to grant time off to teachers or aides. If a teacher or an aide wishes to take time off, his or her request must be approved by the Education Specialist. Although a lead teacher may request additional staffing, such requests are subject to the approval of the Education Specialist. Lead teachers also do not have the authority to send a teacher or an aide home or to approve requests by teachers or aides to change their work schedules.

Lead teacher Hunter, who is about to take a maternity leave, made an unsolicited suggestion to Widdop, her Education Specialist, as to who should fill in for her in the classroom during her absence.

## **Authority to evaluate**

According to the Employer, lead teachers participate in three types of evaluations of teachers and classroom aides: probationary evaluations, bimonthly, and annual evaluations. A different process and evaluation tool is used for each process.

### **Probationary evaluations**

The probationary evaluation form does not explicitly request a recommendation from the lead teacher concerning the staff member's continued employment status. It contains three substantive headings: "areas of strength," "areas for improvement," and "overall performance," with space below for written comments or a narrative.

Angela Card was the only witness to testify with respect to lead teachers' responsibility for evaluating probationary employees. She testified that the lead teacher completes the probationary evaluation after a teacher or classroom aide has been employed by QCAP for 90 days. In response to questioning by QCAP's counsel about whether she was aware of any situations in which a lead teacher completed the probationary evaluation and the probationary employee was dismissed, Card testified that she recalled one such instance involving a staff person, possibly a teacher, who was not under her direct supervision. She testified that the lead teacher completed the probationary evaluation and that, based on the information contained in the evaluation, the Policy Council decided to terminate the staff member's employment. Card testified (although her basis for knowledge was not established), that "the information provided in the document is what caused Policy Council to see that this person should no longer be – and also I believe there were observations and additional documentation." Neither Card nor any other witness was questioned further about this issue.

### **Bimonthly evaluations:**

Lead teachers complete bimonthly evaluations of both teachers and classroom aides. The form used in evaluating teachers is entitled "Lead Teacher/Teacher Supervision Tool."<sup>16</sup> The form used to evaluate aides is entitled "Classroom Aide Supervision Tool." These "tools" list routine functions that the aides, teachers, and lead teachers perform on a daily basis. If an aide or teacher is not responsible for performing a particular function, the lead teacher will note on the supervision tool that the category is "not applicable" to the staff member being reviewed.

The two bimonthly supervision tools differ slightly from one another, specifically in regard to the staff member's level of responsibility in the classroom. For example, the "Lead Teacher/Teacher Supervision Tool" lists health and safety-related responsibilities and curriculum and teaching-related responsibilities not listed on the aides' supervision tool. The Classroom Aide Supervision Tool provides space for the signatures of the aide, the lead teacher and the supervisor. The Lead Teacher/Teacher Supervision Tool provides space for the signature of the lead teacher or teacher, an observer, and the supervisor.

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<sup>16</sup> The Education Specialists use the same bimonthly supervision tool to evaluate lead teachers that the lead teachers use to evaluate teachers in their classrooms. The record is silent as to how the tool is used with lead teachers, and whether, unlike the teachers' and aides' bimonthly evaluations, the lead teachers' bimonthly evaluations are relied on in completing their annual evaluations.

According to both Spencer and Hunter, the supervision tools are primarily used by lead teachers to boost teachers' and aides' morale by highlighting what they are doing well, and what the lead teacher would like them to do more of in the classroom. The record contains no evidence that they are used to determine raises or promotions. Both Spencer and Hunter testified that lead teachers do not rely on them in completing teachers' or aides' annual evaluations, nor have they been instructed to do so.

Lead teachers often consult with the afternoon teachers in their classrooms in completing the aides' bimonthly evaluations because when the lead teachers leave work at 2:30 p.m., they leave the classroom in the hands of an afternoon teacher and an aide for the remainder of the day.<sup>17</sup> Lead teachers whose aides start work at 1:00 p.m. have the opportunity to observe the aides only for about one and one-half hours and during part of that time the children are sleeping. Thus, on a daily basis, the afternoon teachers have more opportunity than the lead teachers to interact with the aides and to observe and evaluate their performance.

Lead teacher Hunter testified that she has an aide who works from 8:30 a.m. to 4:00 p.m., and that, in performing the aide's bimonthly evaluations, she relies heavily on the teacher's input. She explained that after the lead teacher leaves, staff members assist the children in wrapping up the program day by assisting them if they are wet when they wake up, putting away mats, preparing snacks, and helping the children get onto the school bus. At this point in the afternoon, she explained, parents come into the classroom, which requires a level of interaction with staff members. Hunter testified that for this reason she relies on the teacher's input in rating the aide on each of the categories in the bimonthly evaluation form.

After completing the bimonthly evaluations, lead teachers give them to their Education Specialist to review. After the Education Specialist reviews them, primarily for spelling or grammatical errors and to review the lead teachers' comments, she returns them to the lead teacher. The lead teacher then "conferences" (reviews) the evaluation with the staff member, the lead teacher and staff member sign it, and it is returned to the Education Specialist. The Education Specialist reviews the evaluation once more, primarily to read any comments added by the staff member, she signs it, and returns it to the lead teacher.<sup>18</sup>

#### Annual evaluations:

Lead teachers prepare annual evaluations for both teachers and classroom aides. They begin preparing the evaluations toward the end of the school year, in about May. The form is the same one used to evaluate all Head Start employees at QCAP.

On the first page of the evaluation form is a section entitled "overall rating/merit increase." The remainder of the form consists of four substantive sections, three of which

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<sup>17</sup> The record indicates that some aides work from 8:30 a.m. to 4:00 p.m. while others work from 1:00 p.m. to 6:00 p.m.

<sup>18</sup> Lead teachers do not discuss their ratings on the supervision tools with their respective Education Specialists. Instead, they simply give the completed forms to their Education Specialists who read and sign them, and then return them to the lead teachers so that they can discuss them with the staff member who is being evaluated.

require narrative responses. The fourth section, entitled “Performance Factors,” requires the lead teacher to rate the staff member on 15 performance factors, and three “optional performance factors specific to the position or department,” by placing an “x” in the box under one of the following headings: “not meeting job expectations,” “meets job expectations,” “consistent achievement,” and “outstanding achievement.” The form does not assign a numerical value to the ratings. The optional factors include “resource allocation,” “leadership,” and “people development/ supervision.” Next to each rating box is a space designated for “comments,” and the form encourages lead teachers to add comments as needed to support their ratings. The signature section of the form has spaces for signatures of the following individuals: staff member, supervisor, Program Director, and Associate Director.

The lead teacher completes the evaluation, rating the staff member on each of the applicable performance factors, but appears to leave the “overall rating/merit increase” space blank.<sup>19</sup> Lead teachers are expected to support their performance factor ratings with specific examples. The annual evaluation process includes a self-evaluation by the staff member who is being evaluated.

Lead teachers rely on their own observations and information from the previous year’s evaluation in completing teachers’ and aides’ evaluations. They determine goals for particular staff members by looking at the goals they had set for themselves the previous year and evaluating whether they have been achieved. If they have not, the lead teacher carries the previous year’s goal over to the new program year. (S)he may set additional goals as well. For example, if a teacher is working on her Associate’s degree or wants to become a lead teacher, the lead teacher may develop goals that are in line with that objective, as well as, perhaps, goals related to curriculum or paperwork.

In completing the classroom aide’s evaluation, Spencer testified, she relies heavily on the comments of the afternoon teacher, who works more closely with the aide than she does. The teacher assists her in identifying goals and in assigning ratings on each of the performance factors for the classroom aide.

After completing the evaluation, the lead teacher passes it on, without signing it, to the education specialist, who sends it up through the chain of command. The evaluation then passes to the Education Coordinator, the Program Director, the Associate Director, and finally to the Executive Director. It is not uncommon for the evaluations to be modified as they go up through the chain of command. Although the upper-level supervisors and managers who review the evaluations do not actually change the lead teachers’ words or ratings, they may add their own comments.

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<sup>19</sup> All but one of the witnesses (Card) testified that lead teachers leave the overall rating/merit increase space blank, to be completed by the Program Director, and that they are not advised before they submit their evaluations to the Education Specialist of the amount of the increases, or which overall rating is associated with which merit increase.

The Program Director assigns an overall rating to the employee, but the record contains no conclusive evidence about how she arrives at the rating.<sup>20</sup> The Program Director may ask an Education Specialist if (s)he agrees with the proposed rating for a particular staff member, and has, in fact, changed the rating based on an Education Specialist's response to such an inquiry. The record did not indicate whether, in deciding upon an employee's overall rating, the Program Director takes into account the input or observations of other management representatives. Lead teachers are not asked their opinion with respect to a particular staff member's overall rating.

After the Program Director completes the "overall rating" section of the evaluation and, if she chooses to do so, adds her own comments, the evaluation is returned to the lead teacher via the Education Specialist. If it contains no additional comments or proposed changes, the lead teacher "conferences" the evaluation with the teacher or aide who is being evaluated. If it does contain comments, the lead teacher will meet with the Education Specialist to discuss any suggested changes. Once those changes have been incorporated into the evaluation, it goes up, once again, through the chain of command, and comes back down, eventually, to the lead teacher, for conferencing with the teacher or aide.

Education Specialists sometimes suggest that lead teachers change ratings or otherwise supplement their evaluations. One instance was recounted in the record in which Education Specialist Widdop told the lead teacher that her comments regarding the staff member supported a higher rating than the lead teacher had given the staff member, and the rating was increased from "meets job expectations" to "consistent achievement."

An Education Specialist may return the evaluation to the lead teacher if she fails to provide concrete examples to support her ratings. Education Coordinator/Education Specialist Card has instructed lead teachers to change ratings. If an Education Specialist and a lead teacher disagree about a rating, the Specialist makes a note of the disagreement, and passes the evaluation on to the Education Coordinator. If necessary, the evaluation is sent on to a higher-level manager who determines the appropriate rating. The Associate Director and/or Program Director have also changed a lead teacher's performance factor ratings on a teacher's or an aide's evaluation.

Spencer, lead teacher at the Employer's Eldridge facility, has been directed by the Education Specialist who supervises her, Nancy Botelho, to rewrite an evaluation which Botelho felt was not professional. She has also had evaluations returned to her with comments from Botelho and others higher in the chain of command and has made changes to her evaluations after meeting with Botelho about them.

Hunter, lead teacher at the Employer's Weymouth facility, has also been directed by her Education Specialist to change staff evaluations. On one occasion Widdop, her Education Specialist, advised her to either replace the word "excellent" (which she had written in the

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<sup>20</sup> The overall rating assigned by the Program Director may include pluses or minuses, e.g., "consistent achievement plus" or "consistent achievement minus." Lead teacher Spencer testified that she does not know who adds the plus or minus, or what effect, if any, it has on the amount of an employee's merit increase. The record contains no evidence to shed light on this question.

“comments” section of one of the performance factors) with a word associated with a lower rating, or to increase the rating.

On May 5, 2003, the Program Director and Associate Director held a training session for QCAP supervisors, including lead teachers, regarding how to complete the annual evaluation form. Not all lead teachers, to include the two who testified at the hearing, attended this session. The Employer did attempt to reach at least some of the lead teachers who had not attended by going to their job sites and reviewing the training outline with them. In one such instance, Assistant Program Director Ann Leister met with lead teachers at the Weymouth Naval Air Base in June or July 2003. During the meeting, Leister told the lead teachers that they should not give teachers and aides a rating of “outstanding” on the performance factors because “everyone has areas of improvement.” She informed the lead teachers that if they gave an “outstanding” rating to a teacher or aide on their evaluation, the evaluation would probably be returned to them.<sup>21</sup>

Carol McDonough, a 25-year non-supervisory employee of QCAP who has worked as a bus driver for the past 20 years, testified that she evaluates bus aides using a form similar to the form used to evaluate lead teachers, teachers, and aides. She testified that she does not fill in the overall rating or merit increase. McDonough has been asked by her supervisor, the Transportation Coordinator, to change a bus aide’s evaluation to reflect a concern about the manner in which the aide deals with parents. McDonough testified that her supervisor told her that the evaluation would not be accepted as written because “the program director had a problem with [McDonough] stating the aide was okay.” McDonough refused to make the change, and, she testified, the evaluation was changed to reflect that the aide had been involved in an incident with a parent.<sup>22</sup>

### **Secondary indicia**

The lead teachers’ job descriptions list among their duties and responsibilities, “observe, document, supervise and evaluate classroom staff as designated by the Early Head Start Coordinator,” “complete all record keeping as required by OCCS and ACF including but not limited to: children’s files, screening, injury and incident reports, family reports, lesson plans, ongoing goal, contact and attendance sheets, case management concern and follow-up notes,” and “participate in staff, team and supervision meetings; complete training hours annually as required by OCCS regulations.”

By comparison, the teachers’ job descriptions list among their duties and responsibilities, “supervise and evaluate classroom staff and volunteers as designated by the Education Specialist,”<sup>23</sup> “assist the Lead Teacher to complete all record keeping as required by OCCS and

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<sup>21</sup> Lead Teacher Hunter testified that since the meeting she had given staff members outstanding ratings and that the evaluations have not been returned to her.

<sup>22</sup> The Employer objected to McDonough’s testimony on relevance grounds. I find that McDonough’s testimony is relevant to the extent that, as a bargaining unit member, she performs a similar evaluation function to that performed by the lead teachers, whose status is at issue here.

<sup>23</sup> Angela Card testified, on cross-examination, that the phrase “evaluate classroom staff” in the preschool teacher’s job description means that the teacher is supposed to observe the aide’s performance, make sure that (s)he is not

ACF including but not limited to: children's files, injury and incident reports, family reports, lesson plans, ongoing goal, contact and attendance sheets," "participate in staff, team and supervision meetings as a valued member of the teaching team; complete training hours annually as required by OCCS regulations," and "assume the responsibility of the classroom in the absence of the Lead Teacher."<sup>24</sup>

Moreover, while the job descriptions for teachers list the lead teacher as their supervisor, the classroom aides' job descriptions list both the teacher and lead teacher as their supervisors.

As indicated above, the annual evaluation forms that are used for all Head Start staff contain three optional performance factors, one of which is supervision. The record contains no testimony or other evidence as to whether lead teachers, teachers, and/or aides are typically evaluated on this factor, or whether it only applies to higher-level employees.

At a September 2003 orientation program for all Head Start staff, the Education Specialists distributed to the teachers and lead teachers in attendance a document entitled "Year at a Glance." The document identifies tasks to be performed by members of the teaching team daily, weekly, every other week, monthly, every other month, twice a year, and on an ongoing or as needed basis. Although in some instances the document specifies that the responsibility for a particular task lies with the lead teacher, many of the responsibilities are not attributed to any particular member of the teaching team. For example, under the subheading "Supervision Checklist and Observation," the document states that lead teachers must document an anecdotal observation, of approximately 15 minutes, of the teacher's and classroom aide's interaction with children and complete the performance checklist, give it to the Education Specialist to review and sign, and then conference it with the staff person. In a section entitled "Procedures for Collection of Child Outcome Measures," the document states that lead teachers, teachers, and classroom aides are responsible for collecting anecdotal observations of the children as part of the Child Observation Record (COR). Other responsibilities, such as updating of the Early Head Start (EHS) and Pre-School classroom management reports, are apparently assigned to teachers, rather than lead teachers.<sup>25</sup>

Hunter testified that at no time during the orientation session were staff members informed that, where the document states that teachers are responsible for a particular task, the term "teachers" referred only to "lead teachers." In any event, not all lead teachers attended the orientation session, and some teachers may have designated a teacher to attend in their place because of conflicting priorities.

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hurting the children, and that (s)he is using an appropriate tone of voice. According to Card, the teacher is responsible for communicating this information to the lead teacher through a written contact note, and it is the lead teacher, not the teacher, who is responsible for following up on the information.

<sup>24</sup> The record contains job descriptions for the Toddler Lead Teacher, the Preschool Lead Teacher, Teacher Floater, Preschool Teacher, Toddler Teacher, and Classroom Aide positions.

<sup>25</sup> The record indicates that, in practice, either lead teachers or teachers may complete the classroom management reports.

The Employer's wage and grade schedule for Head Start employees indicates that lead teachers are in job grade 5, and that they earn \$12.60-\$14.70 per hour, depending on their level of education and experience. Teachers are in job grade 3, and earn \$11.025-\$13.125 per hour. Classroom aides earn \$8.925 per hour. The Family Resource Specialists and Family Resource Workers, both undisputed as classifications in the bargaining unit, are also in job grade 5.<sup>26</sup>

## **ANALYSIS**

### **Supervisory status of lead teachers**

Section 2(11) of the Act, 29 U.S.C. Section 152, provides:

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

Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the supervisory class. Mississippi Power Co., 328 NLRB 965, 969 (1999), citing Ohio Power v. NLRB, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. Hydro Conduit Corp., 254 NLRB 433, 437 (1981). Thus, the exercise of Section 2(11) authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status. Chicago Metallic Corp., 273 NLRB 1677 (1985). As pointed-out in Westinghouse Electric Corp. v. NLRB, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in Hydro Conduit Corp.: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." See also Quadrex Environmental Co., 308 NLRB 101, 102 (1992). In this regard, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. Bowne of Houston, 280 NLRB 1222, 1224 (1986).

The party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. Kentucky River Community Care, Inc., 121 S. Ct. 1861, 1867 (2001). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991). Similarly,

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<sup>26</sup> The testimony in the record is scant regarding the extent to which lead teachers are the highest-ranking employees at any particular job site. The only record evidence concerning this was derived from the testimony of Angela Card, who testified that she is the highest ranking employee at the Germantown facility.

an individual's duties and responsibilities, and not his or her job title, determine his or her status as a supervisor under the Act. New Fern Restorium Co., 175 NLRB 871 (1969).

### **Authority to Discipline**

Lead teachers do not possess any authority to issue written warnings or higher-level discipline. The Employer contends that the lead teachers are statutory supervisors because they are responsible for job counseling, the first level of discipline set forth in the Employer's handbook. I disagree.

The lead teachers' primary role is to record facts surrounding incidents that could give rise to discipline, without investigation and without any accompanying recommendation. Lead teachers are responsible for attempting to stop inappropriate conduct by a staff member if they witness it and then to make a written record of their observations in the form of a contact note or log so that the Education Specialist can follow up with the staff member. Lead teachers do not have the authority to draft counseling memos, but their observations may serve as the basis for such memos.

Testimony concerning the incident involving lead teacher Kathy Donnelly, who apparently observed a staff member sleeping and brought the matter to Education Specialist Card's attention by documenting her observation in writing, is further evidence of the nonsupervisory nature of the lead teachers' role in disciplinary action. Education Specialist Card, not Donnelly, followed up with the staff person concerning the incident. There is no evidence that Donnelly's written account was accompanied by a recommendation concerning what action should be taken or that Donnelly's actions tangibly affected the staff member's job status.

The putative supervisor's role in the disciplinary process must be more than merely reportorial and the issuance of "minor" discipline such as verbal warnings must tangibly affect employees' job status or tenure before the individual is considered supervisory. See Northcrest Nursing Home, 313 NLRB 491, 497 (1993); Ahrens Aircraft, Inc., 259 NLRB 839, 842-3 (1981). Where, as here, the alleged supervisor's role in the disciplinary process is limited to recording the facts surrounding a potential disciplinary incident, as observed, without further inquiry and without a recommended disposition, his or her role is considered merely reportorial and not indicative of statutory supervisory status. See Loyalhanna Health Care Associates, 332 NLRB 933 (2000), citing Ten Broeck Commons, 320 NLRB 806, 812 (1996).

Accordingly, I conclude that lead teachers do not have the authority to discipline or to effectively recommend the discipline of employees.

### **Responsible direction and assignment of work**

I find that the lead teachers in this program do not responsibly direct other employees or assign them their work.

In NLRB v. Kentucky River, supra at 121 S. Ct. 1861, the Supreme Court rejected the Board's interpretation of the term "independent judgment" as inconsistent with the Act,<sup>27</sup> although it recognized that it is within the Board's discretion to determine, within reason, what scope or degree of "independent judgment" meets the statutory threshold. Here I find that the degree of independent judgment exercised by the lead teachers in directing teachers and classroom aides is insufficient to support a finding of supervisory status.

Lead teachers, teachers, and aides usually decide collaboratively which lessons to present, when to present them, and who will lead each activity. Lead teachers, teachers, and aides take on different classroom tasks based, at least in part, on their educational background, skills, experience, and interests.

Moreover, curriculum planning is circumscribed by the fact that all classrooms follow essentially the same daily schedule, with minor differences in the timing of activities. Differences in the curriculum among the different classrooms appear to stem as much from parental suggestions and interests expressed by the children, which the teaching team attempts to integrate into its daily routine, as from any of the collective skills and interests of the teaching team.

Proof of independent judgment in the assignment of employees entails the submission of concrete evidence showing how assignment decisions are made. The assignment of tasks in accordance with an employer's set practice, pattern, or parameters, or based on such obvious factors as whether an employee's workload is light, does not require a sufficient exercise of independent judgment to satisfy the statutory definition. In re Franklin Hospital Medical Center, 337 NLRB No. 132, slip op. at 6 (2002).

In this case, each Head Start employee's duties are described in detail in their formal job descriptions. In addition, the "Year at a Glance" document distributed at the September 2003 orientation identifies, in detail, which tasks must be performed, and at what intervals, i.e., daily, weekly, every week, monthly, every other month, twice annually, on an ongoing basis and "as needed." With respect to some tasks listed in the "Year at a Glance," the document specifies who is responsible for the task.

The exercise of "some supervisory authority in a merely routine, clerical, perfunctory or sporadic manner," or through giving "some instructions or minor orders to other employees," does not confer supervisory status. Chicago Metallic, supra at 273 NLRB 1689. I find that any directions given by the lead teachers in this case are of a routine or minor nature, and the degree of judgment exercised by them does not support a finding of supervisory status.

Lead teachers are not responsible for finding substitutes for teachers and aides who are absent from work. The Employer's established policy makes clear that a staff member who is absent is required to contact the lead teacher and/or teacher, and the Education Specialist. The

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<sup>27</sup> The Board had previously held that individuals such as charge nurses will not be deemed to have used "independent judgment" when they exercise ordinary professional or technical judgment in directing less skilled employees to deliver services in accordance with employer-specified standards.

policy further states that staff members are required to arrange for coverage in their absence, and if they are unable to do so, they are to seek assistance from their Education Specialist. Accordingly, I find that the record does not support a finding of supervisory status on these grounds.

The lead teachers initial time sheets as completed by teachers and aides in their classrooms to certify that the hours reported are consistent with the employees' scheduled hours.<sup>28</sup> I find that the lead teachers' responsibility for initialing the time sheets for teachers and aides in their classrooms is routine or clerical in nature and insufficient to establish supervisory authority. John N. Hansen Co., 293 NLRB 63, 64 (1989).

The record also makes clear that lead teachers do not possess the authority to grant time off to teachers and aides, to request additional staffing, or to approve teachers' or aides' requests to change their work schedules. Lead teachers further lack the authority to send a teacher or an aide home for the day. Accordingly, I find that the record does not support a finding of supervisory status on the basis of any of these duties.<sup>29</sup>

## **Authority to evaluate**

### **Probationary Evaluations**

Section 2(11) does not include "evaluate" in its enumeration of supervisory functions. Thus, when an evaluation does not, by itself, affect the wages and/or job status of the employee being evaluated, the individual performing such an evaluation will not be found to be a statutory supervisor. Harborside Healthcare, Inc. 330 NLRB 1334 (2000). I decline to find that the lead teachers are supervisors by virtue of their role in completing probationary evaluations of teachers and aides.

The record contains no evidence that probationary evaluations have ever been tied to a pay increase.

The Employer's handbook states that only QCAP's Executive Director, or its Associate Director or Program Director with the agreement of the Executive Director, may discharge QCAP employees. This is subject, of course, to the Policy Council's approval, since it possesses the final authority with respect to hiring and terminations.<sup>30</sup> The Employer introduced no

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<sup>28</sup> Spencer's and Hunter's testimony regarding their work schedules makes clear that they are not present in the classroom during some portion of the aides' and afternoon teachers' work day, and therefore they cannot vouch for their presence at those times.

<sup>29</sup> I also find that the record does not support a finding of supervisory status based on the single unsolicited recommendation of one lead teacher, Hunter, concerning a replacement for her position during her maternity leave.

<sup>30</sup> With respect to the role of the Head Start Policy Council in termination decisions, the Code of Federal Regulations (CFR) provides, at [Title 45 CFR, Section 1304.50\(d\)\(1\)\(xi\)](#), in pertinent part: "Policy Councils ... must work in partnership with key management staff ... to develop, review, and approve or disapprove... [d]ecisions to hire or terminate any person who works primarily for the ... [Employer's] Head Start program. Appendix A to [45 CFR, Section 1304.50](#) specifies and delineates governance and management responsibilities in the operation of Head Start programs. In regard to [Section 1304.50\(d\)\(1\)\(xi\)](#), supra, Appendix A expressly provides that the Policy

completed probationary evaluations into the record and no evidence that the lead teachers actually make a recommendation with respect to probationary employees' continued employment status.

Card's limited and conclusory testimony concerning a single instance in which a probationary employee was dismissed based on information contained in the lead teacher's probationary evaluation is not helpful in determining whether any manager or the Policy Council conducted an independent review or investigation of the facts underlying the evaluation.

In summary, the limited and inconclusive evidence is insufficient to establish that lead teachers have the authority to effectively recommend changes in status for probationary employees. Elmhurst Extended Care Facilities, 329 NLRB 535, 537 (1999) (probationary evaluations of charge nurses do not evidence statutory supervisory authority due to director of nursing's limited and inconclusive testimony where there was only one recommendation of termination and one recommendation of extension of probation).

#### Bimonthly Evaluations

I further conclude that the lead teachers' role in completing bimonthly evaluations of teachers and aides does not confer Section 2(11) supervisory status upon them.

Lead teachers complete the bimonthly evaluations by rating staff members on their performance of a series of daily job responsibilities that are carried out on a daily basis. They assign ratings to staff members based on their classroom observations, and, in the case of the aides' evaluations, based on the observations of teachers who work closely with the aides. The teachers' input is critical, since, in some instances, the work schedules of lead teachers and aides permit only minimal opportunity for the lead teachers to observe the aides' work.

The primary purpose of these evaluations is not to evaluate job status or determine wage increases, but rather to give staff members encouragement and guidance concerning what they are doing well. Although the evaluations are reviewed by the Education Specialists, the record indicates that they are not reviewed by higher levels of authority, and that the Education Specialists' review is more focused on form than content.

Further, the Employer has failed to demonstrate any correlation between the bimonthly evaluations of teachers and aides and their job status or merit increases.

#### Annual Evaluations

I also conclude that the lead teachers' role in completing annual evaluations does not confer Section 2(11) supervisory status upon them. In order to confer such status, the evaluation

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Council "[m]ust approve or disapprove decisions to hire or terminate any person who works primarily for [the Employer's] Head Start program," and elaborates that: [The Policy Council] must be involved in the decision-making process prior to the point of seeking approval. If [the Policy Council] does not approve, a proposal cannot be adopted, or the proposed action taken, until agreement is reached between the disagreeing groups. Community Action Commission of Fayette County, Inc., 338 NLRB No. 79 (Nov. 22, 2002).

process must affect wages or job status and must require the use of independent judgment. The evidence in this case simply does not support such a finding.

In completing annual evaluations of staff members, the lead teachers rely on their own classroom observations, the evaluation of the teacher or aide from the previous year, and, in the case of classroom aides' evaluations, the teachers' observations. Lead teachers complete the performance factor section by marking the box that best describes the staff member's performance in a variety of areas. The afternoon teachers often assist them in determining the appropriate ratings on the performance factors for aides because their work schedules coincide more directly with the aides' schedules.

The evidence indicates that the Education Specialists review the lead teachers' evaluations as they make their way up through the chain of command and back down again to the lead teacher for conferencing with the staff member. Although the Specialists do not actually change the lead teachers' comments and/or ratings, they do suggest modifications, including changing a rating upwards or downwards, the addition of comments to support a rating, or even a change in the adjective used by a lead teacher to describe the staff member's performance in a particular area. If a lead teacher and an Education Specialist disagree about a rating on one of the factors, the Specialist makes a note of the disagreement and forwards the evaluation to higher-level managers who determine the appropriate rating. The Associate Director or Program Director have, on occasion, changed the lead teacher's performance factor ratings on staff members evaluations.

Where evaluations are subject to independent investigation by a higher authority, the Board has held that the performance of such evaluations does not confer supervisory authority. Moreover, the Board has consistently applied the principle that authority effectively to recommend generally means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed. See Children's Farm Home, supra at 61-62. I find that the record evidence here is insufficient to establish that the lead teachers use independent judgment in making evaluations that affect employee job status unhampered by review from higher authority.

The Program Director is the person who assigns an overall rating to each staff member, including, where appropriate, assigning a plus or minus rating. Similarly, lead teachers are unaware of the merit increase percentage associated with a particular rating when they submit their evaluations to the Education Specialists, and thus do not designate the amount of the merit increase a staff member will receive.

The Employer asserts that the lead teachers effectively recommend annual merit increases by rating staff members on each of the performance factors, and that the rating derived from these evaluations directly dictates the amount of merit increase received by the staff member. Even if lead teachers were found to be independently evaluating and rating teachers and aides in their annual evaluations, however, the Employer has failed to demonstrate a direct correlation between the evaluations and the amount of the merit increase a staff member receives. Moreover, the record contains no evidence concerning the method used by the

Program Director to arrive at the overall rating or how, once an overall rating has been assigned, it correlates to the merit increase amount ultimately awarded to a given staff member.

## **Secondary indicia**

In the absence of evidence that the lead teachers possess any of the primary indicia of supervisory authority enumerated in Section 2(11) of the Act, secondary indicia are insufficient to establish supervisory status. In re Progressive Transportations Services, Inc., 340 NLRB No. 126 (2003).

The lead teachers' job descriptions indicate, in the abstract, that they supervise and evaluate teachers and classroom aides. The reality, as demonstrated by the record, however, is that they do not possess the authority described in those documents. The issuance of "paper authority" that is not exercised does not establish supervisory status. Crittenton Hospital, 328 NLRB 879 (1999); Beverly Health and Rehabilitation Services, Inc., 335 NLRB 635, 669-670 (2001).

Based upon all the foregoing and the record as a whole, I find that the Employer has not met its burden of establishing that the lead teachers are supervisors within the meaning of the Act, and I will, therefore, include them in the unit found appropriate.<sup>31</sup>

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed in the Employer's Head Start programs at the Weymouth Naval Air Base in Weymouth, the Eldridge School in Braintree, the Germantown facility in Quincy, the Gould School in Hull, the North Quincy High School in Quincy, and the Braintree High School in Braintree, including lead teachers and lead teacher substitutes, teachers and teacher substitutes, classroom aides and classroom aide substitutes, bus drivers and bus driver substitutes, bus aides and bus aide substitutes, family resource specialists, family service workers, health assistants, nutrition assistants, bilingual translators, and receptionists at the Eldridge School facility, but excluding all managerial employees, confidential employees, professional employees, guards, and supervisors as defined in the Act.

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<sup>31</sup> I note that neither party has pointed to, nor am I aware of, any Board decision addressing the supervisory status of head or lead teachers in Head Start programs that is directly on point. With respect to the various Regional Director decisions that the Employer has cited in its brief, as well as other such decisions that I have examined, I conclude that they are distinguishable on their facts from the record I have before me.

## **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by Service Employees International Union, Local 888, AFL-CIO.

## **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before March 2, 2004. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by March 9, 2004.

/s/ Rosemary Pye \_\_\_\_\_  
Rosemary Pye, Regional Director  
First Region  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Dated at Boston, Massachusetts  
this 24th day of February 2004.

177-8580-8200  
460-7550-8700

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