

In the Matter of BURLINGTON EDUCATORS
ASSOCIATION

and

BURLINGTON SCHOOL COMMITTEE

and

BURLINGTON SCHOOL ADMINISTRATORS
ASSOCIATION

Case No. CAS-05-3605

32. *Binding Effect of a Unit Determination*
34.2 *community of interest*
34.92 *clarification*
35.67 *teachers*
35.671 *principals and department heads*
91.1 *dismissal*
93.4 *petition for clarification*
93.6 *procedure and rules*
93.7 *employer's petition*

August 2, 2006

Hugh L. Reilly, Commissioner
Paul T. O'Neill, Commissioner

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Educators Association*
Darren Klein, Esq. *Representing Burlington School
Committee*
Arthur Fallon, President *Representing Burlington School
Administrators Association*

DECISION¹

Statement of the Case

On January 28, 2005, the Burlington School Committee (School Committee) filed the above-referenced unit clarification petition with the Labor Relations Commission (Commission) seeking to exclude all Middle School Team Leaders (Team Leaders) and High School Department Heads (Department Heads) employed in the Burlington School System (School System) from the bargaining unit represented by the Burlington Educators Association (BEA). The Commission held an informal conference with the parties on September 15, 2005. The BEA and the School Committee also provided extensive information and position statements to the Commission. On October 28, 2005, the Burlington School Administrators Association (BSAA) filed a motion to intervene in this matter. The Commission denied that motion without prejudice on November 29, 2005, because the BSAA had not filed Forms 1 and 2 pursuant to 456 CMR 16.05. The BSAA subsequently filed Forms 1 and 2 and

refiled its motion to intervene on February 6, 2006. The Commission granted that motion on February 9, 2006.

On October 28, 2005, the BEA filed a motion to dismiss this matter. On November 7, 2005, the School Committee filed an opposition to the motion to dismiss. The Commission investigated the issues raised in the petition and, on May 31, 2006, provided the parties with a summary of the information adduced during the investigation. Further, because it did not appear that any material facts were in dispute, the Commission requested the parties to show cause why it should not resolve the unit placement issue based on the information summary. None of the parties responded to the Commission's show cause letter. Accordingly, the Commission will proceed to decide the appropriate unit placement of Team Leaders and Department Heads based on the information provided by the parties during the investigation represented by the uncontested information summary.

Findings of Fact²

The Burlington School System

The School System consists of Burlington High School (High School), which includes grades 9 through 12, the Marshall Simonds Middle School (Middle School), which includes grades 6 through 8, and four K through 5 elementary schools. Each school has its own principal who reports to the Superintendent of Schools. The current superintendent, James L. Picone, Ed.D (Superintendent Picone), has served since the 2003-2004 school year.

Bargaining Units

There are four professional and paraprofessional bargaining units in the School System.³

1. *BEA unit* - This unit has existed for over thirty years.⁴ The recognition clause of the collective bargaining agreement (Agreement) in effect between the BEA and the School Committee recognizes a bargaining unit of the following professional employees:

All classroom teachers, librarians, coaches, assistant audio-video specialists, special subject teachers, department heads, team leaders, guidance counselors in the primary, middle and secondary schools.

2. *BSAA unit* - This unit was certified by the Commission on April 4, 1984 in Case No. MCR-3437. The certified unit consists of:

All full-time professional administrative employees of the Burlington School Committee, Town of Burlington, including Principals, Assistants, Directors, Core Evaluation Administrators and Instructional Assistants.

At present, the recognized BSAA unit also includes the Director of Pupil Services, the Computer Media Coordinator, the Director of Physical Education/Health/Athletics, the Evaluation Administrator, two High School Associate Principals, the Support Services Coordinator, the Data Processing Manager, and the Assistant to the Principal of the Francis Wyman Elementary School. The most

1. Pursuant to 456 CMR 13.02(1), the Commission has designated this case as one in which the Commission shall issue a decision in the first instance.

2. The Commission's jurisdiction is uncontested.

3. The custodians, school clericals and cafeteria workers also are represented for purposes of collective bargaining.

4. The BEA's bylaws date back to 1966.

recent collective bargaining agreement between the BSAA and the School Committee recognizing BSAA as the employee representative for those positions is effective by its terms from July 1, 2005 to June 30, 2008.

3. *Burlington School Nurses Association (BSNA) Unit* - The BSNA represents all school nurses/RNs and the Supervisor of Nurses.

4. *Burlington Instructional Assistants, AFSCME Council 93, Local 1703 unit* - This bargaining unit is comprised of all instructional assistants in the School System.

Department Heads and Team Leaders

Duties and Qualifications of Department Heads

The High School Art, English, World Languages, Math, Science and Social Studies Departments are each headed by a single Department Head. All six Department Heads report to the High School Principal. Each oversees a department ranging in size from three teachers (Art) to thirteen teachers (Math). According to an undated job description, Department Heads' duties and functions include overseeing teaching personnel within the department; developing and evaluating departmental curriculum; preparing departmental budgets; maintaining an inventory of all textbooks, teaching aides, and departmental supplies; serving as a liaison for the school administrators with other departments; and conducting departmental meetings. The job description also lists the following duties:

1. Supervise classroom procedure of non-tenured teachers at least once a month.

a) Supervise classroom procedure of tenured teachers at least once a quarter.

b) Provide written evaluations and recommendations for improvement of each teacher supervised, review [the written evaluation] with each teacher, and report all evaluations in writing directly to the Principal.⁵

c) Maintain records of each supervisory visit.

d) Review teacher tests within department for content, technique and appropriate to course development.

e) Review periodically the daily and semester teaching plans and objectives of teachers within the department.

...

5. In conjunction with the High School administrators and the Coordinator of Secondary Education, take part in the hiring of department personnel:

5. The evaluation procedure is described in more detail below.

6. Under 603 CMR 7.09(3), individuals employed for more than half-time or more as a director, department head, or curriculum specialist in the field are required to obtain a "Supervisor/Director" license. This regulation also requires licensing/certification for the following titles: Superintendent/Assistant Superintendent, School Principal/Assistant School Principal, and Special Education Administrator.

7. The Middle School's Art, Music, Reading, World Languages, and Computer teachers are not included in the grade-level teaching teams.

a) Screen applications of prospective candidates.

b) Interview, with the Principal, prospective candidates.

c) Recommend, in conjunction with the Principal, candidates to fill existing vacancies.

Department Heads also teach classes. Pursuant to Appendix G of the Agreement, Department Heads who supervise 9-15 teachers teach three classes; Department Heads supervising 0-8 teachers teach four classes.

Department Heads are typically hired into their position. No prior administrative experience is required. They are required to have a Master's Degree and prior teaching experience in their particular discipline. The School Committee does not require Department Heads to hold or to obtain any special administrative licenses in accordance with the Board of Education requirements that are set forth in 603 CMR 7.09, "Licenses and Routes for Administrators."⁶

Duties and Qualifications of Team Leaders

Each of the three Middle School grades (6-8) has three teams. Each grade-level team is comprised of a Language Arts teacher, a Social Studies teacher, a Math teacher and a Science teacher.⁷ There are also three separate teams of teachers who are grouped according to the subject they teach. The Math, English, Technical Education and Reading teachers form one team, the World Languages, Social Studies and Science teachers form the second team, and the Art and Special Education teachers form the third. The Team Leaders at issue in this case head each of the three subject teams.

According to the teacher handbook, Team Leaders are responsible for providing "first level administrative and curricula leadership" for each team. The handbook states in pertinent part that Team Leaders "supervise the instructional processes and in cooperation with the Principal prepare teacher evaluation reports." The handbook further states that Team Leaders serve as the "first referral person for discipline problems encountered by teachers" and "meet regularly with administrative personnel and other team leaders to recommend school policies and evaluate results of educational programs." The job description in the teacher handbook is virtually identical to a Team Leader job description dating from 1974.⁸ Team Leaders also teach up to two classes a day.⁹

Like Department Heads, Team Leaders are required to have a Master's Degree and prior teaching experience, but they need not have any special certifications or prior administrative experience.

8. With respect to preparing evaluations, the 1974 job description states: "[I]n cooperation with the principal and his assistants prepare teacher evaluation reports." (Emphasis supplied.)

9. At the informal conference, one Team Leader indicated that she taught no classes, but there is no information regarding the teaching duties of the other two Team Leaders.

Compensation and Hours

Under the terms of Appendix G of the Agreement, Team Leaders and Department Heads receive compensation in addition to their bargained-for teachers' salary. Team Leaders receive a flat stipend, while the salaries of Department Heads are increased by a bargained-for ratio.

Department Heads and Team Leaders generally work a ten-month teacher's schedule. However, pursuant to Appendix G, Department Heads may work an additional two weeks during the summer. Team Leaders also are authorized to work additional days during the summer. Under the terms of the Appendices G and H of the Agreement, all bargaining unit members, including Team Leaders and Department Heads, who perform their regular school duties beyond the school year, are compensated at the rate of 1/188 per diem of their salary for any extra days worked.

Evaluations and Observations

Since at least 1984, Department Heads and Team Leaders have prepared performance evaluations for the teachers in their respective departments/teams. Article X of the Agreement, "Teacher Evaluation," states:

A. All monitoring or observation of the work performance of a teacher will be conducted openly and with full knowledge of the teacher. . . . Teachers will be shown a copy of any evaluation report prepared by the evaluation supervisor and will have the right to discuss such report with their supervisor.

...

C. In the case of any complaints regarding a professional staff member made to any official of the School Department, the complainant shall be referred to the staff member's immediate superior.

Article X has not been amended in the last ten years.

All formal evaluations of teachers must be performed in accordance with Appendix I of the Agreement as well as state statutes and regulations, described below. Appendix I states in pertinent part:

I. Prime Evaluator

A. The Prime Evaluator is the major source for assessing that the goals and objectives agreed upon by the teacher, Prime Evaluator, and administrator are being met with the philosophy of the Burlington Public Schools and that the teacher is meeting the assigned duties and responsibilities as defined by the administrator's rules and regulations, school committee policy and contractual agreement.

B. The role of the Prime Evaluator is to ensure that the standard of performance as defined has been met and constructive support necessary for the teacher to accomplish this end has been given.

C. This process of evaluation, as defined, shall not be construed as eliminating the insertion of the administrator's influence, either at the building or central office levels, in those cases where such need or participation is indicated or necessary.

D. The Prime Evaluator will be designated in September of each school year.

1. The high school and middle school principals will designate all Prime Evaluators at his/her individual building level.

2. Elementary principals shall be the Prime Evaluators for all classroom teachers under their jurisdiction.

3. Teachers in the physical education, guidance, computer, special education and media departments will have the director of that department as their Prime Evaluator. This director will work in concert with the building principal and/or principals in which teachers are assigned.

...

The above does not exclude an administrator, not acting as Prime Evaluator, from participation in the evaluation process. This involvement may be both in classroom observation and presenting input for the written evaluations.

There is no dispute that Department Heads are the Prime Evaluators for the teachers in their respective departments at the High School. Team Leaders also are designated Prime Evaluators. However, Team Leaders perform only two-thirds of the written evaluations for the teachers in their given subject areas. The Middle School Principal conducts the remaining one-third.

Appendix I, Section II requires the Prime Evaluator to hold one pre-evaluation and one post-evaluation conference with the teacher. The need for the pre-evaluation conference is left to the discretion of the Prime Evaluator and/or administrator. The post-evaluation conference includes the Prime Evaluator and the teacher and, where necessary, an administrator. Department Heads conduct these meetings with the principal, or his designee, as necessary. Currently, the Middle School Principal meets with every teacher being evaluated, although the Principal may designate this duty to the Team Leader.

Appendix I, Section III states:

Although the Prime Evaluator is responsible for observation as a major thrust for the evaluation process, all administrators in a particular building and central office are considered to be part of the evaluation process, which will allow them to observe, confer and provide input for the formal written evaluation.

Department Heads and Team Leaders conduct announced and unannounced observations, as do the High School and Middle School principals.

Appendix I, Section IV, "Written Evaluation," sets forth the number of conferences and observations that must be performed each year. This provision states in pertinent part:

A. Generally, tenured teachers shall be formally evaluated every other year. Teachers will be reevaluated in a successive year only on the basis of an unsatisfactory evaluation. If, after the conclusion of an evaluation cycle, performance issues arise concerning a teacher, the Superintendent may permit the evaluation of that teacher during a school year who would otherwise not be subject to evaluation.

A minimum of one formal written evaluation for TENURED teachers based on a minimum of two (2) announced observations and at least four (4) unannounced observations shall be done during the year in which the teacher is to be formally evaluated. . . . The number of evaluations for tenured teachers will be at the discretion of the Prime Evaluator and administrator depending upon teaching performance and observations during any designated period.

B. A minimum of two (2) written evaluations for NONTENURED teachers, . . . based on a minimum of one (1) announced and two (2)

unannounced observations prior to each evaluation shall be done. The number of evaluations for nontenured teachers will be at the discretion of the Prime Evaluator and administrator depending upon teaching performance and observations during any designated period.

Pursuant to Appendix I, Section V, completed evaluation forms must be submitted to the Superintendent of Schools and the School Committee for their review.

Appendix I includes a sample teacher evaluation form containing two signature lines: one for the teacher and one for the evaluator. Prior to 1996, the form included a third signature line for the school principal.

The current evaluation form requires the evaluator to check off whether the teacher's performance has been "Satisfactory, Developmental Area or Unsatisfactory" on each of fifteen criteria.¹⁰ The form leaves space for a narrative on the teacher's performance. There also is space for the evaluator to check off whether he/she recommends reappointment for non-tenured teachers. In a performance appraisal of a non-tenured teacher prepared by the Head of the Science Department in April of 2005, the Department Head did not recommend reappointment. As a result, the principal became involved in the matter, observed the teacher on numerous occasions, and concurred in the Department Head's recommendation. The teacher ultimately was not reappointed. Under Article XXV (B) of the Agreement, decisions not to reappoint non-tenured teachers cannot be grieved.

Performance Improvement Plans

Since 1996, Appendix I, Section VI has included a provision regarding Performance Improvement Plans (PIPs) that states in part:

If the evaluator states that a teacher's performance has been "unsatisfactory" on any of the criteria, then a remediation plan to help the teacher improve shall be developed no later than May 5. The remediation plan shall include specific goals for the teachers; specific, observable recommendations for improving his/her performance; and observable indicators of success in accomplishing the goals. Once the plan is developed it will be attached to the teacher's evaluation form, and a copy will be sent to the Superintendent.

The Agreement includes a sample PIP form containing signature lines for the employee and the supervisor. There is no separate signature line for the administrator or principal.

Department Heads and Team Leaders prepare PIPs. PIPs are subject to the grievance procedure, and Team Leaders and Department Heads have input into management's response to any grievance involving a PIP that they have prepared.

Discipline

Team Leaders and Department Heads do not have the authority to dismiss, demote or suspend teachers. That authority is reserved to superintendents and principals under the provisions of M.G.L. c.

71, §42 and M.G.L. c. 71, §42D. However, Department Heads and Team Leaders can issue verbal warnings and participate in written reprimands. For example, on one occasion, a Team Leader spoke with a teacher whom she believed had inappropriately disciplined a student. The Team Leader explained how the situation might have been handled and told the teacher that her job could be at risk. The Team Leader eventually called in the principal to discuss the matter further.

The School System also considers the recommendations of Department Heads when making disciplinary decisions. For example, in November of 2005, Superintendent Picone held a meeting to discuss the continued employment of a High School physics teacher who had been the subject of a number of complaints from parents about his teaching style, classroom management, grades and other matters. The High School principal, the Science Department Head, the president of the BEA and a BEA building representative attended this meeting. During the meeting, in response to a direct question from Superintendent Picone, the Department Head, followed by the principal, recommended that the teacher be immediately terminated. Based on those recommendations and further discussion, the teacher resigned.

Assignments

Both Department Heads and Team Leaders submit recommendations for teacher assignments, but final assignments are left to the Superintendent.

Hiring

M.G.L. c. 71, §59B grants to the principal exclusive hiring responsibility for teachers. However, Team Leaders participate in teacher interviews, along with other teachers and parents. At the High School, Department Heads conduct first interviews with potential teachers and recommend whether to proceed to a second interview, which the principal conducts.¹¹

State and Regional Reports

In August of 2004, the State Office of Education Quality and Accountability (OEQA) issued a 102-page report based on its examination of the School System in early May of 2004. The OEQA gave the School Department a "satisfactory" rating in a category discussing the clarity of the School System's organizational chart and availability of job descriptions. The OEQA report states in relevant part:

Not included in the organizational chart were the secondary department chairpersons who had some responsibility for teacher evaluation but were not listed as administrators, and in fact are members of the teachers' labor union. This was a significant issue based on the Education Reform Act and the overlap of responsibilities as teacher and evaluator of teacher by the chairman.

The New England Association of Schools and Colleges, Commission on Public Secondary Schools (NEASC), visited Burlington

10. Performance appraisal forms in the 1980's and 1990's rated teachers on a four-step scale: "Performance Better than Usually Observed, Performance as Expected, Performance Needing Improvement, and Performance Incomplete."

11. The Department Head sometimes, but not always, participates in the second interview.

High School on October 17-20, 2004 and issued a 58-page report describing its findings. Section 3 of this report, "Teaching and Learning Standards," states in conclusion:

Departmental supervisors formally evaluate teachers on a regular basis and post-observations meetings provide feedback and encourage reflection on instructional practices, curriculum and student needs. However, this practice may not necessarily provide adequate, unbiased feedback to the teacher being evaluated when he is also a peer of the evaluator.

The NEASC report further indicates: "All evaluators have been trained but department heads indicated difficulty in evaluating their peers." With respect to this issue, the NEASC recommended that the School System "[r]eassess the effectiveness of the current evaluation process in light of the fact that staff members are evaluated by their peers."

Laws and Regulations Pertaining to Evaluations and Teacher Performance Standards

The Massachusetts Education Reform Act was signed into law in 1993 and implemented in 1995. One of the Board of Education's stated goals in implementing this law was to establish and publish by 1995 baseline performance standards for all teachers and to "train principals, teacher's union representatives and other education supervisors in the use of the evaluation guidelines to support professional performance and accountability." *Initiative 7, Board of Education, 5 Year Master Plan.*

M.G.L. c. 69, §1B, first enacted in 1993, requires the Board of Education, among other things, to:

Establish guidelines for establishing systems of personnel evaluation, including teacher performance standards. Public school districts in the commonwealth shall be encouraged to develop programs and standards which provide for a more rigorous and comprehensive evaluation process. Said guidelines shall be reviewed at least every other school year.

M.G.L. c. 71, §38 states in part:

[T]he superintendent, by means of a comprehensive evaluation, shall cause the performance of all teachers, principals and administrators within the district to be evaluated. . . . The superintendent shall require the evaluation of administrators and of teachers without professional teacher status every year and shall require the evaluation of teachers with professional teacher status at least once every two years. The procedures for conducting such evaluations, but not the requirement for such evaluations, shall be subject to the collective bargaining provisions of chapter 150E.¹²

Performance standards for teachers and other school district employees shall be established by the school committee upon the recommendation of the superintendent, provided that where teachers are represented for collective bargaining purposes, all teacher performance standards shall be determined as follows: The school committee and the collective bargaining representative shall undertake for a reasonable period of time to agree on teacher performance standards. Prior to said reasonable period, the school district shall seek a public hearing to comment on such standards. In the absence of an agreement, after such reasonable period, teacher performance standards shall be determined by binding interest arbitration. . . .¹³

The results of evaluations may be used in decisions to dismiss, demote or remove a teacher or administrator pursuant to sections forty-two, forty-two A and sixty-three.

Each school district shall conduct evaluations of teachers and administrators in accordance with the regulations of the [Board of Education]. . . .¹⁴

M.G.L. c. 71, §38 is silent as to which titles/positions are responsible for observing teachers and/or conducting evaluations.

The Board of Education has promulgated various regulations to implement the above statutory framework. 603 CMR 35.00 *et seq.* is titled "Evaluation of Teachers and Administrators." Since 1995, the stated purpose of these regulations has been to:

[E]nsure that every school committee has a system to enhance the professionalism and accountability of teachers and administrators which will enable them to assist all students. 603 CMR 35.00, together with the *Principles of Effective Teaching* and *Principles of Effective Administrative Leadership*, adopted by the Board of Education, set out what Massachusetts teachers and administrators are expected to know and be able to do. 603 CMR 35.00 requires that the school committee establish a rigorous and comprehensive evaluation process for teachers and administrators, consistent with these principles, to assure effective teaching and administrative leadership in the Commonwealth's public schools. 603 CMR 35.01(3).

603 CMR 35.02 defines "evaluators" as any person designated by a superintendent, consistent with the procedures set out in 603 CMR 35.06, who has responsibility for evaluation.¹⁵

603 CMR 35.05 requires the school superintendent to certify that the performance standards established by the school committee "meet the requirements of 603 CMR 35.00 and are consistent with the *Principles of Effective Teaching*. . . ."

Under 603 CMR 35.07, the Board of Education is required to review the performance standards submitted pursuant to 603 CMR 35.05 "no less than every two years" in order to "ensure that the

12. Prior to the passage of Section 40 of St. 1993, this provision read:

The *school committee* shall, by means of a comprehensive evaluation, evaluate the performance of all teachers and administrators within its school district, using the principles of evaluation established by the board of education . . . such principles shall be free of racial or cultural bias. School committees shall evaluate teachers and administrators not serving at discretion every year and shall evaluate teachers and administrators serving at discretion at least once every two years. The procedures for conducting such evaluations shall be subject to the collective bargaining provisions of chapter one hundred and fifty E. (Emphasis supplied.)

13. This provision was added by Section 40 of St. 1993, c. 71.

14. This paragraph, and the one preceding it, has been in effect, unchanged, since the passage of St. 1985, c. 188, §14.

15. The version of 603 CMR 35.02 in effect as of 5/29/87 defined "Evaluator" as:

[A]ny person designated by a *school committee* with responsibility for evaluation. It is the responsibility of the superintendent of schools to ensure that evaluators have training in general principles of supervision and evaluation and have or have available to them expertise in the subject matter or area to be evaluated. (Emphasis supplied.)

The second and final sentence of this definition is now codified as 603 CMR 35.06(c).

evaluation standards and procedures established by each school committee meet the requirements of 603 CMR 35.00 and are consistent with the *Principles of Effective Teaching*.¹⁶ Before the 1995 amendments, the regulations did not contain filing, certification or oversight requirements. They did, however, require school committees to conduct performance evaluations for non-tenured teachers once a year and for tenured teachers every other year and to communicate evaluation results orally and in writing to the teacher. 603 CMR 35.03(4)(b) (1987); 603 CMR 35.03(3)(a) (1987).

603 CMR 35.00 incorporates the *Principles of Effective Teaching* and *Principles of Effective Administrative Leadership* referred to in Section 35.01. The *Principles of Effective Teaching* include:

- Currency in the Curriculum
- Effective Planning and Assessment of Curriculum and Instruction
- Effective Management of Classroom Environment
- Effective Instruction
- Promotion of High Standards and Expectations for Student Development
- Promotion of Equity and Appreciation of Diversity
- Fulfillment of Professional Responsibilities

Before the regulations were amended in 1995, 603 CMR 35.00 *et seq.* did not include explicitly *Principles of Effective Teaching*. They did, however, set forth five criteria to be used by evaluators when observing teachers: a) knowledge of subject matter or field; b) clarity of communication; c) instructional effectiveness, including classroom management, or the design of programs and the provision of services; d) effective use and interpretation of evaluative procedures; and e) responsiveness to all learners. 603 CMR 35.03(2) (1987).

The BSAA Bargaining Unit Qualifications

All members of the BSAA, except the Data Processing Manager,¹⁶ are required to hold Master's Degrees and certifications appropriate to his/her title as required by 603 CMR 7.00 *et seq.* For example, the Associate and Assistant Principals must be certified in accordance with 603 CMR 7.02 and Special Educators and the Director of Pupil Services must be licensed pursuant to 603 CMR 7.03(4).

Schedule

With the exception of the Assistant to the Principal of the Francis Wyman Elementary School, who works the teacher's ten-month schedule (see job description below), all BSAA bargaining unit members work the full calendar year.

Compensation

The 2005-2008 BSAA Agreement contains the annual salary and step increase schedule for each of the eight titles in the BSAA unit. All positions, except the Director of PE/Athletics, Evaluation Ad-

ministrator, High School Associate Principal and Support Services Coordinator, receive compensation unique to their titles. The salaries for the twelve-month positions are expressed as annual figures, while the salary of the Assistant to the Principal of the Francis Wyman Elementary School is expressed in monthly terms.

Supervision Given and Received

All members of the BSAA unit report directly to either the Superintendent or the High School principal. The Core Evaluator also initially reports to the Director of Pupil Services. None of the Department Heads or Team Leaders at issue in this proceeding reports directly to, or are evaluated by, a BSAA member. Other reporting lines, along with a brief description of job duties, are set forth below.

Job Descriptions

Associate Principal, Burlington High School - The Associate Principal assists the Principal in the effective administration of the High School. He/she reports directly to the Principal and is a member of the High School Administrative team. Specific duties involve assisting in the provision of services and programs to meet individual academic needs of students, providing Chapter 504 coordination, supervising student activities, assisting with the evaluation of faculty and staff, and supervising the reporting and monitoring of student attendance.

Director of Pupil Services - This position works in the School System's central administration office and requires a Master's Degree or higher, plus certification as a Special Education Administrator or Director of Pupil Services. The Director of Pupil Services administers all Chapter 766 programs and other programs relating to special needs children and special education. The position collaborates with the Assistant Superintendent and principals to develop and implement curriculum and instructional activities for special education students and after-school and summer programs. He/she coordinates the recruitment of staff with the principals. The Director of Pupil Services supervises and administers all system-wide testing, including MCAS, and other state-mandated tests.

Evaluation Administrator - This position reports to the Director of Pupil Services and is responsible for overseeing all student referral and evaluation programs for students in need of pupil services. The Evaluation Administrator evaluates and supervises the Pupil Services staff, as designated by the Director of Pupil Services. The position requires a valid teaching certificate with Special Education Endorsement.

Support Services Coordinator, Burlington High School - The incumbent in this title is a member of the principal's administrative team. He/she coordinates, directs, supervises and evaluates guidance and special education programs and personnel in grades 9-12. The Support Services Coordinator is also responsible for a wide

16. The current Data Processing Manager holds a Master's degree, but only a Bachelor's Degree is required.

range of duties relating to student testing and record keeping, including disciplinary and academic records.

High School Director of Athletics, Health and Physical Education - This position, which coordinates the High School athletic program, requires certification in physical education and health and recent teaching and/or administrative experience. The Director of Athletics reports to the High School Principal.

Coordinator of Technology and Media Services - This position reports to the Assistant Superintendent of Curriculum and Instruction and is responsible for coordinating all of the School System's technology and media programs. The Coordinator's responsibilities include assisting principals in the evaluation of technology and media personnel. The Coordinator's office is located in the High School.

Assistant to the Principal, Francis Wyman Elementary School - The job description for this title indicates that the Assistant to the Principal acts as the principal's assistant and divides his/her time between teaching and administrative duties as assigned by the principal. The Assistant Principal works a ten-month school year but, pursuant to the terms of the BSAA agreement, receives five per diem days of compensation for work carried out after the end of the school year.

Data Information Manager - This title is primarily responsible for all High School data operations, including creating the High School schedule, performing daily attendance tasks, maintaining the High School data base for grade and transcripts, preparing high school grade reports, and calculating and distributing grade point average/class rank information. As noted above, this position does not require a Master's Degree.

Opinion

As a general rule, a unit clarification petition is the appropriate vehicle to determine whether newly created positions should be included or excluded from a bargaining unit, and to determine whether substantial changes in the job duties of existing positions warrant either their inclusion or exclusion from a bargaining unit. *Town of Provincetown*, 31 MLC 55, 59 (2004), citing *Sheriff of Worcester County*, 30 MLC 132, 136 (2004), further citing *North Andover School Committee*, 10 MLC 1226, 1230 (1983). With limited exception, a unit clarification petition may not be used to exclude positions from a certified bargaining unit unless: 1) the original description of the unit lacked specificity; 2) the duties of the positions at issue have changed since the certification; or 3) a position has been created since the certification. *North Andover School Committee*, 10 MLC at 1230.

Here, the BEA's bargaining unit has existed since 1966, which predates the passage of Chapter 150E. Accordingly, the Commission did not certify the original unit, and none of the parties provided a copy of the unit's original description. There is no dispute, however, that Department Heads and Team Leaders have evaluated teachers in the BEA's bargaining unit since at least 1984. Because we have little or no evidence regarding the supervisory duties of Department Heads and Team Leaders prior to 1984, we consider, as a threshold procedural matter, whether there have

been substantial changes in the duties of Department Heads and Team Leaders since 1984.

The BEA moves to dismiss this petition on the grounds that the Team Leaders' and Department Heads' duties have not changed in thirty years. We disagree. Setting aside for the moment the impact that the Education Reform Act has had on the job duties of the positions at issue, there have been two significant changes since 1984 with respect to the degree to which Team Leaders and Department Heads participate in the teacher evaluation process. First, since approximately 1996, the evaluations prepared by Department Heads and Team Leaders no longer require a principal's signature. This signals a greater delegation of actual authority to Department Heads and Team Leaders than previously had existed. Second, since 1996, Department Heads and Team Leaders have developed and signed PIPs and assisted management in defending grievances arising out of these remedial plans. These additional duties significantly increase the degree to which Department Heads and Team Leaders are required to observe, assess and improve the teaching skills of their fellow bargaining unit members.

The Education Reform Act also effected substantive and procedural changes to the evaluation process. Both the statute and its regulations emphasize the need to establish a "more rigorous and comprehensive evaluation process" to assure "effective teaching and administrative leadership in the Commonwealth's public schools." See M.G.L. c. 69, § 1B; 603 CMR 35.01(1). In particular, the regulations formalized the evaluation process by requiring school systems to evaluate teachers pursuant to criteria set forth in the *Principles of Effective Teaching*. The evaluation forms used by Department Heads and Team Leaders have been modified to reflect these benchmarks. Pursuant to 603 CMR 35.05, school superintendents must certify that the performance standards on which the evaluations are based meet the requirements of 603 CMR 35.00 and are consistent with the *Principles of Effective Teaching*. Under 603 CMR 35.07, the Department of Education must review these standards no less than every two years. These regulations further heighten the level of state involvement in the School System's evaluation process.

Increased oversight of the evaluation process is reflected in the reports issued by the OEQA and NEASC in 2004 regarding the Burlington School System. Both reports discuss evaluations and criticized the fact that Burlington teachers were evaluated by their "peers" and fellow union members. The OEQA report maintains that this is a "significant issue" based on the Education Reform Act, while the NEASC report suggests that this may result in biased evaluations and recommends that the School System reevaluate its procedure.

The increased duties performed by Department Heads and Team Leaders since 1984, coupled with the increased stress that the Legislature and Board of Education have placed on the content and conduct of performance evaluations since the passage of the Education Reform Act, lead us to conclude that the job duties of these titles, at least with respect to evaluations, have significantly changed since 1984. We next examine whether these changes warrant exclusion from the BEA unit, or whether the existing bargain-

ing unit remains appropriate. *City of Quincy*, 10 MLC 1027, 1031 (1983).

Section 3 of the Law requires the Commission to determine appropriate bargaining units that are consistent with the purpose of providing for stable and continuing labor relations while giving due regard to the following statutory considerations: 1) community of interest; 2) efficiency of operations and effective dealings; and 3) safeguarding the rights of employees to effective representation. *Town of Provincetown*, 31 MLC at 60, citing *City of Everett*, 27 MLC 147, 150-151 (2001). In *Boston School Committee*, 11 MLC 1352, 1360 (1984), the Commission held that the application of the community of interest test to school system cases requires it to place supervisory employees in separate units from those whom they supervise. Otherwise, "the potential for conflict between a supervisor's loyalty to his fellow union members and his obligation to the employer would impair effective collective bargaining." *Id.*, citing *Chicopee School Committee*, 1 MLC 1195 (1974).

The BEA does not dispute that Team Leaders and Department Heads evaluate teachers. However, it denies that this creates a conflict of interest with other members of the bargaining unit, because it is only a "peer review" that "assists in the assessment and improvement of teacher performance." Citing M.G.L. c. 71, §38, the BEA notes that teacher evaluation is the ultimate responsibility of the School Superintendent and further argues that it would be inappropriate to place Department Heads and Team Leaders in the BSAA. We disagree.

As described extensively above, Department Heads and Team Leaders observe teachers, evaluate their performance, record their judgments, diagnose problems and prepare PIPs. The principals rely heavily on their judgments, because the Department Heads and Team Leaders possess expertise in the subject areas taught by the teachers they evaluate. Under virtually the same circumstances,¹⁷ the Commission concluded that placing department heads in the teachers' bargaining unit would inevitably lead to the kind of conflicts that impair effective collective bargaining. *Boston School Committee*, 11 MLC at 1361, citing *Chicopee School Committee*, 1 MLC at 1196. See also *Boston School Committee*, 12 MLC 1175, 1197 (1985) (placing Program Advisors in administrators' unit based on their significant role in the diagnostic/prescriptive process). In this case, there also is evidence that Team Leaders and/or Department Heads have input into the grievance process, address potential performance and/or discipline problems, participate in the hiring process, and make recommendations regarding reappointment of non-tenured teachers. Under these circumstances, we conclude that the Department Heads and Team Leaders should be excluded from the BEA's bargaining unit. Their critical role in the evaluation and remediation process necessarily creates a conflict of interest between themselves and those they assess. *Id.* The only remaining question is whether they should be placed in the BSAA unit.

The BEA argues that the Department Heads and Team Leaders are not administrators in an actual or legal sense of the term and, there-

fore, do not belong in the BSAA's unit. The BEA correctly notes that Department Heads and Team Leaders do not hold the proper certificate from the Board of Education to serve in an administrative capacity. However, community of interest does not require an identity of interest, provided there is no inherent conflict among consolidated groups of employees. *Town of Wenham*, 26 MLC 41, 42 (1999), citing *Franklin Institute of Boston*, 12 MLC 1091 (1985). Here, the BEA has not provided any evidence that there are inherent conflicts among Department Heads, Team Leaders, and the other members of the BSAA's unit. In particular, we note that Team Leaders and Department Heads do not report directly to and are not evaluated by any member of the BSAA bargaining unit.

In any event, not all of the BSAA bargaining unit members hold Master's Degrees and certifications appropriate to their title. Furthermore, like other BSAA bargaining unit members, Department Heads and Team Leaders, in addition to conducting performance appraisals, perform a variety of administrative duties, including preparing budgets, reviewing daily and semester teaching plans, maintaining records, conducting departmental meetings and, in the case of Team Leaders, providing first level administrative and curricula leadership. Department Heads also serve as a liaison for school administrators with other departments and, in that capacity, interact with other BSAA bargaining unit members. According to the teacher handbook, Team Leaders similarly "meet regularly with administrative personnel and other Team Leaders to recommend school policies and evaluate results of educational programs."

Based on the factors described above, we conclude that Department Heads and Team Leaders share a community of interest with other members of the BSAA unit sufficient to warrant their inclusion in that unit. However, because the BSAA did not file a separate petition for an add-on election or for unit clarification, we decline to accrete these titles into the BSAA unit at this time. See *Plymouth County Sheriff's Department* 23 MLC 148, 150, n.2 (1996); *Commonwealth of Massachusetts*, 8 MLC 1879, 1880 (1982).

Conclusion

For the reasons stated above, we deny the BEA's motion to dismiss this petition and conclude that the Department Heads and Team Leaders should be excluded from the bargaining unit represented by the BEA.

SO ORDERED.

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17. In *Boston School Committee*, the headmaster signed the evaluation form.