

**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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CONTOOCCOOK VALLEY EDUCATION  
ASSOCIATION, NEA-NEW HAMPSHIRE

Complainant

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\* CASE NO. T-0275-15  
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\* DECISION NO. 2000-086  
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CONTOOCCOOK VALLEY SCHOOL DISTRICT

Respondent

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**BACKGROUND**

The Contoocook Valley Education Association, NEA-New Hampshire ("Association") filed unfair labor practice (ULP) charges on July 10, 2000 against the Contoocook Valley School District (District") for activities violative of RSA 273-A:5, I(a), (c), (e), (g), (h) and (i). The complaint alleges that in June of 2000 the District, after first exchanging negotiation proposals regarding the implementation of an evaluation plan, thereafter refused to negotiate the issue of the implementation and procedures of an employee evaluation program and unilaterally adopted the plan which is alleged to have breached the parties' collective bargaining agreement ("CBA") and affected the terms and conditions of employment of its members. It is further alleged that the District has undertaken conduct related to the formation and implementation of the evaluation plan that constitutes direct dealing with unit members notwithstanding the existence of an exclusive bargaining representative.

The District filed its answer on July 25, 2000 in which it maintains that its establishment of an evaluation plan is not a mandatory subject of bargaining, denies that it has "adopted" a new evaluation plan while admitting that it continues to develop a plan, and asserts that it has the sole authority and jurisdiction to establish an evaluation plan consistent with Article 8 and Article 10 of the CBA.

The Association asks that the PELRB order the District to cease and desist from direct dealing with members of the unit and implementation of the evaluation plan, to return to the bargaining table to negotiate aspects of the plan before implementation and to order that the PELRB decisions be posted at various sites within the school district.

### APPEARANCES

Representing the Complainant: Mary E. Gaul, Uniserv Director

Representing the Respondent: William J. Phillips, Esq.

### ISSUES FOR DETERMINATION BY THE BOARD

1. Whether or not the District is required to negotiate aspects of its employee evaluation plan with the Association? If so, to what extent?
2. Do the District's actions in connection with its employee evaluation plan constitute an unfair labor practice of refusal to bargain in good faith or of direct dealing with employees who are represented by an exclusive representative?
3. Do the District's actions in connection with its employee evaluation plan constitute a breach of the parties' existing collective bargaining agreement?

### WITNESSES

For the Complainant:

1. James Sweeney, Association President and negotiations team member
2. John Manley, negotiations team member
3. Michael Elkavich, Chief Negotiator for Association
4. Mary E. Gaul, Uniserv Director

For the Respondent:

1. Keith R. Burke, Superintendent
2. Diane Creeley, School Board Chairperson and negotiations team member

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood

that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

### **EXHIBITS**

For the Complainant: Contoocook Valley Education Association, NEA-NH

1. Collective Bargaining Agreements
2. Negotiation documents, including proposals and notes
3. Correspondence between the parties

For the Respondent: Contoocook Valley School District

1. Collective Bargaining Agreements
2. School District and School Board Administrative Policies
3. Negotiation documents, including proposals and notes

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties, that each party may rely on the representations of the other that the exhibits listed above will be available at hearing

### **LENGTH OF HEARING**

The time being set aside for this hearing is one-half day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than October 4, 2000.

### **DECISION**

Following a discussion between the parties and the conduct of a Pre-Hearing Conference before a Hearings Officer, the following decisions have been made:

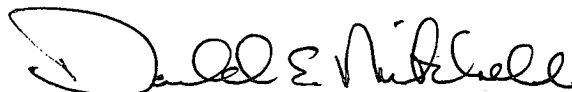
1. The Parties shall meet and confer on September 6, 2000 for the purposes of drafting an Agreed Statement of Facts executed by both sides and to be submitted to the PELRB on or before September 20, 2000.
2. Any dispositive motions are to be filed by either party on or before September 20, 2000 with the responsive pleading due from the opposing side on or before October 4, 2000.

3. The party representatives shall meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
4. Any additional procedural motions shall be filed by the parties no later than ten (10) days prior to the evidentiary hearing date and shall be heard on the same day and immediately preceding the hearing on the merits.

The party representatives shall exchange their final Witness and Exhibit lists and each shall forward a copy of their respective list to the PELRB no later than **October 16, 2000**.

Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on **Thursday, October 19<sup>th</sup> beginning at 9:30 AM**.

Signed this 16<sup>th</sup> day of August, 2000.



Donald E. Mitchell, Esq.  
Hearing Officer