

# RVEP Reporter

## Special Contract Renewal Edition

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A Publication of Rock Valley Education Professionals

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a WEAC and NEA affiliate

January 22, 2010

### CONTRACT RENEWAL PROCEDURE: KNOW THE LAW

**WISCONSIN STATUTE 118.22** The law governing the renewal of teacher contracts is deceptively simple. Because it can affect the professional career and economic survival of any teacher in Wisconsin, it must be examined very carefully. The statute (118.22) requires that in order for a school district to non-renew a teacher it must follow three steps. (1) The board must send a written notice of consideration of non-renewal to the individual teacher by February 28. That notice must contain the information that the teacher has a right to a private conference with the board if requested within five calendar days. (2) The board must grant the private conference if it is requested. (3) Then, in order to complete the non-renewal, the board must vote to non-renew the individual contract and so notify the teacher in writing by March 15.

This 118.22 procedure has only a few steps involving written statements by set dates. But the private conference is not a due process hearing. The board may go into closed session with the superintendent after the conference - which is equivalent to the prosecuting attorney going into the jury room with the jurors. Statute 118.22 does not guarantee fair treatment, since it does not guarantee a fair hearing; your local association contract does.

**SELF-RENEWAL BY APRIL 15** If a teacher does not receive a preliminary notice (of consideration of non-renewal) by February 28, the teacher cannot be non-renewed. Thus, over the years, Wisconsin teachers have looked to that date for assurance of another year of employment. If no preliminary notice arrives by February 28, the teacher is renewed, provided the teacher accepts the renewal by April 15. If preliminary notice does arrive but the board does not then vote to non-renew and notify the teacher by March 15, the teacher is also renewed (again, providing the teacher accepts by April 15).

Most districts offer individual contracts to teachers around March 15; in these cases the teacher can indicate acceptance by signing and returning the individual contract. Even if no document arrives to the individual teacher, the teacher must nonetheless "accept" the renewal of his/her contract in writing by April 15. The statement "I hereby accept the renewal of my teaching contract for the 2010-11 school year" is all that is needed, if signed and delivered to the administration by April 15.

**INDIVIDUAL VS. MASTER CONTRACT** Most teachers are routinely renewed, and thus have no questions about 118.22. But when someone is considered for nonrenewal, or misses a deadline, multiple questions often arise. If you have questions, talk to your local Employee Rights (grievance) Committee members, your local president, or call the RVEP office (1-800-354-1843).

Some difficulties arise due to special conditions being written on the individual contract when it is offered. Generally such provisions are illegal, but, because they appear on a legal-looking document the teacher often feels trapped or obligated to agree to them. In fact, if you are presented with an individual contract with troublesome modifications, you should attach a note to the signed contract when you return it. The note should say "My signature on the individual contract does not mean I agree with all of its provisions; I reserve the right to grieve certain conditions." Subsequent grievances or complaints can be based on conflicts between the individual and master contracts, or on the basis that the employer engaged in illegal bargaining with an individual rather than with the local negotiating team.

The basic principle of collective bargaining requires that the master contract (the collective bargaining agreement or negotiated contract) determine the wages and working conditions and thus always supersedes the individual contract. Since Wisconsin first established legal collective bargaining for teachers in 1961, the individual teacher contract has gradually developed into a simple promise of employment for one more year, subject to all terms of the master contract.

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**OTHER FACTORS** 118.22 applies only to full-time teachers. Thus it is not required under the law for a district to non-renew a part-time employee. The negotiated local association contract, however, may require the employer to follow the 118.22 procedure for all teachers. When a deadline falls on a weekend, the law sets the next regular business day as being the deadline. The board must vote to non-renew by a majority of its total membership; only the board can terminate a teacher contract. The 118.22 non-renewal procedure does not usually govern layoffs. Most RVEP teacher contracts have layoff clauses which allow the employer to lay off teachers at the end of the school year, with a notice of layoff near the end of the year. Only when there is no layoff clause in the contract is the 118.22 non-renewal procedure used for layoffs.

**JUST CAUSE PROTECTION** While 118.22 applies to all full-time teachers in RVEP, the more important just cause standard for non-renewal has been negotiated to apply to all non-probationary teachers, whether full-time or part-time. While 118.22 provides the procedures for non-renewal or renewal of any individual contract, the local association's negotiated master contract sets the standard by which the district's actions will be judged. A grievance on a non-renewal will result in the board's actions being reviewed by a professional neutral - usually a state-appointed arbitrator. Thus, even if a district follows the 118.22 procedure properly, if the district lacked a just cause for its actions, a grievance can be processed and the non-renewal can be overturned.

Prior to asking RVEP to file a just cause grievance, the RVEP member should ask "Do I know whether or not cause exists?" If cause exists, the employer action would be sustained and the grievance denied; if cause does not exist, the grievance is granted and the employer action rescinded. A common explanation of the cause standard is provided in the following set of seven questions.

1. Did the employer give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?
2. Was the employer's rule or managerial order reasonably related to the orderly, efficient, and safe operation of the employer's business?
3. Did the employer, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
4. Was the employer's investigation conducted fairly and objectively?
5. At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?
6. Has the employer applied its rules, orders, and penalties even-handedly and without discrimination to all employees?
7. Was the degree of discipline administered by the employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his/her service with the employer?

By asking these questions when faced with a case involving the just cause standard, RVEP can determine whether or not to proceed to a grievance on the member's behalf. Consultation with RVEP staff is strongly advised in all cases involving just cause for non-renewal.

**SCHOOL DISTRICT ESP STAFF AND OTHER RVEP MEMBERS** 118.22 applies only to full-time teachers. Other RVEP members do not have to go through the annual renewal/non-renewal ritual. RVEP ESP members are considered permanently employed after the completion of the initial probationary period. In order for an employer to terminate a non-teaching RVEP member, it would be necessary to discharge or lay off the individual. RVEP-negotiated contracts provide just cause for discharge and seniority-based layoff protection for all non-teaching personnel.

**RETIREMENT** Each year some of RVEP's 2,000 members retire. Nearly all RVEP teacher contracts and a few ESP contracts provide some early retirement benefits. These benefits usually involve extended insurance coverage and payments, and may also include cash stipends. With full state retirement fund pensions available at age 55, many RVEP members will be considering early retirement. Most RVEP early retirement provisions require a written application by a specified date. It is therefore very important for all RVEP members considering retirement to contact either the RVEP office or their chief unit negotiator if they have questions about securing all available benefits under the contract.