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OIEP Human Resources Bulletin: 03-02

Memorandum

To: Education Line Officers
School Principals

From: Human Resources Officer

Subject: Procedures for Non-Renewal of Employment Contracts for SY 2002-2003

References:

5 U.S.C, 7114A(2)(a), 25 CFR 38.8 and 38.9, 62 BIAM 11.26 & 27

Coverage:

All OIEP contract employees.

Description:

There has been much confusion in the past concerning the timeframes for notification of actions required to non-renew employment contracts. This bulletin seeks to clarify the timeframes for notification of non-renewal actions for SY 2002-2003. Based on the implementation of HR-1 and the anticipated approval of a new Union Agreement between the BIA and the Indian Educators' Federation (IEF), it is anticipated that the timeframes cited in this Bulletin will change for SY 2003-2004. We will issue an updated Bulletin with the new timeframes at that time.

Notification to School Board:

The procedures begin with notification to the appropriate school board of which contracts are recommended for renewal and which contracts are recommended for non-renewal. 62 BIAM 11.26 requires notification to the appropriate school board no less than 90 calendar days before the end the school year (as determined by the school

calendar and not the contract). This normally falls within the timeframe of January/February of each school year. It should be noted that the School Board may be notified earlier than 90 calendar days preceding the end of the school year as 62 BIAM 11.26 requires notification no less than 90 days before the end of the school year.

Recommending Official:

School Supervisors (Principals) make recommendations to the appropriate School Board of renewal/non-renewal of contracts for employees at individual schools. The Education Line Officer (ELO) makes recommendations of renewal/non-renewal to the appropriate School Board of contracts for School Supervisors (Principals).

Board Recommendations:

The School Board may disagree with the recommendations submitted by the School Supervisor/ELO. In such cases, the Board must submit formal written certification of its determinations to the appropriate management official (School Supervisor/ELO) within 25 calendar days of the notification to the Board. If the Board determinations are not received within the 25 calendar day time period, management (the School Supervisor/ELO) notifies employees of the original recommendation to renew/non-renew that was made to the School Board.

If the School Board submits its determinations within the allowed 25 calendar days, management (the School Supervisor/ELO) has one of the following options:

1. Management may implement the Board's determination through issuance of the required notice to the employee of the Board's determination to renew/non-renew, or
2. Management may appeal the Board's determination to the next higher level management official (ELO/Deputy Director), as appropriate.

When a disagreement exists between management and the School Board, every precaution must be taken to ensure that there is a resolution of the matter in time to meet the regulatory timeframe for notification to the employee (see below). When a resolution cannot be accomplished, the employee must be notified of the Board's determination at the time that notification is provided to other employees along with notification that management has appealed the School Board's determination and that the notice is subject to change as a result of the appeal.

In cases where the employee was previously issued a notice of proposed removal for discipline or conduct, management may opt to also notify the employee of the intent to non-renew the contract pending the outcome of a decision on the proposed removal.

Appeal of the School Board's Determination:

When there is a disagreement between management and the School Board on whether an employee's contract should be renewed or non-renewed, management may appeal to the next higher-level management official (ELO/Deputy Director) within 10 calendar days of receiving the Board's determination. The appeal must identify the proposed recommendation that was made to the School Board, the subsequent Board determination and the reason(s) that the management official believes that the Board's determination should be overturned. The School Board then has 10 calendar days to submit a response to the appeal to the ELO/Deputy Director.

If the Education Line Officer or Deputy Director decides to overturn the Board's determination, he or she will notify the School Board and the appealing management official, in writing, within 14 days of receiving all information, outlining the reason(s) for overturning the Board.

Notification to the Employee of Contract Non-Renewal:

A notice of intent to non-renew an employee's contract must be issued to the employee no later than 60 calendar days before the end of the school/year or contract. Please note that although the regulatory provision cites that the employee must be notified no later than 60 calendar days before the end of the school year, the applicable Union Agreement in some cases specifies that the employee will be notified at least 60 calendar days before the end of the contract. Where this is the case, the timeframe in the Union Agreement must be met. Please consult with your servicing Employee/Labor Relations Specialist for clarification of applicable timeframes.

In addition, newly implemented legislation (HR-1) will lessen the notification timeframe to at least 30 calendar days before the end of the school year. However, until the implementation of new Union Agreement implementing the new timeframe specified in HR-1, the provisions in the current Union Agreement apply.

Contents of the Notice to the Employee of Contract Non-Renewal:

The notice to the employee of the intent to non-renew must include a general statement of the reason(s) for not renewing the contract. The reason(s) for not renewing the contract need not be specific. The notice must inform the employee of his or her right to request an informal hearing before the school supervisor, ELO, or School Board (whichever recommended the non-renewal action) within 10 calendar days of the employee's receipt of the notice of non-renewal. Finally, the notice should notify the employee that the non-renewal action is not a discharge regardless of the reason(s) for the non-renewal.

Proceedings During the Informal Hearing:

If the employee requests an informal hearing, the hearing must be held within 30 calendar days of receipt of the request. At the informal hearing, the employee may only provide evidence and documentation addressing the reason(s) for the non-renewal. Since only a general reason was cited in the notice to the employee, management may opt to clarify this general reason during the informal hearing. However, please consult with your servicing Employee/Labor Relations specialist before deciding to discuss specific reasons for the non-renewal with the employee as specific reasons are not required to support a non-renewal action.

The proceedings of the informal hearing must be summarized and an official written summary of the hearing must be maintained by the responsible management official who conducted the hearing.

During the informal hearing, the employee must present his or her own case. He or she may consult a representative, including a Union representative, however, the representative serves only in an advisory capacity to the employee and cannot speak for the employee, argue, threaten or disrupt the informal hearing. When a representative becomes argumentative, disruptive, or attempts to speak for the employee during an informal hearing, the management official holding the informal hearing should remind the representative of the purpose of the hearing. If the representative fails to conform to the instructions, the hearing should be terminated at that point. There is no requirement that the hearing be rescheduled.

Decision on the Informal Hearing:

The management official who holds the informal hearing must send a written determination to the employee within seven calendar days after holding the informal hearing. You should contact your servicing Employee/Labor Relations Specialist for assistance in preparing this notice. If the School Board held the informal hearing, it must notify the appropriate management official of its decision, in writing, within five calendar days of the hearing. The management official will then notify the employee of the School Board's determination after receipt of the School Board's decision.

The notification to the employee of the determination made as a result of the informal hearing must inform the employee of his or her right to request an administrative review of the non-renewal action by the next higher level management official (usually the ELO) within 10 calendar days of the employee's receipt of the decision from the informal hearing.

Conducting an Administrative Review:

Prior to making a decision on the administrative review, the management official who is responsible for the administrative review must obtain the written summary of the

informal hearing from the informal hearing official. No hearing is conducted as part of the administrative review.

The official will send a written decision to the employee within 20 calendar days of receipt of the following information: the employee's written request for review, the summary of the informal hearing and any other supporting documents. Failure to act within this 20 calendar days period will automatically sustain the determination made at the informal hearing.

If the management official who conducts the administrative review decides to overturn the decision made at the informal hearing, he or she must send a written notice to the management official who conducted the informal hearing within 20 calendar days. This notice must specifically state the reason(s) for overturning the decision made at the informal hearing.

The Administrative Review completes the non-renewal process.

Use of the Non-renewal Process for Probationary Employees:

The contract non-renewal process should not be used when an employee is within his or her probationary period. Instead, the procedures specified in 62 BIAM 11.25 A-I (Probationary Period) should be followed.

Contact Information:

If you have questions concerning the above procedures for non-renewal of employment contracts for SY 2002/2003, please contact the Employee and Labor Relations Section at (505) 248-6359.