

COMPENSATION

Use experienced nonprofit counsel in CEO contract talks

Associations differ from the for-profit sector; choosing the wrong attorneys to negotiate employment pacts can hurt leaders

By William Ehart

Don't use an attorney from the corporate world to negotiate an employment contract in the nonprofit space.

Experts say it's critical to be represented by attorneys experienced in the association sector when hashing out contract terms with volunteer leaders. Newly hired CEOs may have won the board's confidence, but they can lose its goodwill by haggling too much or over the wrong things.

"You want attorneys who are experienced in what can go wrong and how they go wrong in contract talks in the nonprofit sector," said Jim Wilson, a partner at law firm Webster, Chamberlain & Bean. "It is its own unique space and the negotiations tend to go more smoothly" with experienced counsel.

When he's not advising hiring organizations, Wilson represents the person being hired, so he sees both sides.

Jerald Jacobs is nonprofit practice leader at law firm Pillsbury Winthrop Shaw Pittman and author of *Association Law Handbook*, the seventh edition of which is being published by the American Society of Association Executives this year. He represents only associations, not individuals.

"There are oddities and exceptions, and unusual features of CEO employment that apply in the nonprofit world and don't necessarily apply in the business world," Jacobs said.

"For example, benefit plans are different for nonprofit exempt organizations than they are for business organizations. And in some circumstances, typical features of severance and termination tend to be different in the nonprofit world than they are in the business world," he said.

"You can call this Jacobs' rule: When a prospective CEO negotiates too hard on too many issues for too long, there is a decent chance that CEO won't last very long in his or her position," Jacobs said.

"Remember that it is volunteers, not businesspeople, who are typically on the other end of negotiating a CEO employment contract. I have seen it time and time again when the prospective CEO spends weeks on every detail

of the contract and pushes hard on compensation and benefits and severance and other terms, he or she may well end up getting the job, but it will leave a bad taste that will be hard to dissipate."

The need to say 'No' sometimes

Jeff Tenenbaum, founder and managing partner at Tenenbaum Law Group, said he uses his long association experience to guide CEOs through negotiations.

"Sometimes I will tell an exec, 'No, I really don't think we should ask for that, we're going to lose credibility,'" he said.

In one case, a client who was on good terms with the association was negotiating a contract renewal. The client wanted to request a catch-up bonus.

"I said, 'I think that's too much, it's going to probably put some of the board members off,'" Tenenbaum said. "Just having a good sense as to how the volunteer leaders are going to react to things is important."

"In a lot of associations, the CEO gets paid a lot more than the board members make in their day jobs. Those are the toughest negotiations," he said.

Strategic advantage

Andrew Steinberg, partner at law firm Venable, said hiring attorneys with association expertise is a good strategic move for association CEOs.

"Legal counsel who are fluent in the specific laws that apply to nonprofits will know how to better avoid pitfalls and identify issues that lawyers who normally serve for-profit businesses or individuals may not appreciate," Steinberg said.

"Having a lawyer who 'speaks the language' of nonprofits creates leverage when negotiating employment terms and can strategically shape the legal, financial and workforce considerations at play. Investing in competent and experienced nonprofit legal counsel is a best practice to manage risk, and more importantly, a strategic imperative to achieve the most favorable outcomes," he said.

Job offer rescinded

Leslie Hortum, head of the Washington office at executive search firm Spencer Stuart with 25 years of experience recruiting leaders on behalf of associations, said that in recent years, she saw a job offer rescinded because the prospective CEO followed the advice of a lawyer unfamiliar with the association sector. That has only happened once in her career; more commonly, the wrong negotiating stance will alienate board members and put the new CEO in a hole that's hard to dig out of.

"The attorney was giving the candidate bad counsel and negotiating really hard and not recognizing that this is about mission, it's not just about money," Hortum said. "And it left a bad taste in my clients' mouths, because they just felt like they were trying to nickel and dime them."

"I'm not an attorney, but I see my job as getting the hiring entity and the candidate to agree on terms, so it's a handshake agreement. By the time it gets to the attorneys, their job is not to renegotiate the deal," she said. "Their job is to see if there's anything we've missed or if there's anything that needs to be clarified. Then their job is to make sure that those terms that have been agreed to get properly included in a formal legal contract." ■

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