



## **GUARANTEED SEVERANCE MAY BE AN ILLUSION**

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Most chief staff officers of national and state associations have an employment contract. These contracts have fairly standard severance provisions. The severance provision gives the association the right to terminate the employment of the chief staff officer, without cause, provided that the association pays the terminated employee a severance payment. Typically, severance payments range from six (6) months salary plus benefits to eighteen (18) months salary plus benefits. Under many contracts, the executive begins with a six (6) months or nine (9) months severance package and the amount of severance increases by one month per year of service until a cap is reached at twelve or eighteen months. Association executives with this type of a contract severance provision feel protected from the whims of an ever-changing Board. The association executive understands that on any day of the year, the elected association chairman may walk into his or her office and provide a severance check and tell the association executive to pack up his/her office and leave. On paper, this sounds pretty good.

Many of us would be happy to get a check for six months, twelve months or eighteen months salary plus benefits and be told to go home. But what happens if your Chairman shows up in your office, tells you that your employment is over but doesn't have that check in hand? You don't think

that this could happen? It happens every day!

Even if your contract stipulates that payment is to be made at time of termination or within thirty (30) days of termination, how are you going to enforce the contract? The Chairman of your association, with the support of the Board of Directors, can terminate your employment and decide to not pay you anything. You may have a valid claim for breach of contract. However, in order to enforce that claim, you may have to hire a lawyer and go to court.

Think about it. Before a Board votes to fire the chief staff officer, the Board must be very unhappy with the way that the Association is being run. This is not a decision that is made quickly. By the time the Board is ready to fire the Chief Staff Officer there will not be much debate. You may think that you are doing a good job and you may think that you have friends on the Board. However, once the elected leaders go to work, you will be amazed at how fast your support dwindles. Unfortunately, the pattern repeats itself over and over again. Having concluded that you are not performing adequately, the next question is why should the association pay you a year's salary or eighteen months salary? Your Board will know how much it costs to litigate and will assume that you will certainly be willing to negotiate and take less than the full amount of severance

provided in your contract. If your salary is \$250,000 a year and your benefits are worth another \$50,000, why should the association pay you \$300,000 when you have done a lousy job. Your Board will be quickly convinced that offering you \$150,000 in cash is very fair and reasonable. You can argue that you have protected yourself by providing for arbitration in your contract. Unfortunately, you will find that in many instances, arbitration is just as costly and takes as much time, as litigation in a court.

Can you protect yourself? The case of New York Knicks Coach Larry Brown is a good example. According to the published reports, Coach Brown entered into a multi-million dollar employment contract with the New York Knicks basketball team. Recognizing that potential problems might arise in the event that the Knicks did not win enough games to satisfy the owner, Brown had a clause inserted in the contract that provided that disputes would be decided by arbitration conducted by NBA

Commissioner David Stern. It is our understanding that the arbitration clause included provisions to ensure that the arbitration would be completed quickly. An arbitration clause could also include provisions imposing penalties on the losing party.

Few, if any, trade associations have a salary comparable to Coach Brown. At the same time, establishing a meaningful procedure for handling disputes arising in connection with termination is to the benefit of both the association and the association executive.

Take a look at your employment contract. What would you do if you were fired "without cause" and the Board did not offer to pay you the amount specified in the contract?

You should plan on such an event happening and modify your contract to protect you from such an eventuality.