

Employment Policy and Compensation Committee: Report on Director--Level Contracts

This report provides information about the structure of previous contracts for director-level employees of the Libertarian National Committee, and offers suggestions, items of concern, and items for consideration concerning future contracts.

Items listed as suggestions enjoy unanimous EPCC support. Those listed as items for consideration are items that either received majority (but not unanimous) EPCC support, or that EPCC members believe should be considered by the LNC. Items of concern are matters the LNC should regard as potential hazards, without a specific course of action suggested.

This report has been created pursuant to the following motion of the LNC:

(Minutes, LNC meeting, Dec. 13-14, 2014, p. 11): Ms. Mattson moved that the LNC refer to the Employment Policy & Compensation Committee the task of researching past employee contract structures and making recommendations for going forward. The motion was adopted without objection.

General Contractual Provisions

Contracts have specified the expectation of good faith and loyalty to the Party, including not working to support any other party, or the candidate of any other party, unless so instructed by the Chair.

Contracts have generally included a submission to arbitration within the District of Columbia (moving forward this will be the Commonwealth of Virginia,) and have specified that registration as a delegate to any convention will constitute an immediate resignation of employment. Arbitration agreements have generally been standard, but one specified a procedure for selection of an arbitrator that appears to have been drawn from the Old Testament.

Contracts have included clauses requiring the return of all real property upon termination. In addition, contracts have generally included clauses protecting the intellectual property of the Party and prohibiting the disclosure of trade secrets.

Contracts have generally stated the standard benefits package, but without binding the Party to continue these benefits indefinitely. As the benefits offered have shifted, contracts have kept pace. These benefits have included a parking space and liability insurance to the extent that the LNC chooses to provide.

However, several contracts have specified the accrual of vacation time, rather than simply referencing the Employee Manual provisions. Some contracts have contained provisions that differ from those in the Employee Manual; the differences are primarily with respect to accrual.

For example, some contracts have stated that vacation time accrues monthly, whereas the Employee Manual states vacation time accrues with each paycheck, which are issued bimonthly.

Contracts have (except in one case) specified that director--level employees are full-time and exempt from overtime, and set their own hours, while stating that they are expected to be available during business hours and to be present at HQ unless conducting Party business elsewhere.

Executive Director contracts have stated that personnel decisions must be made in coordination with the Chair. This accords with requirements stated in the Policy Manual.

Suggestion: The general contractual provisions mentioned above should be included in future contracts, and standard language used for these clauses. Where possible, contracts should be written in accordance with the language of the Policy Manual and the Employee Manual unless there are clear and compelling reasons to use different language.

Bonus Structure

The compensation and bonus structures in contracts have varied greatly. Some employees have been paid low base salaries with very large bonus opportunities, while others have received higher base salaries and lower bonus opportunities. Some employees have had no bonuses included in their contracts. The following are examples of various bonus structures used:

- Fixed amount at fixed revenue points, plus additional pay for each 10% above a higher fixed amount
- Eligible for additional fixed amount bonus once per year, at LNC discretion.
- Fixed amount each quarter if revenue exceeds quarterly budgeted revenue, with the same fixed amount also paid at year end for each 10% in excess of annual budgeted revenue
- Paid quarterly, fixed amount, if revenue exceeds target on an annualized basis; additional larger fixed amount at yearend for exceeding 110%, plus a percentage of excess

Items of Concern: Basing bonuses on revenue provides an incentive to spend excessive amounts on fundraising, and pays for income not dependent on staff performance. Additional concerns are raised by the combination of accrual basis accounting and paying bonuses for revenue above a target, particularly when a staff member is paid a percentage of the amount above the target.

For example, a bequest may be accrued in one period, but distributed over several years. Under most bonus structures utilized, bonuses would be owed (sometimes in large amounts) in the year the bequest was received.

More generally, situations such as bequests raise related issues: staff members who secure a future income stream may not receive bonuses based upon that work, and future staff members may receive bonuses based upon revenue they did nothing to secure.

Suggestions: In designing bonus structures for an employee, the Chair and the EPCC should strive to base those structures on measures tailored to the Party's goals, as relevant to the employee's position. To the extent possible, bonuses should be based upon objective measures that can be reasonably connected to the employee's performance.

In all cases, the process of defining and awarding bonuses should be transparent, and care should be taken to ensure that cash flow issues and other implications are fully understood by the Chair, EPCC, and prospective employee. Additionally, bonuses should be easy to calculate, in the sense that upon reviewing the relevant terms and financial statements, any LNC member can understand and calculate the bonuses to be paid.

Termination

The most commonly used termination arrangements were as follows:

- Termination without cause: One month notice, pay until end date
- Termination with cause: No compensation
- Termination by employee with one month notice: Pay through end date only

However, the arrangements varied, as did the phrasing. Most were similar to the above, with the following exception:

- Termination without cause: Paid for 3 months past termination, relocation up to \$15k, LNC assumes unexpired portion of lease up to 12 months
- Termination with cause: Relocation and lease as above
- Termination with "serious" cause (3/4 LNC vote): No compensation
- Termination by employee with one month notice (unless waived by Chair): Paid through end date, relocation up to \$15k if employee worked at least one year

Items of Concern: In the lease example above, unless the contract contains the appropriate specifics (e.g., the unit leased, the rental terms, etc.), the Party could assume a liability of unknown value. In addition, payments triggered by an employee's unilateral action (e.g., voluntary termination by the employee) may create perverse incentives.

Suggestions: We suggest that termination clauses not include reimbursement for relocation or lease payments unless there are clear and compelling reasons for such inclusion. Instead,

employees terminated without cause should be paid a reasonable compensation (e.g., three months' severance) that is not dependent upon relocation or rental costs. Furthermore, termination for cause should not trigger payments other than those for work performed prior to termination.

Relocation and Work Location

Only one contract included payment for relocation, in an amount up to \$20,000. Additionally, that contract allowed for an extended time of working from Boston prior to moving to the Washington, DC area.

Suggestion: If relocation costs are included in a contract, we suggest that a provision be included allowing for the recovery of such costs, on a pro-rated or staggered basis, in the event of a termination of employment. Additionally, we suggest that relocation allowances be reasonably based on market conditions and prices.

Credit Check and Criminal Background Check

The Policy Manual states that a credit check and criminal background check are required prior to an offer of employment to any prospective employee. Additionally, the Policy Manual limits the work that may be done by those who have been convicted of certain crimes or who have a history of personal bankruptcy, except with permission of the Chair and EPCC.

These limitations would not be acceptable for a director--level employee. Some contracts have stated explicitly that employment is contingent on successful completion of a criminal and credit check, while others have not.

Suggestion: We suggest that all contracts explicitly state that employment is contingent upon a criminal and credit check acceptable to the Chair and EPCC. This would include the requirement that the Chair and EPCC provide clearance, if needed, to perform essential tasks of the position.

A decision by the Chair or EPCC against granting such clearances, based on the results of these checks, should nullify the contract without any liability on the part of the Party. Such requirements and their implications should be made clear in the contract.

Language Used

Most contracts have specified that the contract is between the employee and the LNC, via its chair. However, some contracts have used "I" and "me" terminology, which is not appropriate because the Chair could change during the employee's term of employment.

Most contracts have specified start and end dates, along with the length of extensions (generally one-year increments). Such specification allows for appropriate budgeting. Other contracts have

indicated a start date “upon LNC approval” which complicates budgeting and may require changes in budgets. One contract specified a three-year term of employment, while all other contracts specified a term of one year or less.

Suggestion: Standardize the language used in contracts and include specific start and end dates. In addition, for executive director contracts it is appropriate to indicate that the LNC must approve the contract.

Items for Consideration: The LNC may wish to consider standardizing contract length (such as renewal in one-year increments) for renewed contracts, while leaving the length of the initial contract open to the judgment of the Chair, EPCC, and ED.

Job Responsibilities and Titles

Most contracts have stated that responsibilities will be as described in the Policy Manual and as additionally assigned by the Chair. Others have listed specific responsibilities and left unclear how additional responsibilities can be assigned. Some employees have been hired into job titles specifically authorized and described in the Policy Manual, but with wildly different responsibilities.

Most contracts have used the titles authorized by the LNC in the Policy Manual. However, two contracts used the term “Chief Operating Officer,” which is not authorized or defined in the Policy Manual.

Suggestions: To the extent possible, responsibilities and titles specified in a contract should match the applicable position descriptions in the Policy Manual. All contracts should use standard language indicating that responsibilities will be as stated in the Policy Manual and Employee Manual, and as additionally assigned by the Chair. The Policy Manual should be amended to specify more clearly the responsibilities of the Political Director.

Probationary Period

Several older contracts included a 90-day probationary period with specified tasks to be achieved in that period. Some of these tasks used the language “attempt to,” which may lead to difficulties in determining compliance with the contract. No recent contracts have utilized these 90-day probationary periods.

Item for Consideration: The LNC should consider re-instituting the 90-day probationary period. Should a probationary period be specified in a contract, the contract should also include a clear description of what constitutes satisfactory (and unsatisfactory) performance during that period.

Non-Disclosure Agreement and Conflict of Interest Statement

Several older contracts included signing a non-disclosure agreement (NDA) and providing a conflict of interest (COI) statement as conditions of employment. No recent contracts have included these terms.

Suggestion: All employment contracts should include a statement indicating that as a condition of employment, employees must sign a non-disclosure agreement and provide a conflict of interest statement.

Non-Compete Agreement

While all contracts reviewed included specific expectations that an employee will not to work for competing parties or candidates during the employment term, none of the contracts included a non-competete clause.

Item for Consideration: The LNC should consider introducing a non-competete clause into all contracts, with the possible exception of termination without cause by the Party.

EPCC Involvement

The Policy Manual requires the EPCC to review and comment on all director-level contracts. However, such contracts (with the exception of contracts for the position of Executive Director) do not require EPCC approval, nor do they require the Chair to respond to EPCC concerns and suggestions. In the past, contracts have been signed and approved after the EPCC raised objections, without the Chair making modifications suggested by the EPCC. NOTE: A detailed discussion of these cases should be reserved for an Executive Session.

Additionally, EPCC approval is required in order for employees without clean background and credit checks to perform certain tasks. However, there is no requirement that such approval be obtained prior to hiring such employees. Thus, the possibility exists for hiring a Communications Director who cannot handle membership records or an Executive Director who cannot handle funds.

Suggestion: The Policy Manual should be amended to require EPCC approval for all director-level contracts.

APPENDIX:

The following material from the LNC Policy Manual is relevant to consideration of employment contracts for LPHQ staff.

Section 2.02 COMMITTEE SCOPE AND RESPONSIBILITIES

6) Employment Policy and Compensation Committee

The Employment Policy and Compensation Committee shall develop documents, procedures, and guidelines for the effective administration, supervision and development of Staff, including but not limited to job descriptions, compensation ranges, hiring, training, performance reviews, promotion, progressive discipline and termination. The LNC may supersede any such documents, procedures and guidelines by adopting a replacement.

The Employment Policy and Compensation Committee shall also be available to Staff to discuss on a confidential basis the working environment or observed violations of the Policy Manual.

The EPCC shall also complete a review of any contract for director-level employment no less than 10 days prior to the Chair signing it.

Section 2.04 LEGAL MATTERS

3) Contracts and Contract Approval

All contracts or modifications thereto shall be in writing and shall document the nature of the products or services to be provided and the terms and conditions with respect to the amount of compensation/reimbursement or other consideration to be paid.

The Chair shall approve any contract in excess of \$7,500.

All contracts of more than one year in duration or for more than \$25,000 shall be reviewed and approved by General Counsel prior to signing by the Chair.

No agreement involving a financial transaction with a related party shall be executed unless first approved by the LNC. Any such agreement shall be disclosed in a conflict of interest statement.

Independent contractors doing business with the LNC are required to sign formal contracts that clearly set forth the parties' intention that they be treated as independent contractors.

Each contract for director-level employment must be circulated to the LNC on a strictly confidential basis after it has been reviewed by Counsel and the EPCC.

Section 2.09 OTHER MATTERS

4) Hiring and Termination

The Chair shall appoint and employ the Executive Director with the approval of the LNC, subject to the right of the LNC to discharge the Director at any time by majority vote. The Chair shall provide advice and consent to the Executive Director on the appointment, employment, and termination of all LPHQ personnel.

The office of the LNC shall conduct a credit and criminal background check prior to offering employment to any prospective employee.

Employees and candidates for employment shall be obligated to notify the Chair, Executive Director and Employment Policy and Compensation Committee of the full details of any arrest or conviction of crimes punishable by imprisonment, or of any personal financial problem, including involuntary liens or any filing for personal bankruptcy.

The office of the LNC shall not employ any person who has been convicted of a crime against property or person, unless with the approval of the Employment Policy and Compensation Committee. The Chair shall promptly disclose to the LNC as a confidential employer-employee matter that such approval has been given. The LNC may override such approval, but the motion shall not reveal confidential details.

The office of the LNC shall not allow any employee with a history of financial problems, including involuntary liens or who has filed for personal bankruptcy, to handle money or negotiable instruments, access donor information, approve or negotiate purchases with contractors or suppliers, or prepare accounting records, unless with the approval of the Chair and the Employment Policy and Compensation Committee. The Chair shall promptly disclose to the LNC as a confidential employer-employee matter that such approval has been given. The LNC may override such approval, but the motion shall not reveal confidential details.