

**STYBEL
PEABODY &
ASSOCIATES, INC.**

National Association of Corporate Directors' DIRECTORSHIP MAGAZINE. In Press.

THE BOARD'S ROLE IN END OF EMPLOYMENT DECISIONS.

Laurence J. Stybel & Maryanne Peabody
STYBEL PEABODY, a Lincolnshire International Company
60 State Street, S. 700
Boston, MA 02109
Tel. 617 371 2990
lstybel@stybelpeabody.com
www.stybelpeabody.com
www.boardoptions.com

“Leadership Change When the Stakes are High.”

SUMMARY:

When end of employment decisions are dominated by legal/hr/finance voices, there may be a tendency for these decisions to be transactional and focused on short term cost containment at the expense of medium term strategic considerations. This article presents a series of strategic/marketing questions that ought to be asked when developing end of employment policies. The goal is for end of employment decisions to be made from a balanced business perspective. One of the roles of the Board is to inquire if such a balanced perspective is being utilized.

In a volatile industry, individual terminations and workforce restructurings are on-going. CEO and C level terminations are often governed by previously negotiated severance agreements contained within the initial employment agreements. Union terminations are governed by contractual agreements as well.

What about the majority of employees not governed by contractual agreements? Should the Board be asking any questions?

The traditional Board perspective is to keep its fingers out of tactical decisions like end of employment. And we agree that the Board ought to keep its fingers out. But there are questions Board members can and should be asking if end of employment decisions may have medium term strategic implications.

We make the case why Board members ought to be asking questions, followed by a brief set of questions to ask.

THE END OF EMPLOYMENT CONTINUUM

Let's look at two ends of the end of employment continuum. The majority of McKinsey & Company associates who enter the partnership track will leave the firm. There is an up-or-out talent system typical of most large professional service firms. End of employment, however, does not mean the end of the McKinsey relationship. End of employment is the beginning of membership in the McKinsey Alumni group. The company goes out of its way to assist departing professionals and maintains an active alumni group. The Managing Partner of McKinsey routinely visits McKinsey Alumni organizations around the world to keep the relationship going.

McKinsey sees departing employees as potential referral sources for future work. Taking care of departing professionals and retaining their long-term loyalty is not seen as personnel costs. It is seen as marketing investments. End of employment is not a transaction. It is a change in what is likely to be an on-going relationship with the company.

The other side of the employment termination is to treat departing employees with the same perspective as refuse: "Removal with low cost and no lawsuits. I don't care what happens once it leaves the building." We have heard several CEOs refer to this culture as "You are Either On the Bus or Off the Bus." People who are "off the bus" are a cost and moved "off the bus" in the least costly manner. Carrying the image further, the bus moves on. End of employment is a transaction.

Has your Board and CEO ever had a discussion about where the company is on this philosophical line? Should it have such a philosophical discussion?

RETALIATORY CAPACITY

When working with Boards and CEOs on these issues, we use a threat analysis framework developed by Thomas C. Schelling, the winner of the 2005 Nobel Prize for Economics. He received the Award for applying game theory to conflict. His focus was

on the weapons issues but we apply his ideas to the design of employee termination packages.

Schelling says “uncertain retaliation is more efficient than certain retaliation” when bargaining and “the capability to retaliate is more useful than the ability to defend.” Now let’s apply these concepts to end of employment decisions.

If a company can assume that departing employees have little or no retaliatory capacity or have capacity but lack inclination, then a company can afford to focus on the "On the Bus/Off the Bus" end of the continuum. Suppose one assumes that former employees will continue to be a factor in the firm’s future? They have the capacity to legally retaliate against the company’s interests. And the perception that they were treated like refuse might induce them to harm the company. For example:

They may join other organizations and become potential allies or opponents in the firm’s efforts to gain/keep corporate clients or engage in M&As.

They may become potential referral sources for your firm or a potential source of caution to others about doing business with your company.

They may attend alumni programs or participate in Face Book chats and discourage future talent from joining the company.

Each of these scenarios assumes capability of retaliation, company induced motivation to retaliate, and uncertainty of that retaliation. It is impossible for companies to effectively defend against this trio of threats. The best practical risk management tool is to reduce inclination to harm. In other words treat people with dignity on the way out because the assured costs of such treatment are less than the potential downside future retaliatory risks.

The remainder of this article will focus on concrete ways of implementing these concepts and the role of the Board in implementation.

ARE COMPANIES EMPLOYING AN UNBALANCED PERSPECTIVE?

Termination discussions often involve the CEO delegating the issue to a trio of professionals: human resource leaders, employment/labor attorneys, and finance professionals. All three perspectives are important and valid. Our question is, "Are these perspectives enough?" Isn't the CEO biasing the outcome to focus on cost containment, limitation of legal liabilities, and ease of HR administration? Again, these are all important and valid considerations. Board members need to ask their CEOs if this is enough for improving shareholder value. Throwing people “off the bus” so that they become antagonistic may jeopardize more important medium term strategic issues.

TERMINATION THREAT ANALYSIS ONCE NON-COMPETITION AND NON-DISPARAGEMENT AGREEMENTS LAPSE.

Below is a series of questions we pose during planning meetings surrounding termination:

Rate each factor on a 0-9 scale. A score of "0" means that the factor does not apply. "1" means "minor threat" whereas "9" means a "significant threat."

FACTOR	SCORE
Ability to harm M&A objectives.	
Ability to harm strategic alliances.	
Ability to negatively influence sales.	
Ability to negatively influence talent we seek to hire.	
Ability to negatively influence the community where we operate.	
Ability to negatively influence the regulatory environment where we operate.	

If the CEO can answer these questions with confidence, then proceed with your end of employment deliberations. If you are uncertain what numbers to use, then ask the CEO to get the input from representatives from strategy, marketing, and regulatory affairs.

CONCLUSIONS

We provide senior level outplacement services. Stybel Peabody loves working for client companies that treat departing professionals with dignity on the grounds that treating people with respect is part of the corporate culture.

This article, however, does not assume that companies have such positive cultural values. Our perspective is a contingency based. We argue that if the role of the Board is protection of 1-3 year shareholder value, it is appropriate for Board members to gently ask the CEO if the leadership team's approach to managing end of employment decisions is balanced with respect to managing business risks. An hr/finance/legal perspective is important. But it is imbalanced.

REFERENCE:

Thomas C. Schelling. THE STRATEGY OF CONFLICT. Boston: Harvard Press, 1980

Laurence J. Stybel and Maryanne Peabody are co-founders of Boston-based Stybel Peabody, an Arbora Global Company. Its mission is leadership change when the stakes are high.