Contract Protection—What is Included

by Bruce Marcus

In the first of this three-part series, I attempted to discuss the overall import of a written contract with club owners and management. In this segment, I will attempt to highlight the types of contractual provisions which would customarily be incorporated in any employment contract document.

In any discussion involving employment agreements, it is important to recognize the critical points to be addressed. Initially, the first concern is to specifically identify the name and capacity of the employer. This seemingly obvious component often results in the inability of an employee to seek relief against an employer who has breached a contractual agreement. The name of the employer and its corporate existence should be included.

Secondly, the term of the agreement should be clearly spelled out. Some agreements are for a term of years, while others are effectively "at will." Care should be exercised by any party to a contract or will, especially where a contract specifically denotes a specified term while at the same time indicating that the contract may be terminated by either party upon notice given. The effect of such a provision is to nullify the operation of the term of years and to cut short the term of the contract as stated in the termination provision.

A third consideration should address the specific duties and responsibilities imposed on both parties under the contract. Under the duties and responsibilities provision, an employee should be properly advised of the scope and limitation of the duties and responsibilities imparted to him/her so that an employer cannot exact a greater level of employment accountability than that which was originally contemplated by the parties at the time that negotiations took place.

Termination provisions should be included in a contract. Essentially, there are two forms of termination provisions. The first is dealing with a termination "with cause" and a second type of termination provision which is generally referred to as "without cause." Termination "without cause" effectively allows either party to be relieved of further contractual liability upon notice given to the other party. As indicated above, contracts which are terminable "at will" are effectively the contracts without a specific duration. Contracts which are terminable "at will" should be avoided at all costs. Conversely, contracts which are terminable "for cause" also have certain pitfalls but are generally more acceptable to employees. The problematic portion of "for cause" termination provisions, is the definition of "for cause." Such things as dishonesty, theft, illegal conduct, and other social deviations are generally considered within the purview of "with cause" termination.

However, such things as conduct which is perceived to be unbecoming a professional, may also be included as the basis for termination under a "for cause" termination provision. The difficulty with this type of amorphous and undefined type of provision is the applicable standard to be applied by a reviewing body in determining whether or not a person's conduct is "unbecoming." These types of interpretations cause great problems and unquestionably foster disagreements and potential lawsuits in the interpretation and application of such provisions.

The next area is possibly the most difficult one to negotiate, possibly the least important in many instances, and the least important in the overall scheme, and yet the most immediate concern for both parties. The question of compensation, prerequisites and related benefits is the area on which most parties to contracts focus. In the area of compensation *et al.*, there are a number of specific issues. Wages, salary, disability insurance and/or benefits, health benefits, vacation, sick leave, clothing allowance, automobile allowance, cellular phone, educational opportunities, retirement benefits, club playing privileges and club utilization for the employee and family, food allowances, bonuses, and other forms of economic and non-economic benefits.

As I indicated during my lecture, there are no "standard" contracts. Each club and/or owner has established certain perimeters for itself based on want, need and ability to provide contractual benefits to its employees. To the extent that individuals have the ability to negotiate higher compensation levels, these issues most often are driven not so much by the ability of an individual to negotiate but by the financial realities which confront each club. In assessing the types of benefits and compensation which an employee seeks, the tax consequences of compensation need

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also be addressed as there are a number of acceptable methods to reduce federal and state income tax liability while effectively increasing income.

In the last of this three-part series, I will discuss negotiating strategies. In closing, I would strongly urge all members to address the issue of employment agreements with their clubs and simultaneously propose that the association as a body, take a stand which will allow individual members the ability to represent to the clubs and/or owners that the association to which they belong has imposed as a benefit to its members, a proposed employment agreement similar to that used by Professional Golfers Association of America. The analogy of the PGA contract provision will not be new to most clubs and as such, a relation may prove to facilitate the use of written agreements by members of the Association and their employers.

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