Board Members as Supervisors: The Boss's Boss

~ Kimberly P. Walker

Few volunteers join a nonprofit board of directors to supervise or—the unthinkable—to remove the organization's chief executive officer. However, oversight of the CEO, which includes hiring, compensating, supervising, and, when appropriate, retaining or removing the entity's top employee, is the board's and its individual members' legal responsibility. And unlike many tasks, if the board shirks this role, there's no one else to do it.

In addition to hurting the organization and the CEO, the failure to act may also cause you and other board members to question your well-intended volunteer service. Long, stressful meetings. Board division and resignations. Bad press. No good deed goes unpunished. Fortunately, there is a better way.

Why Boards Don't Supervise

As background, it helps to understand why highly skilled, devoted volunteers may overlook or even avoid this responsibility. First, it's awkward. You were invited to join the board when you were just a fan. Now you're a cheerleader. It feels disloyal and even presumptuous to turn around and judge its welcoming leader. Also, you're a volunteer; she's a professional. You're part-time, maybe a couple of hours a month; she dedicates 60 hours a week. While you have experience in another field, she has worked her entire career in this one.

As board members, your weekly or monthly participation is often driven by important dates and agenda items, fundraising, and more fundraising. There may be no action items on the meeting agendas or an events calendar for supervisory duties, other than perhaps an annual evaluation.

Finally, CEOs are not motivated to beg board members for this oversight. Most have suffered through micromanaging, well-meaning past boards. They have been forced to protect their organizations from board members.

While initially it may feel unnatural to you, regular, open, and appropriate supervision that includes communicating with the CEO about what is going great and what isn't, what the CEO needs from the board, and where the CEO may feel the board is overreaching will be far more comfortable than managing a crisis or replacing a CEO.

Creating an Environment Open to Supervision

To overcome the tendency to avoid supervisory duties, board members should look inward. It's your job as a board member to ensure that you comply with a clear delegation of responsibilities. The board should be acting like a board and allowing the CEO to run the daily operations. If you have any questions about an appropriate division of responsibilities, you will find a lot of literature on the roles of board members (mission, vision, strategy, budget approval, hiring, firing, compensation, and supervision of the CEO to ensure that operations are consistent with the organization's mission, vision, strategy, and budget). The board should stay out of operations other than to the extent necessary to assess (and redirect) the CEO's performance and ensure compliance with the organization's big-picture mission, strategy, and budget. If the board is doing its jobs well, and only its jobs, trust will increase, and the environment will foster a healthy and open supervisory relationship.

Planning

Once the board commits to its appropriate role, it can create a plan for effective supervision of the CEO. It is easier to do this before a controversy or crisis strikes. The board, acting through its chair, should candidly discuss the approach, goals, and best practices focus with the CEO. The board should direct the appropriate committee chair to create a list of responsibilities included in the board's supervisory role, such as interviewing/hiring, setting CEO compensation, setting CEO expectations/goals, CEO evaluation, etc. It should ask the committee to assess whether the board members have sufficient tools and information to make informed decisions; ask for a proposed plan to address any gaps; and ask for a timeline, as well as calendar reports to the board. At the committee level, the board should discuss each topic, obtain input from the CEO, and be prepared to lead a discussion of the full board, including relevant information and a proposed process and timeline for obtaining that information.

CEO-related topics should be first introduced to the full board at an all-board executive session. This encourages participation by hesitant members and helps reassure skeptics of the apolitical best practices agenda. After addressing issues during executive session, the resulting plan and timeline should be reported at a board meeting with the CEO and staff present. The board members' and CEO's tone, ease, and focus on best practices should normalize the discussion and ease stress. Regular, transparent inclusion of the board's supervisory responsibilities in discussions should also alleviate fear and remind staff that the board is ultimately responsible for the organization's mission. Note that open discussion of the supervisory role and process does not mean open criticism of the CEO. Board members should take care to restrict constructive feedback only to the necessary audience to avoid undermining the CEO.

This open approach differs from the unfortunately too common approach of limiting CEO-related discussions to one annual evaluation and many whispers in the hallway. The once-a-year approach often results in poorly informed decisions, missed opportunities to rehabilitate a CEO, and the inadvertent promotion of fear and distrust. While buy-in may take time, openly acknowledging the need for information to supervise and openly planning how and when to obtain the information are a good start.

Hiring

Before participating in any stage of hiring, determine what tools you need. Make a plan to obtain the tools and to carry out the search. Follow your plan, revising it as appropriate.

The first step is to ensure that everyone involved in the decision receives an update regarding interviewing and legally protected characteristics and conduct that should not be discussed or considered in employment decisions. Recognize that your board members' prior information may be out of date or inapplicable to your current organization due to size, location, or industry. Bring in an expert if needed. Ask your constituents (donors, employees, affiliates, etc.) for input. At the board and the committee levels, determine the organization's needs and build a consensus regarding the position details and expectations. (After hiring, the board should revisit this issue and obtain the CEO's input regarding expectations and goals.) Consider having a draft offer letter or contract prepared early in the search. There is no need to complete all of the terms, but the process will help guide those responsible for recruiting.

Carefully manage the logistics and ensure that those assigned recruiting roles understand their responsibilities (and perform them). Weigh the costs and benefits of engaging a professional recruiter; understand his or her networks of candidates and fees. Have any proposed agreements reviewed by counsel in advance of signing. Create a timeline and process for receiving applications and responding to applicants. Consider where and how you will advertise the position. Will it be a local, regional, or national search? Reach out to constituents for input and recommendations. Try to build connections during the process, and avoid alienating unsuccessful candidates. Communicate with internal candidates regarding the plan and the impact that a search may have on those candidates. Consider whether the internal candidates will stay with the organization if they are not promoted.

While the board may delegate interviewing and narrowing the pool of candidates—or any other aspect of the process—to a committee, the board retains ultimate responsibility for the hiring decision. Consequently, whenever possible, board members should ensure they have all the information they need to reach a level of comfort with a CEO candidate before the candidate is hired.

Compensation

Before setting or revising CEO compensation, board members need to understand the relevant market and consult reliable data regarding reasonable compensation for similar positions in similar organizations. Board members should understand the basis for and be able to defend compensation decisions with cogent explanations other than, "She's been here a long time" or "We had to pay him more than the number 2 guy." Compensation decisions should be logical and supported by data, not made in a vacuum. Maintain records of your process, data, and analysis. A nonprofit board must be able to provide a clear, concise message to donors or other constituents who have reviewed your publicly available Form 990 filings. Many nonprofits use compensation surveys, the advice of recruiters, and compensation experts to avoid the liability and penalties associated with the payment of compensation determined by the IRS to be unreasonable. While others with an agenda may spin the information and choose not to share relevant information, your supporters are likely to appreciate your reasoning and transparency. For example, "Our CEO performs at the 90th percentile, and according to a well-regarded compensation survey comparing similar organizations, she is paid at only the 60th percentile (a bargain)." Similarly, donors may appreciate that you relied on the advice of a professional compensation consultant with relevant experience.

Supervision and Evaluation

Supervision and evaluation require a comparison of your CEO's performance to the previously established goals and expectations. Before making this assessment, the board should have, in advance, reached a consensus regarding expectations. This is best accomplished with the CEO's input and candid discussion of the anticipated operational details that impact each goal in the coming year. Throughout the year, the board should communicate with the CEO regarding his or her performance vs. the consensus expectations. These discussions may result in revisions to those expectations. At least annually, and before conducting the board's formal evaluation of the CEO, the board should ask the CEO for a self-assessment on each expectation. The board may incorporate into its evaluation process input from its constituents, whether through an evaluation that seeks the input of staff, donors, contractors, and others (such as a 360 Evaluation that seeks feedback from subordinates and supervisors) or some other means of gathering sufficient feedback to truly assess performance. Board members have shared that staff feedback is invaluable and that without it, a board member cannot supervise the CEO. If you are seeking staff input, the manner in which you ask the questions, the CEO's support of the process, the assurance of no retaliation, and the results in the form of feedback to staff will go a long way toward improving trust and future communications. Some organizations evaluate their leaders on a report-card method populated by agreed-upon data-based results and scores. Others prefer a completely subjective approach. While uncomfortable initially, it is far more productive and much less awkward to candidly discuss roles and performance than it is to face the consequences of avoidance (or a perfunctory address). These regular communications and structures will make it less likely that the board will shock the CEO with a sudden determination that it has lost confidence in and needs to replace the current leader. It will also decrease the likelihood that the CEO shocks the board with a resignation to take a better job because she or he wasn't appreciated. How you as a board perform these roles may have a significant impact on your organization and on the professionals who are willing to entrust their careers to even the most well-meaning and highly skilled part-time volunteers. The value of candor, fairness, and respect cannot be underestimated.

Making a Change?

Supporting and retaining the right leader or removing the wrong one is the board's responsibility. If you don't have the information you need to carry out this critical duty, make a plan as a board to obtain it. Assign responsibility for each step. Set a timeline. Obtain the advice of counsel.

The plan should include an analysis of your legal position. Review your agreements, including any offer letters. Obtain an understanding of your legal obligations, risks, and options, including any necessary steps, notices, or cure periods. Review relevant communications, including evaluations and directives, and determine whether additional direction and guidance are appropriate under the circumstances.

Consider whether perceived deficiencies are experience-based ones that may be overcome with support, training, and time, and address each with the big picture in mind. For deficiencies that appear to be character- or personality-based, such as dishonesty or lack of commitment, adopt a more aggressive supervisory approach: provide clear directives and monitor compliance more closely while assessing the gravity of the concern.

Consider at what stage the board should address an issue or concern with the CEO directly. The ideal is early, candid communications, with the understanding that this practice may need to be altered following a cost-benefit analysis of particular issues. Regardless of when the CEO is included in the process, the board should diligently protect the integrity of its confidential board-level discussions. The board should consider having a board confidentiality policy and, at times, individual confidentiality agreements. Any board confronting CEO turnover should put in place a communications plan, focusing on donors, staff, and media inquiries. Even if it is not needed, the process will be helpful in planning.

Before voting on a CEO's removal, the full board should fully discuss the issue and conduct a cost-benefit analysis, considering both the short-term and long-term impact. Ideally, the board will consider the CEO's feedback, which may be offered by designated board members following a meeting with the CEO, a letter from the CEO, or inviting the CEO to address the full board. The decision on removal or retention is a full-board decision that typically requires multipart discussions spread over more than one meeting. However, egregious conduct is more likely to result in an immediate decision. While the board can delegate all or a portion of these duties, it is not recommended that it do so. Further, despite a delegation, the board as a whole remains responsible for the decision.

If the difficult decision is made to remove a CEO, there are many logistical considerations. Timing, announcements, severance, public comments, vacating the office, transitioning donors, and responding to reference checks should all be part of the plan. Each step should be carried out with integrity, sensitivity, and respect for the individual while maintaining a focus on the organization's mission.

It's About the Mission

Board members who learn what the job entails and take a thoughtful, proactive approach are more likely to recruit and retain rock-star CEOs. Board service must focus on the organization's mission.

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