

Institute for Local Government Lawyers

A Review of Negotiation Skills

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A REVIEW OF NEGOTIATION SKILLS

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I. DEFINITIONS. (1)

A. Negotiation - Negotiation is a process in which two or more participants attempt to reach a mutually acceptable decision on one or more matters. The goal of negotiation is to reach a decision that provides the greatest possible benefit to you or your client.

B. The Subject of Negotiation -

1. Distributive: A distributive negotiation is the process of dividing a fixed quantity of resources. Common examples are contracts for purchase or construction, negotiations over salary, and settlement negotiations over money damages.

2. Integrative: An integrative negotiation is one where the parties' interests are not directly in conflict, and agreements are possible in which the level of satisfaction of both parties can be increased on the same issue. Common examples are: negotiation of a policy or the resolution of a specific problem or complaint.

3. Combination.

C. Tactics - Specific negotiating behaviors.

D. Strategy - A series of tactics to obtain at least the minimally acceptable resolution (goal).

E. Types of Tactics and Strategies -

1. Competitive: Competitive tactics and strategies are designed to undermine the other party's confidence in their position and induce them to agree to a conclusion less advantageous than they would have prior to the negotiation. Examples: high initial demands, threats, "take it or leave it" positions.

2. Cooperative: Tactics or strategies based on what is fair and reasonable (objective measures) and the use of concessions and compromises to encourage the other negotiator to reciprocate. Examples: reasonable opening offers, open sharing of information, use of promises rather than threats.

3. Problem Solving: An approach to negotiation designed to identify and maximize opportunity for joint or mutual gain. Most applicable to integrative subjects, such as policy development, complaint resolution or problem solving.

F. Style: The impact and result of personality on the choice and use of tactics and strategies. Admittedly inexact...

G. The Interplay of Tactics and Style:

		STYLE	
		Competitive	Cooperative
TACTICS	Competitive	The Jerk	The Con Man
	Cooperative	People Who Don't Know Better...	A Friendly Negotiator

II. COMPONENTS OF NEGOTIATION PROCESS.

A. Planning and Preparation.

1. Clearly define the subject, situation or problem.

2. Determine What Information is Needed. Familiar issues require less new information; unfamiliar issues require extensive information gathering.

3. Determine Goals. The negotiator must determine the minimally acceptable result ("bottom line") and the ideal or target result. Equally important is to assess the other side's goals and understand their bottom lines and targets! You should understand your opponent's needs as well or better than you understand your own. Compare your bottom line and target results with theirs and anticipate problems based on the

comparison.

4. Rank Order the Goals. Rank order your goals and those of the other side.

a. Need: The things that you or they must obtain are the minimum requirements of the negotiation. Are there alternatives for you? Are there alternatives for them?

b. Want: The target or ideal results, but not absolutely required.

c. Giveaways: Those negotiable items that have value to one side but not necessarily to the other. These are the easiest items to give away or ask for in a bargaining or logrolling contest.

5. Choose a Strategy:

6. Prepare Notes or Outline: Include Need, Want and Giveaway items, and have specific information which may be required in the negotiation (e.g. cost projections, requirements, timeframes, or agreement language).

B. Opening Moves and Relationship Building. The initial orientation phase of a negotiation is critically important!

1. Gather baseline data on personality, style and probable negotiation strategy of the other side.

2. Develop appropriate relationship with the other party. Most probably this would be an expectation of professionalism and trustworthiness.

3. Determine limits and qualifications on the authority of the opposing negotiator.

4. Seek agreement on goals or parameters for the negotiation.

5. Agenda Control: If you intend to exercise agenda control, you must make the opening move. If you object to the other party exercising agenda control, stop it fast.

C. Information Gathering and Exchange.

1. Questions are the most valuable negotiating tactic available to you.

2. Information gathering and exchange is easier and more natural in the early stages of a negotiation. Information gets "tight" during the later stages.

3. Use information obtained to confirm or refine your predictions of the other side's minimum and target goals.

4. Be conscious of what and how much information you are giving up. Trading of equivalent value information is a reasonable expectation; blurting out all your best data too early will leave you vulnerable in the later stages.

D. Offers, Proposals and Solutions.

1. Agenda Control: Should you start with the little issues or the big issues?

a. Least issues first: allows time to gather more information about the other side, their goals and strategies; builds relationship; prevents early breakdowns or impasses; builds "buy in".

b. Most Important Issues First: Quicker and more efficient; risks breakdown or impasse; tends to de-emphasize all issues past the "big ones".

c. Simultaneous Negotiation of Multiple Issues: Encourages concessions and trading ("logrolling"); no one issue kills a deal; but, beware, can end in "take it or leave it" package.

2. Who Should Make the First Offer?

a. If YOU make the first offer you exercise agenda control, set the tone of the negotiations, and define the proposed range of discussions and initial offers. However, you risk alienating the other side or missing the opportunity to gather more data.

b. If THEY make the first offer, you get more information about their strategy and goals. You retain flexibility. However, you lose agenda control.

3. Range of First Offers:

Extreme High---Reasonable Offers---First, Firm, Fair and Final or Low Offers
(Take it or Leave it)

E. Narrowing of Differences.

1. Your two goals are (1) to induce the other negotiator to agree to terms that are favorable to you, and (2) to determine what terms are acceptable to the other party.

2. Competitive tactics include threats, "walking out", real or feigned displays of anger, argumentative responses, and refusals to make concessions.

3. Cooperative tactics include making or proposing mutual concessions, use of promises to obtain concessions, explanation of position as opposed to argumentative statements, and the use of objectively reasonable information supporting your position.

4. Problem solving tactics for narrowing differences include brainstorming, mutual data gathering, and open sharing of information.

F. Closure.

1. Competitive tactics to force closure include deadlines, ultimatums and "final offers".

2. Cooperative tactics to conclude negotiations include reciprocal final concessions and "splitting the difference".

3. Always summarize the elements of the agreement to assure mutual understanding. Where appropriate, reduce the agreement to writing.

III. CHOOSING A STRATEGY.

A. General Concerns: There is no single strategy which is appropriate for all situations. Your choice of strategy should always be a conscious choice. The choice should remain flexible so that changes in the situation or the other party's strategy may be compensated for.

B. Specific Issues to Consider in Choosing a Strategy:

1. The Issue to be Negotiated. Example: A purchase contact for office furniture is probably a competitive negotiation.

2. The other negotiator's probable strategy and style. (Do you fight fire with fire, or fight fire with water?) Note that profession, age, sex,

cultural background, and amount of authority may influence style.

3. Relative Power of Parties. The less power a negotiator has the more cooperative the strategy should be.

4. The degree of risk acceptable.

5. Is this a "one-shot" negotiation or an on-going relationship or transaction? On-going relationships usually imply cooperation.

6. The history and context of this negotiation.

7. The values and norms of your organization.

8. Your personality.

IV. SPECIFIC TACTICS.

A. Competitive Tactics.

1. "Good Guy/Bad Guy": The use of an aggressive, competitive first negotiator to soften up the other side, followed by a pleasant, friendly negotiator who now seems eminently reasonable by comparison. When faced with this tactic, don't get aggravated or argue; simply sit and listen. When the "bad guy" has finished, then deal with the "good guy", BUT, consider the "good guy's" demands without comparing them to the "bad guy's" demands. In other words, ignore the "bad guy". Another **Counter Tactic** is to simply call their hand, i.e., point out that you know what they're doing.

2. Extreme Demands: If the other side tries to skew the midpoint between your position and theirs by making a ridiculously extreme offer, there are two basic choices: (1) the competitive response is to make an equal but opposite extreme demand or (2) the cooperative approach is to ask for good faith substantiation of their position and to call their hand by labeling the behavior.

3. Higher or Shifting Authority: Don't allow the opposing negotiator to get you committed and then say "I have to check with my boss" on all of his commitments. Establish at the beginning of each negotiation the authority of the negotiator on the other side to make a binding decision. **Competitive Counter Tactic:** Claim you must also get permission from higher authority or threaten to walk out. **Cooperative Counter Tactic:** Remind the other party of agreements they made at the beginning of the negotiations, call their hand on the use of a dirty tactic, and remind them

of basic principles of fairness and honesty. Some experts believe you should never negotiate with anyone who has less authority to make concessions than you do.

4. Incomplete or Ambiguous Terms: Revisiting any assumed, vague or undiscussed terms of a deal to gain an additional advantage or increase the other party's cost. A common example is a lowball price for an article, which then quickly escalates as all the extras or change orders are added to it. **Counter Tactic:** Admit that you didn't understand it and demand that you start back at step 1. This time, though, get the deal in writing and continually ask whether there are any other issues or items which could affect the item being discussed.

5. "Take It or Leave It" Ultimatums:

When this occurs, always leave your opponent a way out, a way to save face. Do not assume that the ultimatum is true. Rather, you should begin testing pieces of the deal to see if they are genuinely bottom lines. The tactic could just be a test of your skill, or an act of frustration by your opponent. Express a lack of understanding and ask the other party to re-explain terms, needs assumptions, or the process.

6. The Actor: This tactic is the deliberate use of feigned emotions to create a specific response in the opposing party. Examples include appeals to sympathy, guilt induction, false anger, feigned confusion (Lt. Colombo), false friendship, and fear. The best **Counter Tactic** for each of these emotional ploys is recognition. Once you have recognized the tactic, you may choose whether to ignore it, return it in kind, call attention to it and refuse to proceed until it stops, or make any other appropriate response.

7. The Non-Negotiable Issue: This is a claim that a particular issue is controlled by a policy or rule that the negotiator does not have authority to change. It may be true that there is such a rule, but it may not be true that it cannot be changed. Test it by asking a lot of questions. Government officials can use this tactic very effectively.

8. Nibbling the Deal: When the negotiation is wrapping up, and both sides think they have a deal, one side may "nibble" the deal by asking for one more minor concession. **Counter Tactic:** Suggest that you will trade for an equally minor reciprocal concession.

B. **Cooperative Tactics.**

1. When in doubt, ask a question! Asking a question will almost

always be beneficial in some way. It may give you new information, diffuse a tense moment, lead to mutual problem solving techniques, identify new alternatives, or simply buy you enough time to think of a better response.

2. Bring the Process into the Open: If competitive tactics are being used against you, or the negotiations appear to be bogging down for some reason, calling attention to the original goals, summarizing what has been decided so far, or exposing competitive tactics being used against you, may refocus the negotiations in a positive and constructive direction. Done competitively, it may backfire; done sincerely it will probably help the negotiations.

3. Mediators and Third Party Assistance: Sometimes bringing in an expert, a neutral third party or a mediator can break an impasse. For example, asking the advice or assistance of a recognized expert, or agreeing to take the case into mediation.

C. **Telephone Negotiations.**

1. If you have a choice, don't negotiate over the telephone. Negotiating by telephone tends to be more impersonal, involve less information exchange, and can become "bottom line" oriented much too fast. With no visual cues from your opponent, you must pay much more attention to the verbal cues (e.g. tone of voice, word choice and pacing).

2. If you must negotiate by phone, prepare extensive notes and an outline ahead of time. One advantage of telephone negotiation is that your opponent cannot see what you're doing, therefore, you can use notes, calculators, have other people in the room feeding you information, and make candid notes about your opponent's position.

3. If you must negotiate by phone, you make the call. If you wait for the other side to call you, they will be prepared and you will be caught off guard. A cooperative alternative is to agree on a set time for your negotiating call.

V. "BOTTOM LINES"; 6 BASIC "RULES"

1. Understand what you want.

2. Understand even better what the other side wants.

3. Consciously use your experience, knowledge, common sense and skills.

4. Don't allow the other side to intimidate you or confuse you such that you forget to follow Rule #3.

5. Ask questions.

6. When you get what you want, stop.

PART II: DEMONSTRATION

Participants: Three members of the group will be chosen to participate in a demonstration negotiation.

Assumptions: Be as realistic as possible. Don't make up any facts or change known reality unless not doing so would force you to end the negotiation without reaching a conclusion.

Audience Role: The audience will critique the participants and select a winner from among the three. The critique will be an open discussion of tactics, strategy and style.

Incentive: The participant chosen by the group as the best negotiator will receive an incentive award provided by

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(1) Definitions adapted from Legal Negotiation, Theory and Applications, Donald G. Gifford, West Publishing, 1989, ppp. 13-24.