



THE ART AND SCIENCE OF WINNING NEGOTIATIONS

By Maria C. Walsh

Everyone recognizes the value of negotiation.

Recently Abdul Salam Zaeef, the Taliban ambassador to Pakistan, acknowledged that “only the way of negotiation will solve our problems.” If only the rest of the Taliban would follow his advice.

The best negotiators study what works and practice it until it becomes instinctive. The worst negotiators mimic stereotypical behavior without understanding why they fail to persuade the other side.

The Financial Times reported that General Electric failed to acquire Honeywell International, Inc. due to GE Chairman Jack Welch’s overly aggressive negotiating style. It was, said Honeywell’s ex-chairman, “a case study in how not to handle the process ...”.

Negotiation is the art of persuasion and the science of strategic collaboration. Gifted negotiators may be born (pre-verbal infants can persuade the adults in their world to engage in astonishing antics!), but most negotiators develop their skill through study and conscious practice.

Identifying Objectives and Articulating Interests

Skilled negotiators understand their own objectives: what they need and why they need it. They don’t simply announce “positions” (e.g., “I’m entitled to damages for your delay”), but instead articulate “interests” (i.e., “your delay has cost me money that I need to complete my renovation, therefore I seek damages”).

By identifying tangible interests, negotiators increase the opportunity to generate multiple solutions to a dispute. The more identifiable solutions, the greater the chance to make a deal.

Deal-making is the art of finding common ground with someone else—creating a mutually advantageous result. No one will

agree to a settlement unless it offers him something better than not settling. When negotiators state only their “positions,” they leave little room for deal-making.

Presented with a demand for a \$10,000 raise, most employers react with an equal but opposite position: “The company can’t afford raises now.” In the physics of this action and reaction there’s no room for discussion, collaboration or identification of mutual interests that might lead to common ground. The situation quickly stalemates.

If, instead, negotiators first identify and fully articulate their most important interests, they create opportunities to satisfy the objectives of both parties.

The employee who says, “I’ve worked hard and want to stay with this company, but I’m discouraged when I see people who don’t work as hard get paid more,” articulates an interest.

The employee who simply says: “Pay me more money,” doesn’t motivate the employer to discuss much, or to search for mutually beneficial solutions.

Finding Common Interests

Employers will listen more attentively to the proposals of the first employee because most employers also have an interest in a fair compensation system. Once parties identify shared interests, each becomes more motivated to explore mutually acceptable solutions.

The result is unlikely to be what either envisioned when negotiations began, but if it satisfies the most significant interests of each it will suffice. In the workplace example, the parties might agree to introduce an incentive bonus plan to achieve mutual gain.

Listening: The First Step to Being Heard

Gifted negotiators know how to listen in order to be heard. This is the “Zen” of negotiations: To be heard, you first must listen.



Ask First, Talk Later

Persuasive negotiators begin their negotiations by asking questions. Their willingness to listen increases their opportunity to learn the real interests of the other side. The employee who proposes a raise “because I’m worth it,” will get a different reception than the employee who initiates salary negotiations by first asking questions about the company’s long-term goals and inviting the employer’s assessment of the employee’s contributions. The employee’s demonstrated commitment to the employer’s enterprise will motivate the employer to listen to the employee.

The Role of Emotions and Personalities

Many negotiations involve emotional elements. Emotions used in a controlled, strategic manner can enhance communication and help persuade. Emotions that represent only undisciplined reactions, however, distract negotiators from problem solving and can divert creative energy.

Emotional antagonism can interfere with listening, block collaboration and impede the search for a mutually acceptable solution. When the personalities of negotiators conflict, resulting emotions can entrap and distract the participants. To limit conflict to the problem, introduce other participants to refocus negotiations on the issues rather than the players.

Establishing Priorities

Effective negotiators prepare for negotiations by understanding their own objectives and prioritizing them. A software distributor seeking a licensing deal from the developer foresaw great profit in providing ongoing support for existing products. The developer, in contrast, saw more opportunity in releasing new products. Only after clarifying their different interests were the parties able to negotiate a long-term licensing agreement that met both business objectives. Clients often need counsel’s help to evaluate and prioritize their interests.

Establishing a Sense of Reality

The best negotiators understand the realities of their case and are prepared to adjust their priorities accordingly. Understanding the reality of a case means more than evaluating the facts and law — although it requires a thorough command of both.

Counsel must also accurately predict how the other party views its case, and estimate its “zone of settlement potential” (e.g., the range within which the other party will settle).

It is important to assess what is possible in the context of the parties’ relationship, and the financial, legal, political and psychological constraints on each side. An injured victim may deserve damages of \$1 million, but a judgment-proof tortfeasor with a \$20,000 insurance policy makes a six-figure settlement unrealistic. Unless other tortfeasors have been identified, negotiations shouldn’t take long.

In every negotiation the parties also must understand the

alternatives to settlement. If the alternative to a negotiated deal is better, there is no reason to settle. Only when a negotiated deal offers more than the next best alternative (such as litigation and its risks), will the dispute settle.

Understanding what is possible not only for one’s own client, but also for the other side, is essential preparation for negotiation. Counsel must assess not only the other party’s ability to agree to a proposal, but also its “walk-away point.” Only then can counsel assess whether the other party is posturing or making its best offer.

Speaking the Right Language

Experienced negotiators view the evidence and legal theories from the perspective of the other party, so that they can choose the imagery, facts and legal precedent most likely to be heard and understood by the other side. Statements that reflect the other party’s perspective will sound more persuasive to them than statements that ignore or dismiss their claims.

Conceding points of agreement at the beginning of negotiations can communicate a sense of collaboration and common purpose. Strategic concessions also may relax the other party’s suspicions enough to open their ears and eyes to new proposals. Unless they listen, they’re unlikely to agree.

Persistence and Evaluation

Successful negotiators persist until they prevail. Although settlement may seem remote, they keep plugging away. They may change the participants; dig further in discovery to identify new evidence; or seek the involvement of a mediator to introduce perspective, new ideas or to re-energize the search for a settlement. But they don’t give up. Even if at first the dispute doesn’t settle, they analyze the experience and learn from it.

Then they practice, practice, practice. ■

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