MANAGING DIFFICULT MOMENTS

An Interactive Training Program

PRESENTED BY

PRESENTED FOR
NEGOTIATION IS A STRATEGIC COMMUNICATION PROCESS USED TO PUT DEALS TOGETHER OR RESOLVE CONFLICTS

This simple definition of negotiation points the professional to the fact that negotiation is a strategic undertaking involving communication and that it takes place as a definable, structured process. Far beyond instinct or intuition, negotiation is both an art and a science that can be studied. Its skills can be learned.

Think about a specific negotiation in your professional life.

• What strategies were utilized?

• How did the negotiators communicate?

• What messages were sent and received?

• How was the process managed?
Many organizations provide substantial training and education on the substance of their work. The substance includes the subject matter to be negotiated, the legal environment of negotiation, and company policies. In contrast, however, many training and education programs focus less on the dynamics and applications of the negotiation process.

In the last twenty years, significant empirical data has been generated about the dynamics of the negotiation process.

The Negotiation Navigator Program focuses on the work of professionals in efficiently and effectively managing the negotiation process.
Every negotiation is an exchange in which the bargainers must manage the tension between the motives to compete and to cooperate. The motive to compete, for example, may result from the need to avoid exploitation or to obtain as much value as possible. At the same time, bargainers may want to cooperate in order to maintain a working relationship or to work together in creating problem-solving options. The conflict between the motives creates the negotiator’s dilemma.

COMPETITORS DRIVE FOR AN INDIVIDUAL WIN; COOPERATORS LOOK FOR A JOINT GAIN

Competitors sense that the essence of negotiation is to claim as much of the value as possible while giving up as little as possible. Cooperators tend to believe that, above all, successful negotiation must be inventive and cooperative enough to devise an agreement that yields considerable gain to each party, as compared to no agreement.

If value is not created, the pie is not enlarged in a creative, joint, beneficial way; thus there will be less to divide. But regardless of the size of the pie, ultimately it must be divided; value created must be claimed. There is a tension in negotiation between cooperative moves to create value and competitive moves to claim it.
AVOIDING EXPLOITATION IN A MIXED-MOTIVE DYNAMIC

Negotiators generally have two primary objectives. The more obvious objective is to achieve the negotiator’s bargaining goals, however, an even more basic objective is to avoid being exploited in the negotiation process. Studies of the Prisoner’s Dilemma played many times consecutively by the same players reveal a strategy for avoiding exploitation even while creating cooperation. The entire strategy contains four rules:

1. Begin cooperatively. A negotiator’s first move should usually be cooperative in an attempt to signal the other side that cooperation is sought. To avoid being exploited, however, the instance of cooperation can be a small one, such as responding promptly and politely to a request for information that one is already obligated to share. By limiting the risk to an issue the negotiator can afford to lose, the negotiator can send a cooperative message without jeopardizing major issues.

2. Retaliate if the other side is competitive. By responding competitively to all competitive moves, a negotiator not only is protected from exploitation, the negotiator signals that the opponent cannot gain by being competitive, thus signaling that cooperation may be more beneficial to both parties.

3. Forgive if the other side becomes cooperative. If the other side demonstrates cooperation after being the focus of retaliation, forgiveness is necessary in order to return to a mutual cooperative bargaining environment.

4. Be clear and consistent in the approach. While negotiators regularly “hide the ball” in regard to their investigation, authority or bottom line - the substance of the negotiation - there is power in being clear about how one would like to handle the process of negotiation. If the other side knows your preference for cooperation but your willingness to be competitive, many times the opponent will act more cooperatively.

The four steps of this approach have also been described as being nice, provokable, forgiving, and transparent. Moreover, this strategy has been shown to create pockets of cooperation among negotiators even where the vast majority of negotiators bargain competitively.

In distributive bargaining, often the most important move is the first move. This well-documented characteristic of distributive negotiation is critical to the strategic management of the process. The opening move is the move that establishes expectations regarding the substance and the dynamics of the negotiation. It provides a tremendous opportunity to influence the other side. Capturing the potential of the opening move is critical to negotiation success.

Three Strategic Opening Issues:

• Who should open first?

• Where should one open?

• How should one open?
WHO SHOULD OPEN FIRST?

The first issue in determining an opening offer is to decide if you want to open first or if you want the other side to open. An important advantage of opening yourself is that you have the first opportunity to affect your opponent’s expectations about the negotiation. An advantage of allowing the opposition to open first is that they set the negotiation boundaries closer to your reservation point than you might have expected.
WHERE SHOULD ONE OPEN?

An opening offer may be described as falling in one of three zones. An offer in the zone of agreement is acceptable to both parties. The parties may continue to negotiate to improve their positions, however, further negotiation should not be necessary if the goal is merely to reach an agreement. An opening offer may also fall in the credible zone, in which case an opposing party may perceive the offer as outside his or her zone of agreement, but reasonable enough that the ultimate agreement can probably be reached. An offer in the insult zone is so unreasonable it not only fails to set a bargaining parameter, it may cause an opponent to refuse to continue bargaining.
ILLUSTRATION OF OPENING MOVES

BUYER'S BARGAINING RANGE

SELLER'S BARGAINING RANGE

ZONE OF AGREEMENT
HOW SHOULD ONE OPEN?

THE EXTREME OPTION

A negotiator using the extreme option opens at the extreme edge of what is credible. There must be some rationale that supports the offer, even if somewhat far-fetched. An offer is beyond the edge of reasonableness if either it is offensive or it is so extreme that it is not an offer. Such an offer may fall in the insult zone.

An Extreme Offer May Need To Be “Soft”

The negotiator making a more extreme offer should recognize that the offer may need to be “soft”. It is often made merely to affect the opponent’s expectations and it will probably be conceded more quickly than would a more reasonable offer. This softness may or may not be communicated to the other side.

Monitor the Response

The negotiator making a more extreme offer should monitor the response from the other side and be ready to move from the offer or solidify the position depending on that response.

Anticipate Concessions

Finally, the negotiator making the extreme offer should anticipate the possibility of making substantial concessions and must plan a way to do so without losing credibility.
THE REASONABLE OPTION

A reasonable offer is one that is perceived to be within or close enough to the zone of agreement that if combined with a reasonable counter-offer will likely establish where the final agreement will result.

A Reasonable Offer Should Be Firm

The negotiator making a reasonable offer by definition has less room for concessions, so the offer should be presented with a sense of firmness. The firmness must be communicated before the offer is communicated.

Must Demonstrate Commitment

A reasonable opening offer must be accompanied by commitment in order to reduce the possibility it will be dismissed as an extreme offer. Commitment to an opening offer can be demonstrated by the offeror's describing the large cost that will be imposed on the offeror for moving significantly from the offer. An expression of commitment seeks to limit the bargaining range in favor of the offeror.

May Require Hard Bargaining

The negotiator making a reasonable opening offer must be prepared to solidify the negotiator’s position through argument, communicating limited flexibility.

Reduces Concessions

Concessions should be modest and should be made only after an appropriate amount of time.
INTEGRATIVE BARGAINING

To overcome the limitations of distributive bargaining, most negotiators use strategies that have been variously described as cooperative, problem-solving, principled, collaborative or integrative. While there are some differences among these approaches, they are grounded in very similar concepts.

Go Beyond the Zero-Sum Exchange

Integrative bargaining, unlike distributive bargaining, does not assume the value being bargained is fixed. In distributive bargaining, the parties accept that whatever one-side gains, the other side must lose. Integrative bargainers seek ways that both sides can achieve their goals with as little cost as possible to the other side. This concept sometimes appears difficult to apply to disputes which seek to distribute specifically identified financial resources, however, a creative negotiator can often use integrative bargaining strategies even in what appears as very restrictive circumstances.

Expand the “Pie”

The general approach of the integrative bargainer is to be more global than the distributive bargainer. The goal is to not be tied to the obvious, but to move “outside the box” and create value.

“EVERY MAN MUST DECIDE WHETHER HE WILL WALK IN THE LIGHT OF CREATIVE ALTRUISM OR IN THE DARKNESS OF DESTRUCTIVE SELFISHNESS.”

-MARTIN LUTHER KING, JR
INTEGRATIVE BARGAINING CONTINUED…

Separate the People from the Problem

The problem the integrative bargainer is seeking to solve is dealt with rigorously. Because negotiations are often emotionally charged, integrative bargainers attend carefully to the negotiation’s focus and work either to steer the focus back to substance whenever the negotiation strays to personalities, or to deal forthrightly with affective issues when they interfere with discussing the substance of the negotiation. The negotiation process itself is as much an issue for the integrative bargainer as are the bargaining interests of the parties. Only when the bargainers are comfortable with their bargaining relationship can they risk approaching the negotiation using techniques that go beyond distributive strategies.

Focus on Interests, Not Positions

Every negotiation seeks to resolve issues. Distributive bargaining focuses on the positions the parties’ take to resolve those issues. Less obvious in a negotiation are the interests that lie underneath the issues and the positions. The integrative bargainer directs the attention of the negotiation to interests, not positions or even issues. By focusing on interests, the integrative bargainer seeks to “go below the line” to find what is driving the parties’ conflicting positions. When discovered, it is anticipated that more creative and more satisfactory resolution can be achieved.
MOVING FROM DISTRIBUTIVE TO INTEGRATIVE BARGAINING

In distributive bargaining, the parties are pulling against each other to distribute the fixed value they have identified between them.

Assumes a Fixed Pie that will be distributed between the negotiators – a “Claiming Value” approach to negotiation

In integrative bargaining, the parties figuratively move to the same side of the table, putting the problem dividing them on the other side, and seek to expand the pie to their mutual benefit.

Assumes that the Pie is expandable – a “Creating Value” approach to negotiation
IN NEGOTIATION THREE ELEMENTS ARE ALMOST ALWAYS PRESENT. EACH IS LABELED WITH A TERM THAT IS IMPORTANT IN UNDERSTANDING THE STRUCTURE OF THE INTEGRATIVE BARGAINING PROCESS.

ISSUES

Issues are the “identifiable and concrete” concerns that must be addressed to conclude a negotiation successfully. Issues tend to be tangible, measurable, and set the negotiation agenda. Issues must always be addressed before bargaining is complete.

POSITIONS

Positions are the parties’ “definable” perspectives on the issues of the negotiation. They are the parties’ suggested means of dividing the value in dispute.

INTERESTS

Interests are the “abstract” needs that must be satisfied to complete a negotiation. They tend to be less tangible and measurable but are very real to the parties. Whether objectively identified or not, these must also be satisfied before bargaining is successful. There are many types of interests that must be satisfied in a negotiation, such as process, substantive, relationship or interests in principles.
The strategic integrative negotiator seeks to go below the line to discover interest information.

The place of issues, positions and interests in negotiation may be diagramed as follows:

```
  ISSUE
    /\   \   /
   / \   / \  
  /   \ /   \ /
 ISSUE
```

Most negotiations deal only with issues and positions, i.e., the negotiation takes place “above the line.” These negotiations often break down because there is simply no zone of agreement. By focusing on positions rather than interests, distributive bargainers limit the information they share, reducing their creativity and problem-solving power. To capture the potential of integrative bargaining, the parties must “go below the line” and conscientiously explore each party’s interests to see that they are satisfied. Moreover, by focusing on interests, it is possible the parties can devise strategies to satisfy those interests that are creative and require fewer resources than strategies suggested by merely addressing the issues the parties raise and the positions they take.
THE INTEGRATIVE BARGAINING ROADMAP

I. Go Below the Line

When issues are raised, they are usually defined by the person's positions relating to them. Immediate reaction to these positions can cause disagreement or delay, or prevent a discussion of important interests. Interest-based negotiation is only accomplished when people seek what is behind such positions. Instead of just reacting to the various positions, the sophisticated negotiator will attempt to explore their bases, seeking the interests that underlie them.

II. Ask Questions [Like a Counselor Would Ask]

The key to capturing the below-the-line interest-based information is asking questions like a counselor would ask. By asking “what” and “how” questions, sophisticated negotiators can learn the reasons behind the positions and seek to satisfy those interests rather than the more concrete issues. The questions asked should invite the other person to share information. They should be open-ended and begin with phrases such as “Tell me about...” or “Help me understand....” Questions that begin with “why” should be avoided. “Why” questions have a tendency to put people in a defensive posture. When people are defensive, they will naturally close up and be reluctant to openly share interest information.

III. Listen Actively [Especially for the Unstated]

We do not have the ability to look into people’s minds, but we can be aware of both their stated and unstated communication. Sensitivity, especially to what is left unstated, will assist in identifying the interests of people involved, even if they cannot or will not verbalize those interests themselves.
IV. Create Options

Without lifting your pen from the paper, connect all of the following dots by drawing no more than four straight lines.

Follow a process that allows initially for no criticism and does not obligate the suggesting party to defend or eventually accept the suggestion. The parties must be free to make suggestions without obligation. Continue inventing options until all ideas are explored.
V. Develop Options

Once a list of options has been created, develop the list of options to determine which are indeed possible. Each option should be considered to determine if it realistically should be considered. It is important to emphasize here that this stage should be insulated as much as possible from the judgmental perceptions. The focus should be on the potential of each option, not the desirability.

VI. Evaluate Options

Once all the options are on the table, consider which options are realistic and which best meet the parties’ needs. To do this, review the interests revealed in the bargaining process, assess how those interests can be met by the solutions developed in brainstorming, make a cost/benefit analysis of each viable option, and integrate options, if possible, to provide the best solutions. Options that go most directly to the interests underlying the parties’ positions should receive the most consideration. Keep in mind a deal that expands the pie to be distributed and meets the concerns of both parties will more likely be accepted than a solution that more narrowly meets the needs of only one party.

This ability to meet multiple concerns should be given high priority in evaluating potential deals. If a high degree of compromise is needed to reach agreement, it may indicate that the options being considered are insufficiently creative to provide a long lasting solution to the issues being negotiated. The more the parties can evaluate the solutions from each other's frame of reference, the more likely a workable deal will be found.
THE MEASURE OF A SUCCESSFUL NEGOTIATION

Product (Substantive) Satisfaction

Process (Procedural) Satisfaction

People (Psychological) Satisfaction

“ANY BUSINESS ARRANGEMENT THAT IS NOT PROFITABLE TO THE OTHER PERSON WILL IN THE END PROVE UNPROFITABLE FOR YOU. THE BARGAIN THAT YIELDS MUTUAL SATISFACTION IS THE ONLY ONE THAT IS APT TO BE REPEATED.”

-ANONYMOUS
DURABLE AGREEMENTS

To be durable, an agreement should be satisfying to the parties psychologically, procedurally, and substantively.

Psychological Satisfaction

Psychological satisfaction refers to the parties' emotional response to the negotiation. For the agreement to be durable, the parties must each believe they achieved as much as possible within the context of the requirement to accommodate each other's needs. There should be a sense that the agreement was better than the alternatives to agreement.

Procedural Satisfaction

An agreement should assure order, equity, and ownership of the dispute resolution process or terms of agreement. The real test of procedural satisfaction is whether the parties use the process to resolve future disputes or strike future deals.

Substantive Satisfaction

There is a sense of adequate resolution of the issues negotiated. The resolution need not and will likely not be perfect, however, there should be:

- resolution on all substantive issues;
- specificity on all terms and conditions; and
- a sense of equity, practicality, and achievability.