

Know your negotiation strategy

BY ELLEN F. KANDELL, ESQ.

How do you normally approach negotiation? Do you butt heads? If so, you are a hard positional negotiator and see your negotiating opponent as an adversary. Do you bow to the other side and let go of your needs to avoid conflict? If so, you are a soft positional negotiator and see your opponent as a friend.

The risk here is that you make concessions for the sake of the relationship. None of these strategies work well in the long term to get your or your client's needs met.

Two primary schools of negotiation theory may help: distributive and problem-solving negotiation. Both can be applied to business disputes.

Before looking at theory, it is important



to understand basic definitions. Negotiation is the mutual discussion and arrangement of the terms of a transaction or agreement. Do you think of the concept of mutuality when you start to negotiate? Many people see their negotiation tasks more like an exercise in persuasion. Persuasion is the state influencing someone about a particular belief or idea. Do you think of negotiation more in the nature of an exercise in persuasion? The answer to this question will probably tell you what kind of negotiator you are.

DISTRIBUTIVE NEGOTIATION: DIVIDING THE PIE

Distributive negotiation, also known as hard positional negotiation, looks at distribution of limited resources, such as power, money or control between the parties. In this theory, the exchange is a series of offers and counteroffers aimed at reaching a number and terms that are acceptable to all parties. Professional sports contract negotiations are a good example of this school of negotiation.

The first thing you need to do is determine your target and resistance points through indirect and direct assessment. The target point is your optimal price or goal. The resistance point is the bottom line price, below which the deal is off. Indirect assessment involves gathering intelligence and looking at the marketplace and comparables. Asking your colleagues what they are paying for

similar products or services or doing an Internet search are examples of indirect assessment. Direct assessment takes place through bargaining and the exchange of information.

Typically, target points do not overlap.

Don't lie about your reservation point. It's unethical, doesn't make strategic sense and can ultimately hurt your reputation.

The seller wants more than the buyer is willing to pay. However, resistance points often overlap: the most the buyer is willing to pay is more than the least the seller is willing to accept. The space between the seller's resistance point and the buyer's resistance point is the bargaining zone. If there is no overlap, there is a negative bargaining zone.

A bargaining surplus exists when there is overlap between parties' reservation points. The question for negotiators becomes: How do you achieve most of the surplus for yourself, or how do you get more of the pie? Here are some popular distributive negotiation strategies to help you maximize your advantage:

- Determine your reservation point and don't reveal it until necessary.
- Research the other side's alternatives (known as BATNA, or best alternative to a negotiated

agreement) and estimate their reservation point.

- Set high aspirations; be realistic but optimistic. The first offer from each side is called the anchor point.

- Always wait for a response. Do not assume that silence is a rejection of your offer.
- If the other party opens, make a timely response with your anchor point counter offer.
- Plan your concessions. Negotiators who make fewer and smaller concessions maximize their slice of the pie, compared to those who make larger and more frequent concessions.
- Support your offer with facts.
- Appeal to norms of fairness, but note that fairness is subjective and arbitrary.

Finally, don't lie about your reservation point. This is critical. First, it's unethical; second, it doesn't make sense strategically and can reduce your real bargaining zone. And it hurts your reputation. ►

PROFESSIONAL development



>> 5 TIPS FOR NEGOTIATION SUCCESS

1. ALWAYS PREPARE: Never go into a negotiation without preparing your case and anticipating your negotiating partner's situation. Do your research, assess the BATNA, determine resistance and target points and bargaining range and think about underlying interests. Rehearse with colleagues if high stakes are involved.
2. BE CREATIVE: Consider novel ideas for solving this problem. Ask an outsider who is not so close to the problem.
3. AFTER THE NEGOTIATION, ANALYZE what worked well and what didn't. How can your negotiation improve next time?
4. CONSIDER RELATIONSHIPS, their importance and their effect on the negotiation. Is there a key long-term relationship at stake? What is that worth?
5. DEVELOP A STRATEGY and tailor it to the specific case you are negotiating. What worked in a big merger or acquisition might not be successful in the sale of a family-owned business.

PROBLEM-SOLVING NEGOTIATION: EXPANDING THE PIE

Problem solving, also known as interest-based negotiation, is a collaborative approach. It is based on the work of Robert Fisher, Bruce Patton and William Ury at the Harvard Negotiation Project.¹ The essence of the problem-solving negotiation process is outlined below.

DISTINGUISH POSITIONS FROM INTERESTS

Positions are demands, such as the items you want or tasks you will or won't do. Interests are your needs, concerns, fears and aspirations. Interests drive positions. They are the motivators. To identify interests, look behind the stated positions and ask why this is important for you, your client or your adversary's company. Identifying interests is critical because you will usually find multiple and overlapping interests. In addition, there are often multiple ways to satisfy interests.

SEPARATE THE PEOPLE FROM THE PROBLEM

The problem is the substantive underlying issue, i.e., terms, conditions, price or deadline. The people issues are such items as perception, trust, communication and emotion, which are often entangled in the underlying problem. Use people techniques to solve people problems, such as active listening, acknowledging emotions and understanding perceptions. Fisher, Ury and Patton advocate being soft on the people issues and hard on the problem.

BRAINSTORM OPTIONS FOR RESOLUTION

Instead of evaluating and judging options, first try to generate and brainstorm possible ideas. Suspend judgment while developing options. In order to do this you need to — talk with the other side, not at them; focus on the future, not the past; talk about what is to be done, not who is right. You need to tackle the problem jointly.

IDENTIFY CRITERIA FOR EVALUATION

Independent criteria should be used to evaluate options. Examples of independent criteria are found in law, regulations and industry practice. The most widely known example of independent criteria for used cars is the Kelley Blue Book.

BEST ALTERNATIVE TO A NEGOTIATED AGREEMENT (BATNA)

BATNA is the best alternative that satisfies your interests in the event of no agreement. Ask yourself: What do you think your side will do if there is no agreement in this negotiation? How attractive or unattractive would that be as an outcome? Also, try to figure out your opponent's BATNA.

DOCUMENT THE AGREEMENT

Move towards closure gradually. Get a

draft done and fill in the details before you commit.


RESOLVING THE NEGOTIATION

Understanding which type of negotiation is right for you will go a long way toward reaching an amicable resolution. ■

1. Fisher, Roger; William Ury; and Bruce Patton. *Getting to Yes: Negotiating an Agreement without Giving In*. London: Random House Business, 1999.

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