

Negotiation Strategy

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Preparing for Negotiation – The Beginning Impacts the End

- Know the arguable facts and conclusions of law.
- Try to discern any underlying interests, needs and motivations of both sides.
- Predict initial positions.
- Strategically decide whether you should make the opening offer or if you should wait. Remember that the opening offer manages expectations.
- Explore your BATNA (best alternative to a negotiated agreement), your WATNA (worst alternative) and MLATNA (most likely alternative).
- Know your reservation point (bottom line) so that you do not get caught in the “momentum” of the negotiation, however also be open to new information and retain flexibility.
- Do not get locked in to your own expectations. Be aware of optimistic overconfidence.
- Be open to creative options. Think outside the box!

Recognizing and Responding to Negotiation Tactics

- A tactic is an intentional, manipulative strategy designed to fluster, create uncertainty and produce ineffective negotiation techniques by the other side.
- Tactics can occur before the negotiation actually begins (pre-condition demands), during the negotiation, and in the closing stages.
- Be aware of when a tactic is being played. You usually will have a physical reaction (sweaty palms, unsettled stomach, tension in your muscles.)
- Identify (to yourself) what tactic is being played (good cop/bad cop, questioning your integrity, environmental strategies, etc.)
- As you intellectualize the tactic, your physical reaction will lessen, allowing you to be more strategic.
- Now decide how to respond:
 - Ignore
 - Institute a counter-tactic
 - Utilize humor
 - Identify and acknowledge the tactic to the other side
 - Negotiate on process

Continued on reverse.



How to Resolve Impasse, Break Deadlocks and Revive Stalled Negotiations

- ➔ Diagnose the source of resistance. Common sources of resistance may include:
 - Optimistic overconfidence – Subjective confidence is greater than objective accuracy
 - Boulewarism – Take-it-or-leave-it strategy
 - Status quo bias – Cognitive bias to keep things the way they are
 - Mismanaged expectations – Either external or internal forces create expectations that are unrealistic
 - Lack of information – Insufficient information about facts, conclusions of law, externalities, or interests that prevent a party from feeling confident in making a final decision
 - Inability to seek closure – Lack of incentive to move beyond the problem; either an over-identification with the problem or fear of closure
- ➔ Do not use a generic technique. Tailor the impasse technique to the source of resistance. Techniques may include:
 - Anchoring – Anchoring to perceived gain rather than loss
 - Reframing – Restating an issue or interest; removing toxicity from either language, tone, or body language
 - Reality testing – Exploring the alternatives (external to the negotiation) if the options (internal to the negotiation) are unacceptable and deal is not reached
 - Acquiring an outside opinion – Objective outside sources with credibility to sway either side
 - Linkage – Combining different pools of value
 - Deadlines – Creating an endpoint based on either internal or external needs
 - Temporary agreements – Trial agreements to test possible settlement ideas
- ➔ Be careful of unilateral concessions in substance. Make a concession in process.
- ➔ If the technique does not work, re-examine the source of resistance and try a new technique.
- ➔ Do not re-use the same techniques. For example, don't continue to reality test the other negotiator if the source of resistance is the potential for loss of face.

Assessing Durability of Agreements

Satisfaction is important in order to attain a durable agreement. Satisfaction can be reached in:

- Process – How the deal was reached
- Product – The actual outcome or deal
- Psychological/Personal – The underlying needs and interests

Assessing levels of satisfaction should be a continual technique throughout the negotiation, not just at the end. It is in your best interest that the other side feels satisfied (just as you need to be satisfied). The more satisfaction, the more durability. If you sense there is a low level of satisfaction in one area (for example, the other side is not getting the outcome that they want), seek to raise the level of satisfaction in another area (listening to their frustration so that they feel more satisfied about process.)