Effective Negotiation Strategies and Preparation

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Overview

A negotiation is a communication process in which multiple parties discuss problems and attempt to solve them via dialogue in order to reach a resolution. Negotiations occur constantly on micro and macro scales, both in the office and in everyday life. As in-house counsel, you are sure to encounter numerous types of negotiations as part of your daily tasks, such as salary negotiations, contract negotiations with outside counsel, settlement negotiations during litigation, union negotiations, purchase order negotiations, and more. This QuickCounsel provides a summary of the advantages and disadvantages of different types of negotiating formats, negotiating styles and preparation strategies.

Negotiation Formats

While countless types of negotiations exist, running the gamut from negotiating with your spouse over which tv show to watch to settling a civil suit, there are only two main formats in which these negotiations take place.

Positional bargaining, also known as distributive negotiation, involves arguing based on a position. Each side takes an extreme position based on its wants, needs, and limitations. These positions are almost always on opposite ends of the spectrum. The parties then treat the negotiation as a zero-sum game in which only one party can "win" the negotiation. By starting with an extreme initial position, the parties are then forced to make concessions to reach agreement. The smaller the concessions made, the more victorious one party feels. However, by starting with extreme positions and making only small concessions, the parties find that the negotiations become tense and drag on. A failed negotiation results when a stalemate is reached, and no final agreement is made.

Positional bargaining is best characterized by a pie analogy - each party is competing for the biggest slice of the pie. The negotiating room grows hostile, and communications may involve threats and lack transparency. A lack of trust ensues, and the future of the relationship may seem precarious. As the negotiation continues, parties grow even more entrenched in their positions, refusing to change their minds. Parties strongly commit themselves to one position and one position only and focus only on their own goals.

Despite its flaws, there is a time and place for positional bargaining. It works best when haggling on price, compromising on a position with another party that has conflicting underlying interests, or acting in a situation of immediate crisis.

Principled negotiation, also known as integrative negotiation, is another negotiation format in which parties work together to forge a value-creating agreement that leaves both parties happy with the outcome and with the status of the relationship. Principled negotiation creates a collaborative environment in which parties establish shared interests and work together to build mutually beneficial solutions. Parties are able to understand each other and trust each other while also being creative in solving the shared problem. Rather than thinking in terms of positions, the parties think in terms of interests and problems. Rather than a zero-sum game, principled negotiation leaves both parties no worse off than when they started the negotiation. Principled negotiation can also be characterized by a pie analogy - each party collaborates with the other to try to create a bigger, mutually beneficial pie in which to share.
Negotiation Styles

In addition to the negotiation formats discussed above, each individual has his/her own negotiation style. There are five main negotiation styles. Each negotiation style deals with conflict differently. These five styles are competing, collaborating, compromising, avoiding, and accommodating. Each style has its advantages and disadvantages, and it is crucial to be tactical in which style you choose, considering such factors as the style of the other negotiator and the type of negotiation.

The competing style is the most adversarial style. Negotiators who gravitate to this style see negotiations as competitions that have winners and losers. The other negotiation styles see competing negotiators as aggressive and strategic. The competing style works best when you need a fast negotiation or when there aren't many variables at play, such as simply negotiating over the price of a product. However, the competing style does not work well when used against another using the competing style; often, deadlock occurs, and relationships become frayed or even hostile.

The accommodating style is a submissive style, the yin to the competing style's yang. Accommodators are ready and willing to give information and to make concessions. Accommodators often let the other side of the table win on issues. This can be dangerous when negotiating against a competing style. However, accommodators put relationship as a top priority, and this style can be very successful in negotiations in which mending or maintaining relationships is critical. For example, if your company is in the midst of a crisis, an accommodative strategy can be very successful at avoiding litigation and appeasing the other party. However, unless the situation involves a relationship crisis, use accommodative strategies sparingly - giving away too many concessions or too much information in a negotiation might lead to a less than ideal outcome.

The avoiding style is passive aggressive and tends to skirt issues rather than confront them head on. Avoiders tend to come across as less transparent and honest, and lines of communication can be weak. Often times, this style is employed by negotiators who do not respond well to conflict or aggression. Rather than make accommodations, the avoiders simply avoid the situation. With that said, an avoiding style has its advantages in a highly emotional negotiation. Avoiders can avoid confronting emotions and passions and instead focus on hard numbers in order to reach an agreement. The avoiding style also works fine when the negotiation is simple or trivial. However, due to looming communication issues, the avoiding style has the ability to result in deadlock and resentment, as well as strained relationships. If you find yourself using this style and negotiations have become rocky, consider taking a break from the negotiating table to think through strategy before returning to negotiations.

The compromising style involves meeting halfway. One side makes some concessions, while the other side makes some concessions. In the end, there are no clear winners, but rather, what is believed to be a fair result instead occurs. Parties tend to start out at extreme positions, then work their way to the middle. This style is used often in positional bargaining. It works well when there are time constraints or there is an ongoing and strong relationship with the other party. While this format helps keep relationships strong, the agreements are usually not the most optimal agreements for both parties.

The collaborating style involves ensuring that both parties' needs are met. Parties brainstorm on how to create mutual value and think outside of the box on collaborating on a solution. Collaborating is all about value creation and is commonly encouraged by those who support the principled negotiation format. Collaborators expand the pie and strive to meet an optimal agreement that maximizes everyone's returns. This style is great at forming strong bonds or maintaining good relationships. However, the collaborating style is the most consuming style and the most mentally exhausting style. It also requires the most preparation. In addition, it does not work as well with competing style negotiators as they may try to take advantage of the situation. In addition, collaborators need to be wary of how much information is shared in order to avoid being taken advantage of.

Negotiation Preparation Strategies

While many individuals feel as if successful negotiations are simply the product of natural skill, the key behind reaching
an optimal agreement is **preparation** - know the issue, know yourself, and know your party. Preparation includes knowing your needs and limits, understanding what the other party wants and anticipating their limits, asking the right questions, and being creative in your proposed solutions. Good preparation allows you to strategize and to think on your feet in the negotiation room.

One of the most popular forms of negotiation preparation involves using a Seven Elements approach, as first outlined in *Getting to Yes: Negotiating Agreement Without Giving In* by Roger Fisher, William Ury, and Bruce Patton. The **Seven Elements** include interests, options, legitimacy, alternatives, communication, relationship, and commitment. By considering all of these different elements of a successful negotiation, you can enter the negotiating room fully prepared and fully informed.

First, consider both your interests and the other party's interests. Interests are not positions. Interests are merely the reasons behind a position. Your interests in reaching an agreement may be readily apparent to you. However, the other party's interests may not. Try to put yourself in their shoes. Why did they agree to sit down at the table with you? What will they get out of this agreement? After you devise a list of interests, circle the common interests. You will highlight these shared interests at the negotiation. Starting off a negotiation on the same page creates a foundation for agreement down the road. It also creates a sense of mutual understanding at the table and opens lines of communication. A good agreement fulfills interests, not positions.

Second, brainstorm options for the agreement. Not every agreement involves just a black-and-white agreement on a monetary amount. How can you create value? What options create value for both parties? For example, if you are negotiating an employment contract with a new employee, think outside salary. Options can include benefits such as health care and paid time off, training, trade association memberships, telecommuting, and more. Options create value and help fulfill even more shared interests.

Third, consider how you can add legitimacy to these options. What objective criteria or standards create a sense of fairness in the transaction? This dissolves a sense of arbitrariness from negotiations. For instance, if you are negotiating on a real estate purchase, you can use property appraisals or recent sales as objective criteria.

Fourth, think about the alternatives for both parties. What alternatives do you have if you do not reach agreement? What alternatives might the other party have? The **BATNA** is the Best Alternative to a Negotiated Agreement. This is your plan B. If you have a great BATNA, you know you can walk away from negotiations if your interests aren't being met or if things become hostile. This puts the value the agreement creates in perspective. Never forget that the other side might have other competitive offers.

Fifth, focus on keeping lines of communication open. Ask about the other side's alternatives. Ask about their interests. Before going into the negotiation room, write out a list of questions that you need to ask. Also strategize on the most effective way of framing your interests and how to communicate shared interests to the other party.

Sixth, assess your relationship with the other party. Where is it now? Where would you like it to be? Why is it like that? How can you improve it? Transparency, active listening, and empathy are great ways to improve negotiations and subsequently, relationships.

Finally, consider the commitments at stake. What level of authority do you have - can you execute a final agreement at the negotiating table or do you need to have your Board vote on a proposal? What level of authority might the other party have? What steps do you (or they) need to take in order to get a final agreement?

Writing down your answers and information for each element and bring that information with you to the negotiation room will prove to be invaluable.
Conclusion

There are several different formats and styles of negotiations, and which one you use depends on a host of factors such as the strength of the relationship, the urgency of the situation, the complexity of the issues, and the content of the negotiation. Each format and style has its own strengths and weaknesses and can be strategically used in various types of situations. While positioned bargaining may be adequate for quick and informal negotiations such as price haggling, principled negotiations provide a sound backdrop for successful agreements that add value to both parties by fulfilling mutual interests. In addition, the five different negotiation styles (competing, accommodating, avoiding, compromising, and collaborating) are appropriate in different situations, though the collaborative style is universally recommended for principled negotiation as it helps increase value. Finally, preparation is a key element of a successful negotiation, and specifically the Seven Elements can serve as a strong foundation for comprehensive preparation and strategizing.

Additional Resources

- Program on Negotiation at Harvard Law School
- Negotiation Theory and Practice (EASYPol 2008)
- Center for Negotiation Analysis
- The Negotiation Resource Center (BATNA.com)
- Negotiating Style Self-Assessment (Women’s Institute of Negotiation 2011)
- Negotiation Preparation Form (Align Consulting 2005)
- Getting to Yes: Negotiation Agreement Without Giving In (Fisher, Ury & Patton 2011)

http://www.acc.com/legalresources/quickcounsel/ensp.cfm