

NEGOTIATION & DISPUTE RESOLUTION

DOPL TRAINING PROGRAM FOR UVHBA

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Key Areas of Focus

1. Avoiding Disputes
 - a. Managing expectations
 - b. Pre-dispute work to prevent potential disputes
 - c. Communication skills
2. Resolving Disputes
 - a. Handling disputes when they arise
 - b. Basic negotiation skills training
 - c. Negotiation simulations
 - d. Avoiding the need to escalate disputes
 - e. Avoiding the need to obtain outside help to resolve the dispute
3. Handling Escalated Disputes
 - a. Process for effectively escalating a dispute
 - b. Costs of escalating a dispute

Introductory Principles

1. Negotiations and conflict are everywhere
 - a. Water example
2. Potential negotiation pitfalls
 - a. Uncomfortable
 - i. Conflict
 - ii. Negotiation style
 - b. Uncertain
 - i. How to negotiate?
 - c. Pitfalls lead to:
 - i. Deals not made
 - ii. Protracted disputes
 - iii. Damaged relationships
 - iv. Money and time wasted
3. Causes of Pitfalls
 - a. Negotiation viewed as a zero-sum game
 - b. Lack of a systematic framework to prepare for, conduct, and analyze negotiation
 - c. Unaware of the impact of our behavior on others
 - d. Cultural or institutional norms
 - e. Three E's:
 - i. Emotion
 - ii. Ego - wanting to win
 - iii. Escalation - responding in kind

Getting to Yes

The Problem

Don't Bargain Over Positions

3 Criteria for Judging a Negotiation:

1. It should produce a wise agreement if possible.
2. It should be efficient.
3. It should improve or at least not damage the relationship between the parties.

Wise Agreement: One that meets the legitimate interests of each side to the extent possible, resolves conflicting interests fairly, is durable, and takes community interests into account.

1. Arguing over positions creates unwise outcomes
2. Arguing over positions is inefficient
3. Arguing over positions endangers an ongoing relationship
4. Being nice is no answer

Positional Bargaining: Which Game Should You Play		
Soft	Hard	Negotiate on Merits
Participants are friends	Participants are adversaries	Participants are problem solvers
The goal is agreement	The goal is victory	The goal is a wise outcome reached efficiently and amicably
Make concessions to cultivate the relationship	Demand concessions as a condition of the relationship	Separate the people from the problem
Be soft on the people and the problem	Be hard on the problem and the people	Be soft on the people, hard on the problem
Trust others	Distrust others	Proceed independent of trust
Change your position easily	Dig in to your position	Focus on interests, no positions

Make offers	Make threats	Explore interests
Disclose your bottom line	Mislead as to your bottom line	Avoid having a bottom line
Accept one-sided losses to reach your agreement	Demand one-sided gains as the price of agreement	Invent options for mutual gain
Search for the single answer: the one they will accept	Search for the single answer: the one you will accept	Develop multiple options to choose from; decide later
Insist on agreement	Insist on your position	Insist on using objective criteria
Try to avoid a contest of will	Try to win a contest of will	Try to reach a result based on standards independent of will
Yield to pressure	Apply pressure	Reason and be open to reason; yield to principle, not pressure

Solution:

1. Principled Negotiation or Negotiation on Merits
 - a. Focusing on basic interests, mutually satisfying options, and fair standards typically result in a wise agreement.
 - b. Elements of Principled Negotiation
 - i. People: Separate the people from the problem
 - ii. Interests: Focus on interests, not positions
 - iii. Options: Invent multiple options looking for mutual gains before deciding on what to do
 - iv. Criteria: Insist that the result be based on some objective standard

Focus on Interests, Not Positions

1. Your position is something you have decided upon.
2. Your interests are what caused you to so decide.
3. For every interests there usually exists several possible positions that could satisfy it.

How do you identify interests?

1. Ask “why?”
 - a. Make it clear that you are not asking for justification of the position, but for an understanding of the needs, hopes, fears, or desires that it serves.

2. Ask “why not?” Think about their choice.
 - a. Realize that each side has multiple interests.
 - i. A common error is to assume both sides have the same interests.
 - ii. The competing interests are not always just the interests of the two people in the negotiation. It can be their family, their bosses, etc.
3. The most powerful interests are basic human needs.
 - a. Basic human needs include:
 - i. Security
 - ii. Economic well-being
 - iii. A sense of belonging
 - iv. Recognition
 - v. Control over one’s life
4. Make a list.
 1. Always write down a list of the interests of the other side and use it as you proceed to negotiate.

Talking About Interests.

1. You must explain your interests if the other side is going to take them into account.
2. Make your interests come alive.
 - a. It is your job to make the other side understand exactly how important and legitimate your interests are.
 - b. As long as you do not seem to imply that the other side’s interests are unimportant or illegitimate, you can afford to take a strong stance in setting forth the seriousness of your concerns.
 - c. Ask the other side to “correct me if I am wrong.”
 - i. If they do correct this helps come to a mutual understanding.
 - ii. If they don’t, they are accepting what you are saying.
 - d. You need to portray your interests as legitimate.
3. Acknowledge their interests as part of the problem.
 - a. If you understand the other side, the other side will view you as intelligent and sympathetic and in turn worth listening to.
 - b. Restate and make sure you understand their interests as well.
 - c. This will help identify any mutual interests.
4. Put the problem before your answer.
 - a. If you want someone to listen and understand your reasoning, give your interests and reasoning first and your conclusions or proposals later.
5. Look forward, not back.
 - a. If you ask two people why they are arguing, the answer will typically identify a cause, not a purpose.
6. The question “Why?” has two quite different meanings.
 - a. Looking backward for a cause and treats behavior as determined by prior events.
 - b. Looks forward for a purpose and treats behavior as subject to free will.
 - c. Interests are better satisfied by looking forward.

7. Be concrete but flexible.
 - a. To avoid having to make a difficult decision on what to settle for, people will often go into a negotiation with no plan other than to sit down with the other side and see what they offer or demand.
 - b. To convert your interests into concrete options, ask yourself, "If tomorrow the other side agrees to go along with me, what do I now think I would like them to go along with?"
 - c. An open mind is not an empty one.
8. Be hard on the problem, soft on the people.
 - a. It may not be wise to commit yourself to your position, but it is wise to commit yourself to your interests.
 - b. Often the wisest solutions, those that produce the maximum gain for you at the minimum cost to the other side, are produced only by strongly advocating your interests.
 - c. Two negotiators, each pushing hard for their interests, will often stimulate each other's creativity in thinking up mutually advantageous solutions.
 - d. Attack the problem without blaming the people.
 - i. Listen to them with respect
 - ii. Show them courtesy
 - iii. Express your appreciation for their time and effort
 - iv. Emphasize your concern with meeting their basic needs
 - v. Show them that you are attacking the problem, not them
 - e. One useful rule of thumb is to give positive support to the human beings on the other side equal in strength to the vigor with which you emphasize the problem.
 - f. It is the combination of support and attack that works; either alone is likely to be insufficient.
 - g. Successful negotiation requires being both firm and open.

Invent Options for Mutual Gain

1. Skill at inventing options is one of the most useful assets a negotiator can have.
2. All too often negotiators "leave money on the table" – they fail to reach agreement when they might have, or the agreement they do reach could have been better for each side.

DIAGNOSIS

1. In negotiations, often the only creative thinking is to suggest splitting the difference.
2. In most negotiations there are four major obstacles that inhibit the inventing of an abundance of options:
 - a. Premature judgment
 - b. Searching for the single answer
 - c. The assumption of a fixed pie
 - d. Thinking that "solving their problem is their problem."

3. Premature Judgment
 - a. Inventing options does not come naturally
 - b. Judgment hinders imagination
 - c. Under the pressure of a forthcoming negotiation, your critical sense is likely to be sharper.
 - d. Practical negotiation appears to call for practical thinking, not wild ideas.
 - e. You may also fear that by inventing options you will disclose some piece of information that will jeopardize your bargaining position.
4. Searching for the Single Answer
 - a. People see their job as narrowing the gap between positions, not broadening the options available.
 - b. "We're having a hard enough time agreeing as it is. The last thing we need is a bunch of different ideas."
 - c. Since the end product of negotiation is a single decision, they fear that free-floating discussion will only delay and confuse the process.
 - d. By looking from the outset for the single best answer, you are likely to short-circuit a wiser decision-making process in which you select from a large number of possible answers.
5. The Assumption of a Fixed Pie
6. Thinking that "Solving their problem is their problem."
 - a. For you as a negotiator to reach an agreement that meets your own self-interest, you need to develop a solution that also appeals to the self-interest of the other side.
 - b. Shortsighted self-concern leads a negotiator to develop only partisan positions, partisan arguments, and one-side solutions.
7. Broaden your options
 - a. Even with the best of intentions, participants in a brainstorming session are likely to operate on the assumption that they are really looking for the one best answer.
8. Look through the eyes of different experts.
9. Invent agreements of different strengths.
 - a. Permanent vs. provisional etc.
10. Change the scope of a proposed agreement.
 - a. Break it into smaller parts.
11. Look for Mutual gain
 - a. The assumption of the fixed pie is a common misconception when negotiating.
 - b. Identify shared interests.
 - i. Look for them even when they may not be apparent at first.
 - ii. Make shared interests future oriented.
 - iii. Treat them like joint goals.
 - iv. Stressing your shared interests can make the negotiation smoother and more amicable.
12. Dovetail differing interests.
 - a. Differences in belief often provides the basis for a deal.

- b. Different beliefs? – Possibly have an arbitrator settle the dispute.
- c. Different values placed on time? – Installment plans, etc.
- d. Different forecasts? – Contingency
- e. Differences in aversion to risk? –

Insist on Using Objective Criteria

1. Deciding on the basis of will is costly
2. The case for using objective criteria
 - a. Principled negotiation produces wise agreements amicably and efficiently
3. Developing objective criteria
 - a. Fair standards
 - b. Fair procedures
4. Negotiating with objective criteria
 - a. Frame each issue as a joint search for objective criteria
 - i. Ask “What’s your theory?”
 - ii. Agree first on principles
 - b. Reason and be open to reason as to which standards are most appropriate and how they should be applied
 - c. Never yield to pressure, only to principle

Yes, But...

These skills are great but what if the other side is making things difficult?

What if They Are More Powerful? (Develop Your BATNA – Best Alternative to a Negotiated Agreement)

1. Protecting yourself
 - a. The costs of using a bottom line
 - b. Know your BATNA
 - c. The insecurity of an unknown BATNA
 - d. Formulate a trip wire
2. Making the most of your assets
 - a. The better your BATNA, the greater your power
 - b. Develop your BATNA
 - c. Consider the other side’s BATNA
3. When the other side is powerful

What if They Won’t Play? (Use Negotiation Jujitsu)

1. Negotiation Jujitsu
 - a. Don’t attack their position, look behind it
 - b. Don’t defend your ideas, invite criticism and advice
 - c. Recast an attack on you as an attack on the problem
 - d. Ask questions and pause

What if They Use Dirty Tricks? (Taming the Hard Bargainer)

1. How do you negotiate about the rules of the game
 - a. Separate the people from the problem
 - b. Focus on interests, not positions
 - c. Invent options for mutual gain
 - d. Insist on using objective criteria
2. Some common tricky tactics
 - a. Deliberate deception
 - i. Phony facts
 - ii. Ambiguous authority
 - iii. Dubious intentions
 - iv. Less than full disclosure is not the same as deception
 - b. Psychological warfare
 - i. Stressful situations
 - ii. Personal attacks
 - iii. The good-guy/bad-guy routine
 - iv. Threats
 - c. Positional pressure tactics
 - i. Refusal to negotiate
 - ii. Extreme demands
 - iii. Escalating demands
 - iv. Lock-in tactics
 - v. Hearthearted partner
 - vi. A calculated delay
 - vii. "Take it or leave it"
 - d. Don't be a victim

Avoiding Disputes

3D Negotiation

1. Set Up
2. Design
3. Tactics

Managing expectations

Pre-dispute work to prevent potential disputes

1. The best way to deal with problems is before they come up
2. Face the problem not the people:
 - a. Don't look at the other side as adversaries.
 - b. Think of each side as partners in a side-by-side search for fair agreement advantageous to each.

- c. "Look, we're both lawyers. Unless we try to satisfy your interests, we are hardly likely to reach an agreement that satisfies mine, and vice versa. Let's look together at the problem of how to satisfy our collective interests."
- d. Sitting on the same side of the table can help this.

Communication skills

Common problems with communication in negotiations:

1. Negotiators may not be talking to each other (talking to impress their side or trip up the other side)
2. The sides aren't listening to each other.
3. Misunderstanding and misinterpretation.

Listen actively and acknowledge what is being said

1. Use reflective listening.
2. "The cheapest concession you can make to the other side is to let them know they have been heard."
3. Don't try to think of a response while listening. Just continue to clarify until you understand perfectly what is going on.
4. It is very important to validate the other side's point of view.
5. "One can at the same time understand perfectly and disagree completely with what the other side is saying."
6. "Once you have made their case for them, then come back with the problems you find in their proposal."

Speak to be understood.

1. Talk to the other side.
2. You are not trying to impress any third parties.
3. Think of it as two judges trying to come up with a joint opinion.
4. No matter how many people are involved in the negotiation, important decisions are almost always made when there are only two people in the room.

Speak about yourself, not about them.

1. Say "I feel let down" not "you broke your word."
2. Say "we feel discriminated against" not "you are a racist."
3. It is easy for the other side to disagree and get mad about what you say about them, but it is much harder for them to disagree about what you feel.

Speak for a purpose.

1. Sometimes in negotiations people talk too much.
2. Before making a significant statement, know what you want to communicate or find out, and know what purpose this information will serve.

Resolving Disputes

Handling disputes when they arise

1. Disputes will arise

Basic negotiation skills training

Types of Interests

1. Joint/Shared
2. Differing
3. Competing

Traditional Bargaining

1. Hard negotiation
2. Soft negotiation

Negotiator's Toolbox

Ladder of Inference

1. Pool of Info
2. Observations
3. Interpretations
4. Conclusions

Active Listening

1. Less about words, more about authenticity
2. Be genuinely curious
3. Genuinely care about the other person
4. Three Components:
 - a. Inquire
 - i. Open-ended questions
 - ii. Concrete info
 - b. Paraphrase
 - i. Check for understanding
 - ii. Show the other person he/she has been heard
 - c. Acknowledge
 - i. The four invisible questions:
 1. Are my feelings ok?
 2. Do you understand them?
 3. Do you care about them?
 4. Do you care about me?

Seven Elements of Negotiation Success

1. Alternatives
 - a. Definition: Walk-away options if no agreement
 - b. Success: Better than BATNA
 - c. Advice: Improve your BATNA in advance; weaken their BATNA
2. Interests
 - a. Definition: Needs, concerns, goals, desires, fears
 - b. Success: Satisfies both parties interests...yours well, theirs acceptably
 - c. Advice:
 - i. Clarify yours; estimate theirs
 - ii. Probe for interests
 - iii. Consider tangible and intangible
3. Options
 - a. Definition: All possibilities on which parties might agree
 - b. Success: Maximizes joint gains; efficient
 - c. Advice: Base on interests; brainstorm
 - d. Brainstorming Rules
 - i. No dumb ideas - crazy ideas welcome
 - ii. No criticism, evaluation, or ownership
 - iii. Focus on quantity, not quality
4. Legitimacy
 - a. Definition: External criteria (laws, regulations, industry standards)
 - b. Success: Using standards so parties feel fairly treated
 - c. Advice: Use as a sword; use a shield
5. Communication
 - a. Definition: Exchange of thoughts, messages, or information
 - b. Success: Message sent = message received
 - c. Advice: Tailor words and tone to audience - Combine advocacy with inquiry
6. Relationship
 - a. Definition: Connection between two parties
 - b. Success: Relationship improves or is not harmed
 - c. Advice: Separate people from problem; Frame as joint problem; Invite, don't accuse
7. Commitment
 - a. Definition: Agreement about what a party will do
 - b. Success: Specific, firm, implementable
 - c. Advice: Avoid committing too early; use process commitments to move forward; make substantive commitments at the end.

Seven Elements Definition of Negotiation Success

1. Better than our BATNA
2. Meets our interests well and theirs acceptably

3. Is legitimate, supported by objective criteria
4. Improves, or at least does not damage the relationship
5. Is based on clear communication
6. Identifies commitments that are specific, firm, and implementable

The Value of the Seven Elements

1. Provides a systematic way to measure success in a negotiation
2. Serves as a simple, thorough way to prepare for a negotiation
3. More robust than simplistic, one dimensional definitions of negotiation success
4. Useful in all types of negotiation

Negotiation simulations

Feedback

Giving Feedback:

1. Inquire into your counterpart's purposes
2. Discuss both "did well" and "do differently"
3. Use "and" instead of "but"
4. Use specific data points and examples
5. Balance inquiry and observation

Receiving Feedback:

1. Separate performance from identity
2. State focus areas up-front
3. Be curious, not defensive
4. Ask for specific examples
5. Be willing to change

Defining Negotiation Success

Common ways to define success:

1. Winning
2. Reaching agreement
3. Not fighting
4. Equity
5. Breaking their bottom line

Create a UVHBA relevant negotiation scenario and have everyone go through it.

Avoiding the need to escalate disputes

How to be a good negotiator

1. Know how to negotiate
2. Apply what you know

3D Negotiation

Avoiding the Need to Obtain Outside Help to Resolve the Dispute

Handling Escalated Disputes

Process for Effectively Escalating a Dispute

Costs of Escalating a Dispute