

Principled Negotiation: What it is and why you should try it

Handling a Misdemeanor Case from A to Z

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INTRODUCTION

- We negotiate every day
- What is a negotiation?
 - Communication
 - Oral
 - Physical
 - Differing interests
 - An agreement
 - Satisfies the interest of both parties
 - More satisfaction than if there was no negotiation
- We all negotiate as a part of our job on a daily basis. We can all become much better negotiators.
- We all have a style of negotiation whether we are conscious of it or not. We must become conscious of how we negotiate.
- We tend to think that negotiators come in two styles:
 - Competitive (“hard”)
 - Cooperative (“soft”)

THE COMPETITIVE/“HARD” NEGOTIATOR

- The competitive negotiator sees any situation as a contest of wills in which the side that takes the more extreme positions and holds out longer fares better.
- The competitive negotiator moves psychologically against the other person with behavior designed to unnerve the opponent. Competitive negotiators expect similar behavior from their opponents and therefore mistrust them.
- Competitive negotiators tend to employ a strategy which often includes the following tactics:
 - A high initial demand
 - Limited disclosure of information regarding facts and one's own preferences
 - Few and small concessions
 - Whenever possible, the competitive negotiator appears to make a concession without really making one
 - Competitive negotiators may also make an initial demand that is a false issue so that they have something to concede later

- Threats and arguments
 - Apparent commitment to positions during the negotiating process
 - Elective disclosure about one's own case for the specific purpose of undermining one's opponent
- Empirical research shows a significant positive relationship between a negotiator's original demand and his payoff
 - To the extent that the success of a negotiation strategy is measured by the payoff in a single negotiation involving the division of limited resources between two parties, studies of simulated negotiations suggest that the competitive strategy yields better results than other strategies for the negotiator.
 - However, the competitive strategy suffers severe disadvantages:
 - Likelihood of impasse is much greater for negotiators
 - Competitive tactics engender tension and mistrust
 - There can be long term repercussions against the negotiator or the repeat customer

THE COOPERATIVE/"SOFT" NEGOTIATOR

- The cooperative negotiator initiates granting concessions in order to create both a moral obligation to reciprocate and a relationship built on trust that is conducive to achieving a fair agreement.
- The cooperative negotiator does not view making concessions as a necessity resulting from a weak bargaining position or a loss of confidence in the value of her case. Rather, she values concessions as an affirmative negotiating technique designed to capitalize on the opponent's desire to reach a fair and just agreement and to maintain an accommodative working relationship.
- Proponents of the cooperative strategy believe that negotiators are motivated not only by personal or competitive desires to maximize their own utilities, but also by collectivistic desires to reach a fair solution.
- Cooperative negotiators assert that the competitive strategy often leads to resentment between parties and a breakdown of negotiations.
- Cooperative negotiators expect opponents to reciprocate with concessions of similar size. Cooperative strategies would include any strategies that aim to develop trust between the parties and that focus on the expectation that the opponent will match concessions ungrudgingly.
- The major weakness of the cooperative approach is its vulnerability to exploitation by the competitive negotiator.

COOPERATIVE/SOFT

Participants are friends
Goal is agreement
Make concessions to cultivate relationship
Be soft on the people and the problem
Trust others
Change your position easily
Make offers
Search for the single answer: the one they will accept
Accept one-sided losses to reach agreement
Insist on agreement, yield to get it
Try to avoid a contest of will
Disclose bottom line

COMPETITIVE/HARD

Participants are adversaries
Goal is victory
Demand concessions as the price of relationship
Be hard on the people and the problem
Distrust others
Dig in to your position
Make threats
Search for the single answer: the one you will accept
Demand one-sided gains as the price of agreement
Insist on your position, apply pressure
Try to win a contest of will
Mislead about your bottom line

- Both the competitive and cooperative strategies focus on the opposing “positions” of the negotiators. Each negotiator attempts to achieve as many concessions from the other as possible. These concessions move the negotiations closer to an outcome favorable to the negotiator; however, each concession diminishes the opponent’s satisfaction with the potential agreement.

PRINCIPLED NEGOTIATION – HARVARD NEGOTIATION PROJECT

- In 1981, Professors Roger Fisher and William Ury published their seminal book, *Getting to Yes: Negotiating Agreement Without Giving In*. Their book advanced the theory of negotiation developed at the Harvard Negotiation Project.
- It is a strategy largely based on problem-solving or integration. Issues are decided on their merits rather than through haggling process focused on what each side says it will or won’t do. The theory suggests that you look for mutual gains wherever possible, and that where your interests conflict, you should insist that the result be based on some fair standards independent of the will of either side.
- The style is hard on the merits, soft on the people. It employs no tricks or posturing. There is no war-like mentality to determine a winner and a loser. You obtain what you are entitled to while still remaining decent.

- This has been referred to as “principled negotiating,” “mutual gains negotiating” or “win-win negotiating.” This method of negotiation sets out to:
 - **Separate the people from the problem**
 - **Focus on interests, not positions**
 - **Generate a variety of possibilities before deciding what to do**
 - **Insist that the result be based on some objective standard**
- This is not a concession-based strategy that seeks to divide a fixed pie; rather, it maximizes the parties’ potential for problem solving in order to increase the joint benefit and *expand* the pie.
- The principled negotiator strives to identify problem-solving solutions which are not readily perceived.

SEPARATE THE PEOPLE FROM THE PROBLEM

- Negotiators are people first
- Every negotiator has two kinds of interests:
 - In the substance
 - In the relationship
- Separate the relationship from the substance and deal directly with the people
- Perception
 - Put yourself in their shoes
 - Don’t deduce their intentions from your fears
 - Discuss each other’s perceptions
 - Look for opportunities to act inconsistently with their perceptions
 - Give them a stake in the outcome by involving them in the process
 - Make your proposals consistent with their values
- Emotion
 - Recognize and understand emotions—theirs and yours
 - Make emotions explicit and acknowledge them as legitimate
 - Allow the other side to let off steam
 - Don’t react to emotional outbursts
 - Use symbolic gestures
- Communication
 - Three main problems in communication

- Negotiators may not be talking to each other
 - Negotiators may not be hearing each other
 - Negotiators may be misunderstanding each other
- What can be done to solve communication problems
 - Listen actively and acknowledge what is being said
 - Speak to be understood
 - Speak about yourself, not about them
 - Speak for a purpose
- Prevention works best
 - Build a working relationship
 - Face the problem, not the people

FOCUS ON INTERESTS, NOT POSITIONS

- For a wise solution, reconcile interests, not positions
 - Interests define the problem
 - Behind opposed positions lie shared and compatible interests, as well as conflicting ones
- How do you identify interests
 - Ask "Why?"
 - Ask "Why not?" and think about their choice
 - Realize that each side has multiple interests
 - The most powerful interests are basic human needs
 - Security
 - Economic well-being
 - A sense of belonging
 - Recognition
 - Control over one's life
 - Make a list
- Talking about interests
 - Make your interests come alive
 - Acknowledge their interests as part of the problem
 - Put the problem before your answer
 - Look forward, not back
 - Be concrete, but flexible
 - Be hard on the problem, soft on the people

INVENT OPTIONS FOR MUTUAL GAIN

- Diagnosis
 - Premature judgment
 - Searching for the single answer

- The assumption of a "fixed" pie
- Thinking that "solving their problem is their problem"
- Prescription
 - Separate inventing from deciding—brainstorm
 - Broaden your options
 - Multiply options by shuttling between specific and general
 - Look through the eyes of different experts
 - Invent agreements of different strengths
 - Change the scope of a proposed agreement
 - Look for mutual gain
 - Identify shared interests
 - Dovetail differing interests
 - Ask for their preferences
 - Make their decision easy

INSIST ON USING OBJECTIVE CRITERIA

- Deciding on the basis of will is costly
- Developing objective criteria
 - Fair standards
 - Fair procedures
- Negotiating with objective criteria
 - Frame each issue as a joint search for objective criteria
 - Ask "What's your theory?"
 - Agree first on principles
 - Reason and be open to reason
 - Never yield to pressure

COOPERATIVE/SOFT	COMPETITIVE/HARD	PRINCIPLED
Participants are friends	Participants are adversaries	Participants are problem solvers; separate the person from the problem; care about the person but focus on the problem
Goal is agreement	Goal is victory	Goal is a wise outcome reached efficiently/amicably
Make concessions to cultivate relationship	Demand concessions as the price of relationship	Separate people from the problem
Be soft on the people and the problem	Be hard on the people and the problem	Be soft on the people and hard on the problem
Trust others	Distrust others	Proceed independent of trust
Change your position easily	Dig in to your position	Focus on interests not positions
Make offers	Make threats	Explore interests and motivations
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
Accept one-sided losses to reach agreement	Demand one-sided gains as the price of agreement	Invent options for mutual gain where both interests are met
Insist on agreement	Insist on your position	Insist on using objective criteria
Yield to pressure	Apply pressure	Reason and be open to reasons; yield to principle, not pressure
Try to avoid a contest	Try to win a contest of will	Try to reach a result based on standards independent of will
Disclose bottom line	Mislead about your bottom line	Avoid having a bottom line

"YES, BUT..."

- What if they are more powerful?
 - Know your BATNA (Best Alternative to Negotiated Agreement)
 - The better your BATNA, the greater your power
 - Consider the other side's BATNA

- What if they won't play?
 - Negotiation jujitsu
 - Don't attack their position, look behind it
 - Don't defend your ideas, invite criticism and advice
 - Recast an attack on you as an attack on the problem
 - Ask questions and pause

- What if they use dirty tricks?

- Negotiate about the rules of the game
- Recognize the dirty tricks
 - Deliberate deception
 - Phony facts
 - Ambiguous authority
 - Dubious intentions
 - Less than full disclosure is not the same as deception
 - Psychological warfare
 - Stressful situations
 - Personal attacks
 - The good guy/bad guy routine
 - Threats
 - Positional pressure tactics
 - Refusal to negotiate
 - Extreme demands
 - Escalating demands
 - Lock-in tactics
 - Hardhearted partner
 - A calculated delay
 - "Take it or leave it"

SUMMARY

- You knew this all along
- Learn from doing—practice, practice, practice
- Redefine "winning"