Steps to Problem Solving
A Negotiation Toolkit

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ABSTRACT
The following pages contain valuable information on ways to turn conflict into cooperative problem-solving efforts that have an excellent chance of attaining win-win outcomes for both parties.
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Chapter 1: A Short Overview of Human Conflict in the Workplace

Human beings in the workplace have, and most likely will, continue to be at odds with each other because of the dialectic relationship between stakeholder wants, employee needs, and organizational structure. These opposing relationships create conflict in the workplace. The best solutions to conflict are found through some type of problem solving technique that facilitates a wise negotiated agreement. If the parties are willing to sit side-by-side and discuss common interest and differences a solution may be found that increases the “economic pie” for both parties. Because conflict in the workplace will always be prevalent, the need for joint problem-solving techniques, principled negotiation tactics, and agreement implementation strategies will also have to be prevalent.

Stakeholder Wants

A CEO’s job is to operate a company profitably; stakeholders expect a return on their investment. Managers must adopt a revenue-generating philosophy to ensure the company stays profitable and that they, as managers, keep their jobs. Profits are the leading concern of a company and at times these profits may come at the expense of employee concerns or needs.

Employee Needs

Human beings are subjective creatures. When we perceive a loss of autonomy, freedom, or the infringement of our principles or values, it usually manifests itself as an underlying reason of conflict in the work place.
Organizational Structure

Several organizational structural theories and practices, such as the factory system and scientific management, for example, enhance manufacturing production schedules. But these organizational, management, and production techniques can actually add tension to the human element of an organization.
Organizational structures were designed to minimize conflict in the workplace by controlling the human element in a production setting. These structures may have minimized outward conflict by using strict enforcement of rules and discipline, but they probably did little to address employee conflict or problem solve in a fair and just manner.

Chapter 2: Tools to Prepare

Several tools exist to help manage conflict fairly, but no negotiating tool will work at its optimum unless you are fully prepared with as much knowledge of situation as humanly possible. A BATNA and the Nine Steps process will help you to become a more prepared negotiator.

BATNA

The best alternative to a negotiated agreement (BATNA) is your knowledge of what you want out of the agreement. To derive the best outcomes from negotiation prepare your BATNA before negotiations begin. Here’s how:

- Make a List: List on a piece of paper all the possible end result scenarios that you could conceive happening during negotiations. Circle your “best alternative to a negotiated agreement” (BATNA). Only one option can be your BATNA.
- Make your BATNA operational. For example, if your BATNA for negotiating a salary increase is to quit if you do not get the raise you want – begin the task of finding a new job.
  - Remember though, your BATNA is not your bottom-line. Your BATNA is designed to be flexible and dynamic, thus allowing you to explore options – ones you did not think of.
  - Your BATNA gives you piece of mind that you do have another option; however, that option may not be your best option.
Nine Steps

Nine Steps (see Figure 1) is a negotiating preparation tool that if followed gives the negotiator a powerful edge. The steps include identifying good outcomes for both parties, (1) the prospect of creating value to all parties, and (2) identifying everyone’s BATNA. Other steps of the process are (3) improving your BATNA to get you into a better negotiating position, and to (4) prepare for authority issues when you are not bargaining with the decision maker. Additional steps include (5) learning all you can about your negotiating partners, to (6) make the bargaining process flexible, to (7) set rules of fairness by using agreed upon objective criteria, and if you feel that your ideas are not being heard, (8) alter the bargaining process in your favor by (9) working behind the scenes. For example, explain your ideas to someone in authority behind closed doors.

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**Figure 1**

Preparing For Negotiation:

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**Chapter 3: Being a Competent Negotiator**

**Principled Negotiations**

The time has come to actually negotiate and you’ll want to adopt the principled style of negotiating. A principled negotiator negotiates on four merits.
- People: No personal attacks, keep the problem separate from the person(s).
- Interests: Concentrate on what’s important to each party, not on positions.
- Options: Brainstorm ideas that benefit both parties before a decision.
- Criteria: Use a fair and objective standard for gauging worth or relevance.
You will most likely encounter resistance as you try to persuade your negotiating partner to see a problem or conflict through your eyes. Your negotiating partner may take a positional approach of bargaining where he/she becomes locked into their positions. Positional negotiating leaves very little room for flexibility, and it usually ends up being a contest of wills. But whatever negotiating style you adopt or encounter, you must try to keep emotionally balanced. You can do this by using the Individual Conflict Competence Model (see Figure 2).

- Calm Down: Strong motions can adversely affect the thinking processes, so if you feel yourself getting upset or angry, step out and calm down.
- Take a Break: If you are having a hard time calming down, take a break and regain your composure.
- Reconnect Meaningfully: Once you have regained your composure you will be better able to resume your negotiations.

**Figure 2**

Emotions Out of Control?

Calm Down
Take A Break
Reconnect Meaningfully

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Chapter 4: Negotiation Techniques & Alternative Dispute Resolution

First and foremost, try and settle differences or conflict at the lowest possible level. For example, conflict between two line workers would ideally be reconciled on that level and not involve management. This type of conflict resolution is usually the fastest, cheapest, and is best for preserving relationships.

Joint Problem Solving

Bear in mind that even if emotions get tangled up in the discussion, the intent is still joint problem solving. Joint problem solving has three objectives, five possible barriers to those objectives, and five strategies for breaking through those barriers (see Figure 3).

Figure 3

Joint Problem Solving

The Objective: Joint Problem Solving

• People Sitting Next to Each Other
• Tackle the Problem
• Finish With an Equally Acceptable Agreement

Barriers To Cooperation

• Your Response
• Their Response
• Their Stance
• Their Unhappiness
• Their Power

Tactic: Breakthrough Negotiation

• Control Your Behavior
• See the Problem From Their View
• Ask Questions
• Make it Easy for Them to Say Yes.
• Make it Hard for Them to Say No: Educate Them

Joint problem solving may not get you to a satisfactory negotiated settlement – usually because one side is stuck in their position. When joint problem solving fails to produce an agreement that’s satisfactory to both sides then the time has come to investigate other forms of Alternative Dispute Resolution (ADR) such as one text, mediation, or arbitration.
A stalled or unproductive negotiation may benefit from the one text method. The one text method of negotiating is to involve a third party neutral, but parties still retain control of the processes and outcomes. A third party neutral is able to move between parties because s/he does not have a stake in the outcome. Thus the third party is seen as neutral and can be trusted by either side to only be a facilitator.

The neutrality of the third party makes it easier for s/he to shift the parties away from positional negotiating. The third party does this as bargainers express their concerns in private. The third party listens and looks for opportunities where the parties may have common interest and uses those interests to facilitate collaboration. Any person that both parties trust, and has knowledge of the problem, can be a third party neutral. The point is to push both sides towards cooperation so that they can hone in on options, and agree to them, without feeling that they have compromised too much.
Mediation is another negotiating alternative when a third party neutral is required or preferred. Mediation facilitates in helping parties resolve their own differences while they maintain control of the processes and outcome. The difference between mediation and one text method is that a mediator is usually a professional who has skills in conflict resolution and could have expertise in the subject matter surrounding the conflict. Also, in mediation the mediator customarily charges a fee for services. Much like the one text method the mediator tries to move the parties towards cooperation; the mediator does not decide the outcome of the dispute. The process is outlined in Figure 4.

The advantages (see Figure 5) of mediation over arbitration are:

- Diminished injury due to exposure, because mediation is private.
- Use of a mediator furthers shared understanding, knocks down barriers created by positions, and refreshes the obligation to resolve disagreements but keeps parties in control of the outcome.
- Discover different or common interests.
- Hone in on options and be innovative.
- Mediation is more agreeable process, which yields better settlements.
- It is also faster and cost effective because nearly all the legal framework allowed by arbitration and courts are not present in mediation.

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Mediation is non-binding, so parties do have options, albeit more expensive, if no agreement can be discovered and agreed upon during mediation.

Joint problem solving, one text method, and mediation are negotiating techniques designed to preserve relationships while working toward a solution to the conflict. These three techniques also require the good-faith effort of all parties involved to be successful. When joint problem solving, one text method, and mediation are not a workable form of ADR then arbitration is another option.
Arbitration

Arbitration is yet another negotiation alternative that requires a third party neutral. Arbitration differs from mediation in a few ways. First, with arbitration there is no caucus with the parties. Second, arbitration renders a binding decision, rather than options. Finally, let me say that arbitration is not the best method of ADR, because arbitration can look and cost very much like litigation. Arbitration, unlike mediation, obliges a solution on the parties, which is usually binding, and without the benefit of court proceedings; whereas mediation is designed to allow the parties to discover solutions to their disputes while retaining control. To keep the cost of arbitration as reasonable as possible, follow these steps:

- Simplify the process: Agree to any facts and matters of law before proceedings begin.
- Keep "Briefs" as short possible by limiting the number of pages.
- Set up a prehearing where information between parties is exchanged and analyzed for significance to the hearing. This is not discovery, only an exchange of information.

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Agree to limit witnesses to those who have the most relevant information to offer.
Choose damage limits wisely before the hearing. Both parties should agree to use only one neutral damage expert.

Remember, arbitration is a win-lose proposition...one party wins at the expense of the other, and no real solution is attained. The economic pie is not enlarged; in fact only half of the pie is realized by only one party.
Chapter 5: Implementing The Resolution

Reasons Why a Deal May Fail

Now that you have stuck a bargain with the other party, how do you go about making sure all your hard work at the negotiating table is realized – in other words how do we implement the terms of the deal? According to Danny Ertel and Mark Gordonix a deal that has a point should be negotiated with that point in mind. For example, if you were to negotiate a deal with a mechanic to fix your car, you need to keep in mind these points: who pays for the towing, who handles the insurance company, are new or used parts acceptable, and a time frame for repairs. Negotiating these points helps the implementation of the deal go smoothly. Listed below, and in Figure 6, are reasons why a deal may not be implemented.

- Deals are entered into under false pretenses – a form of fraud.
- Parties want to implement the deal, but have differing understanding of how to go about it – who is going to do what and when are they going to do it?
- Both parties understand what’s required of them but one party cannot perform because of limited resources, logistics, etc.
- Both parties understand what’s required of them, but the situation changed – weather, labor strikes, etc.
- The contract may not list every requirement and contingency. A good faith effort means that parties must embrace the spirit of the deal, rather than the letter of contract, to implement it.
Figure 6

Why Deals Don't Get Off The Ground

- A Party Deals in Bad Faith
- Parties Have Different Understanding
- Why Negotiated Agreements Fail to get Implemented
- Situation Has Changed
- A Party Cannot Perform
- A Party Only Follows the Letter of the Contract
Ways To Successful Implementation

Ertel and Gordon explain that many deal makers fail to see implementation as the point of a deal; rather, they see the “deal” itself as the main focus of the negotiation. Implementation matters and any successfully negotiated outcome will have addressed implementation issues (see Figure 7). Here are several key points that a negotiator, who negotiates with implementation in mind, should follow:

- Acknowledging that the true purpose of negotiation is not just to make a deal, but also to achieve something.
- Being certain that all your people and their people are on board with the deal so that implementation can move forward efficiently.
- Acknowledging that the way you and your negotiating partners interact during negotiations will influence your working relationship during implementation.
- Tackle the hard issues rather than avoiding them to get the deal signed.
- Don’t leave grey areas as a trap. Make sure your negotiating partners are clear as to what their responsibility is, and that they can deliver. Ambiguity creates confusion on both parts.
- Be vigilant in the shift from the bargaining table to implementation.

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Figure 7

Successful Execution of Agreement

- Everybody Involved is Working Toward the Same Goal
- Working Well During Deal Crafting Reflects the Same Relationship During Implementation
- Tackle the Hard Issues. Don’t Leave Grey Areas Unresolved, It Only Creates Confusion
- Achieve Something Greater Than Just a Deal
- Be Vigilant From Start to Finish

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Conclusion

Conflicts are ever present and natural byproducts of organizations because of the organizational structure and its dialectic relationship between stakeholders’ wants and employee needs. Conflict is not a bad thing; in fact, if managed correctly conflict is good because it helps companies keep from becoming stagnated. Conflict stimulates communication among employees, and it holds many keys to creative and innovative solutions. By using the techniques and tactics outlined in this toolkit a win-win resolution to conflict is greatly enhanced.
Works Cited


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