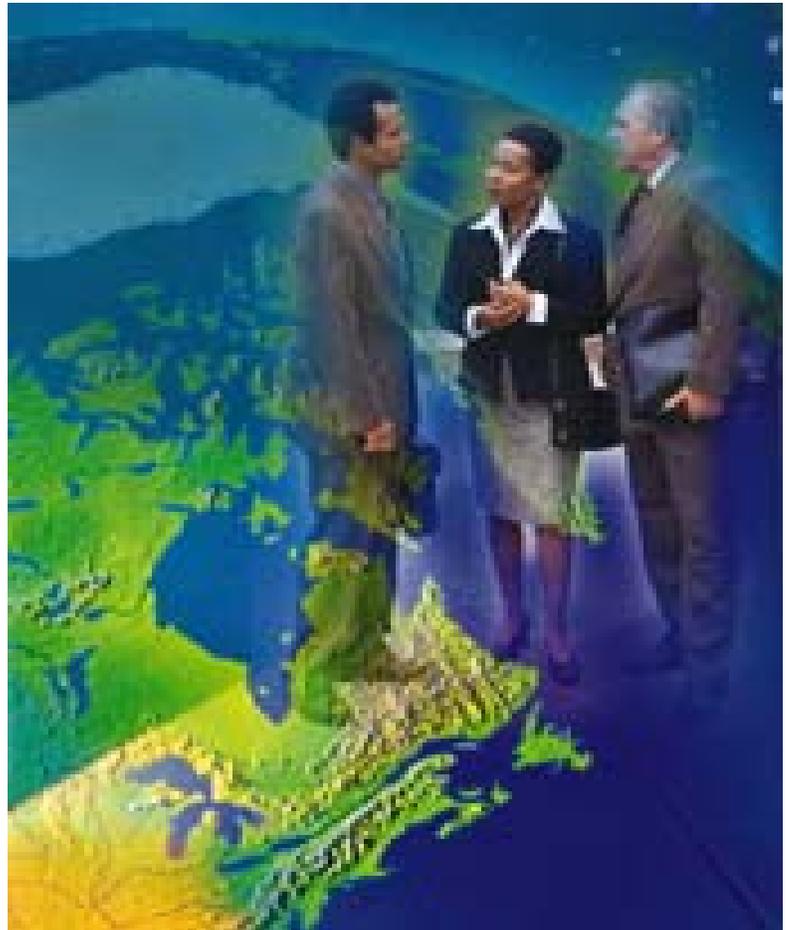


HOW TO REACH AGREEMENT



April 20, 2003

Mailing Address:

Spectrum IT Consulting, LLC
9758 Windsor Way
Florence, KY 41042-9202
(859) 992-8969

Office by Appointment:

Florence Executive Centre
7430 U.S. 42
Florence, KY
(859) 992-8969

This approach to reaching agreement assumes each side desires a mutually beneficial “win-win” agreement. Mutually beneficial agreements are essential for healthy long-term business relationships, because in those situations you have an interest in protecting your suppliers and/or customers from ruin, in addition to protecting yourself.

Splitting an Orange

A common error for negotiators to make is not taking the time to understand the true desires of the other party. Instead they often assume that the other party has similar interests. Here’s a classic story. Two women each needed an orange for their recipe, but they only had one orange between them. Neither wanted to do without, so they revealed that they could each get by with half of it, then cut it in half and went their separate ways. The first woman cut her recipe in half, used her half of the fruit in it, and threw away the peel. The second also cut her recipe in half, used her half of the peel, and threw away the fruit.

Common Cognitive Mistakes

The 5 most common cognitive mistakes that negotiators make:

1. They fail to consider the judgments of the other side in negotiation.
2. They tend to non-rationally escalate commitment to a previous course of action and escalate conflict.
3. They tend to have a very limited frame in their perspective to conflict.
4. They tend to be overconfident that they will prevail in disputing situations.
5. They tend to view negotiations very much in a zero-sum manner. What you win, I lose, and vice versa, even when that is not objectively true.

Common Mistakes

During negotiation mistakes can be made that tend to limit the number of options discussed. Several of the most common mistakes are:

- **Not understanding the interests of the other side** – Thinking that “solving their problem is their problem”. Understanding the other side’s interests reveals how an agreement might be crafted to maximize its value
- **Not establishing a collaborative relationship** – A collaborative relationship encourages each side to express its interests, rather than just stating positions
- **Only picturing wedge-shaped slices of pie** – Assuming the pie must be sliced in a traditional way
- **Simply moving toward a midpoint** – Seeing the job as one of finding a middle ground between positions
- **Crafting a single offer or counteroffer** – Rather than presenting multiple choices, of which many could be agreeable
- **Making judgments too quickly** – Prescreening options and only suggesting the most conventional ones. This usually occurs out of a fear of immediate disapproval. The solution is to separate the creative and selection processes (for details see “How to Generate Options” below on page 3)
- **Ignoring the other side’s opportunity cost** – Consider the opportunities that the other side may give up if an agreement is reached. Some negotiators refer to this as the other side’s “best alternative to a negotiated agreement” (BATANA). It may provide insight into possible reasons that would explain the other side’s behavior
- **Beginning a negotiation unaware of the market and/or not aware of a fair price** – Avoid offering or accepting a price without understanding the market value and the value to the other side. It is okay to solicit an offer from the other side and perfectly acceptable to ask for time to consider it

A Methodology for Negotiations

Plan how to build and maintain a good working relationship with the other side. Professional negotiators can use several methods for diffusing issues and reaching agreement. The method that works best for reaching a mutually beneficial outcome is to proceed in this order:

1. **Depersonalize the issue** – For instance, rather than say “You made a mistake” it is more productive to say “I believe a mistake has been made”
2. **Put yourself in the other side’s shoes** – Think about what your hopes and fears are. Imagine what the political implications of different agreements would be. Imagine what impacts recognition and the

timing and method of announcement could have. Think about inexpensive incentives that could sweeten the offer

3. **Acknowledge that the other side's opinion is logical given the facts the other side may have** – State that the other side's current opinion is understandable (wait until step 5 of this process to bring up facts and perceptions that allowed you to reach your opinion)
4. **Present the other side's argument** – Demonstrate that you thoroughly understand the positions (facts/issues/concerns/interests) of the other side. Demonstrate this by **“arguing” their viewpoint back to them**. This helps create a common understanding from which a successful agreement can arise and also helps gain their respect and soften their stance. Also use this opportunity to begin a dialogue based on reason
5. **Introduce your perceptions** – And state that you'll change them given *sufficient* reason
6. **Discuss potential “win-win” outcomes** – Once an issue or group of issues is *well explored*, you should be prepared to make an offer. Be persistent in pursuing your interests, but not rigid in pursuing any particular solution. This should be mutually beneficial given the understanding of both sides of the issue. Focus on interests, not positions. Try to conceive options that yield mutual gain. To move from inventing options to making commitments, consider making “framework agreements” like those used for real estate) with blank spaces for each term to be resolved by negotiation. Where each side's interests are directly opposed, look for objective criteria (for details see “Draw upon Precedents” below on page 3). Before offering or accepting any agreement though, consider the possible adverse impacts to each side if each side complies with the letter of the agreement
7. **Design for a simple “yes”** – Try to construct a proposal that can take effect with a simple “yes” from the other side. However, be aware of the psychological perception of surprising the other side with a quick acceptance. This can harm the relationship if the other side perceives quick acceptance as an indication that they ended up with a poor agreement for their side. Always try to ensure that the other side leaves the negotiation feeling satisfied and fairly treated

How to Generate Options

There is a proven process that encourages participants to suggest a spectrum of options and to respectfully consider them. These are the 4 basic steps in the process:

1. If necessary, **state the problem** (what, why) (not analysis, approaches, or action ideas)
2. Have the most knowledgeable participants offer their **analysis** of the situation to uncover the **true cause** (keep in mind that you may need to ask a series of 5 whys to reach the true cause)
3. Gather **possible solutions** from participants, and protect them from attack (until later in the process)
4. Discuss and select the **action options**

Draw upon Precedents

If it comes down to interests that really are directly opposed, insist on using precedents or other objective criteria that seem relevant. This helps reduce suspicion that either side will be harmed, because others have found it suitable in the past. Objective criteria that both sides may accept as objective/unbiased/fair include:

- professionally established standards
- scientific information
- objective formulas
- cost
- market price
- tradition
- judicial ruling
- morals
- ethics
- fairness
- equal treatment
- ease
- one side divides, and the other chooses
- reciprocity
- enforceability

Sample “Principled Negotiation”

Here’s a script composed of “principled negotiation” stock phrases¹:

- [their name]—please correct me if I’m wrong—[perceived fact]
- [what the other side has done for us], and we appreciate what you’ve done for us
- Our concern is fairness [perceived fair action we plan to take until agreement is reached]
- [if necessary restate leverage, re-clarify position, state the realistic possible worst-case scenario] Who wants that? No, we would like to settle this fairly on the basis of independent standards, not of who can do what to whom
- Trust isn’t the issue. What considerations do you think would be fair to take into account to reach agreement?
- Could I ask you a few questions to see whether the information I’m considering is correct? [state perceived facts as questions]
- I think I have good reasons for my current position, and I’m sure you have good reasons for your position—what are your reasons, I want to understand them?
- Let me see if I understand what you’re saying. [restate the other side’s points in positive terms]
- Let me get back to you
- Let me say where I have trouble following some of the reasoning you used. [depersonalize the other side from their reasoning, present objective analysis of information, hopefully involving expert sources, plus personal observations]
- I think one fair solution might be [proposed fair solution]
- If we agree [briefly state a compelling benefit for agreeing]. If we disagree [depersonalize self from action and state the action that will follow]. We are extremely reluctant to take this course of action. We feel confident we can reach a fair agreement without taking this action
- [suggest or ask if there is something that we can do for them (to help them save face or feel better about the terms)]

Do Not Appease

If the other side refuses to negotiate, ask why and find out the root causes and then maybe make mild concessions, but avoid harmful concessions. Giving in solely to appease the other party usually harms you in the long run, because the other side tends to be emboldened to subsequently demand more.

Protect Your BATANA

If one side knows the other side’s BATANA (i.e., best alternative to a negotiated agreement), there may be risk that they can eliminate it, so you may want to keep your BATANA secret.

Question Any Questionable Tactics

If the other party seems to be using a dirty/unprincipled tactic, raise the issue explicitly, and question the tactic’s legitimacy and desirability in a depersonalized and non-threatening manner. Question it early and be very clear in raising it, because this will discourage future questionable tactics. Be willing to say “Here’s my phone number. If I’m mistaken, I’ll be ready to talk when you are. Until then....” and walk out.

When the other side insists that “you’ll have to take my word on it” make sure you don’t. If this ever happens, simply state that it’s not a matter of you trusting or not trusting them. Tell them that having the agreement in writing with a contingency for non-compliance is simply your policy from experience. Tell them you certainly feel that you can trust them, but that you have proven yourself to be a poor judge of character in the past. For instance, one e-Bay seller posts this in everything they sell “As with all my auctions, this is sold “as-is” to protect me from dishonest e-Bayers (sorry, but there are a few out there, and I have been burned)”. If they still protest, ask them how sure they are that they’ll keep their word. Then state that since the chance of non-compliance is 0%, it should be simple for them to agree to the legally binding contingency that will never be implemented. If the other side really is trustworthy they won’t say “no”. After this, if they still don’t agree, cut off negotiation.

¹ Adapted from the book “Getting to Yes”

The “lack of authority” tactic is a favorite of automotive/car dealers, insurance adjusters, lawyers, and salespeople. Make sure the other side has authority to negotiate and reach a binding agreement without involving **anyone** else. Otherwise, only one side will be making concessions. If they unexpectedly announce their lack of authority, insist that neither side is committed (some states allow consumers 3-days to back out of certain types of agreements).

Sometimes you’ll be given a “take it or leave it” offer. It usually helps to ignore this ultimatum. If there is a compelling reason to bring them to the table in the first place, they probably won’t turn down something slightly different. Once their motivations are understood, it may even be possible to craft an agreement that both sides like better.

If the other party uses dirty tactics, remember that it is easier to defend principle than an illegitimate tactic. Don’t be a victim.

Check Your Own Tactics

To check that you are negotiating in good faith, it may help to ask yourself questions such as

- Would I negotiate this way with my family and friends?
- Would I be embarrassed with my tactics if the public was able to watch?
- Would my tactics be used by one of the good guys or one of the bad guys in a movie?

Train Yourself

Hopefully it will be easy for you to employ these ideas. However, if you are hesitant you should try these techniques out when there is a good potential for a long-term relationship, when the stakes are small, and when you have a good BATANA.