Interest-Based Problem-Solving

ILR in Buffalo and
Scheinman Institute on Conflict Resolution

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Section 1: Interest-Based Bargaining Basics

Interest-Based Bargaining is an interest-based approach to conflict that encourages the parties to:

➢ **Advocate for their interests**

➢ **Educate one another on the issues**

➢ **Jointly determine objective solution criteria or standards**

➢ **Create multiple options before solutions**

➢ **Choose the option which best meets interests & criteria**

➢ **Build working relationships through resolving conflict**

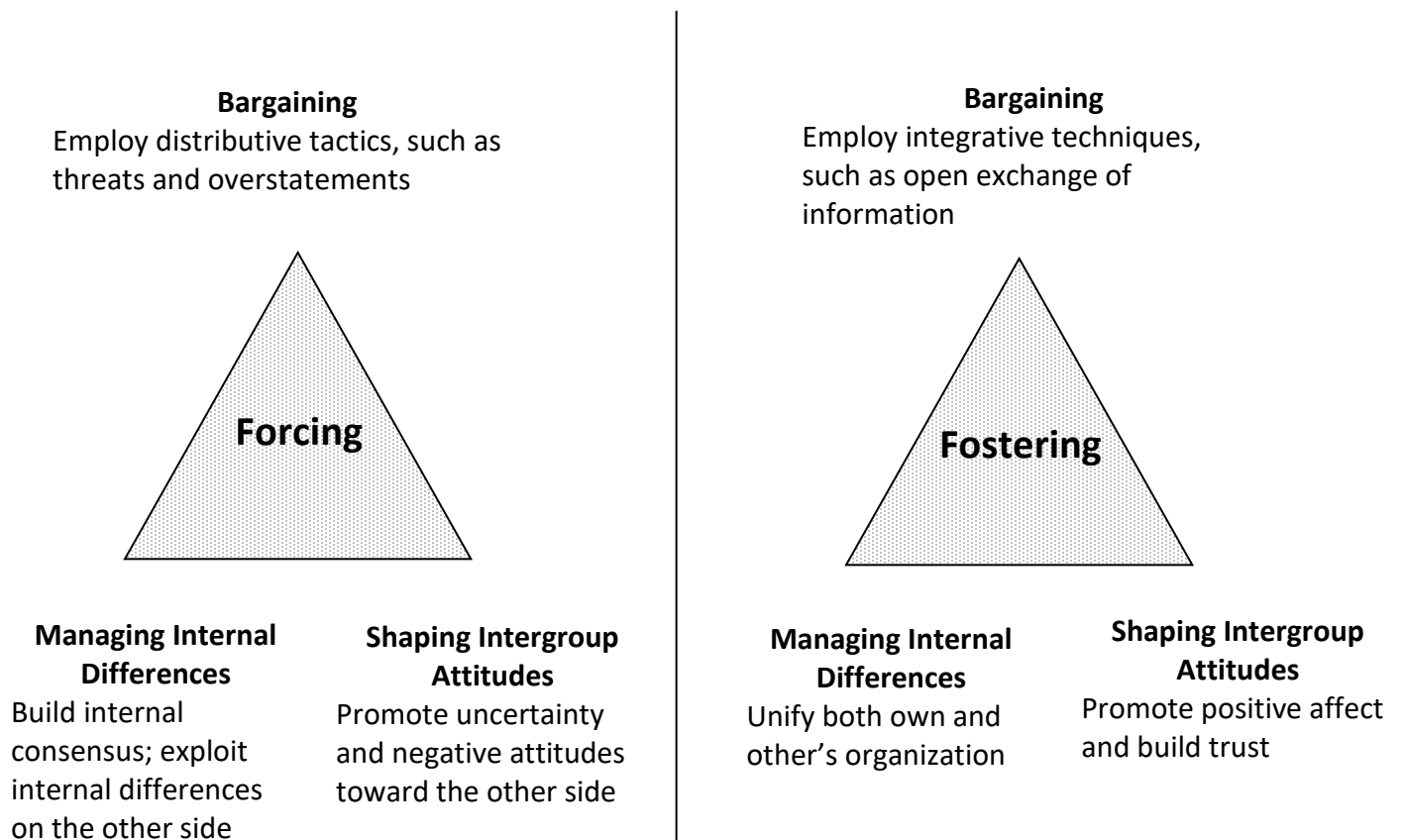|	
Conflict is like pain:	You don't have to like it.
	But it serves a purpose.
	It tells you something needs fixing.
	So fix it.
Conflict can be a source of:	Learning
	Better Decision-Making
	Improved Working Relationships

Conflict is an opportunity for improvement. Use it.

Labor-Management Strategy Choices

◆ **Escape** the existing relationship

◆ **Force** the other side to make substantive concessions

◆ **Foster** substantive outcomes that address needs

Bargaining
Employ distributive tactics, such as threats and overstatements

Forcing

Managing Internal Differences
Build internal consensus; exploit internal differences on the other side

Shaping Intergroup Attitudes
Promote uncertainty and negative attitudes toward the other side

Bargaining
Employ integrative techniques, such as open exchange of information

Fostering

Managing Internal Differences
Unify both own and other's organization

Shaping Intergroup Attitudes
Promote positive affect and build trust

Adversarial Conflict Relationships

Assumptions:

→ For me to win, you must lose. -- therefore we must compete

→ To help you is a sign of my weakness and it will hurt me

→ My power comes from opposing, criticizing and beating you

Outcomes:

→ One-sided victories

→ High cost to both sides

→ Learn of the other side's strength after it's too late

→ Neither fully achieves goals and joint gains are unrealized

→ Relationships are destroyed

→ Payback is to be expected

What Makes Conflict Resolution So Difficult?

Think about an adversarial conflict you've been involved with. . . .

Keeping that in mind, put a ☒ next to the observations you've experienced.

☐ It is possible to create competitive groups by merely placing them in a situation that appears competitive.

☐ Perceiving a situation as competitive distorts the judgment of group members so that they are likely to overestimate the quality of their solution to a problem and underestimate that of their "opponent."

☐ Once a group creates a solution to a problem, it becomes committed to it and is unable to understand an alternative solution.

☐ Opportunities to gain further information about an opponent's solutions are used to attack and belittle the opponent, rather than to study the proposal. The negotiation conference will often be used as a forum for justifying one's own position.

☐ Stereotypes of the other side develop, leading to what has been called the "enemy image." The image, once established, is maintained and reinforced through restricting communications, selective filtering, and interpretation of the evidence to fit the image.

☐ The stress of competitive interaction, often increased by deadlines and threats, distorts the way the parties see the situation, and leads the parties to behave and think rigidly

.

Conventional Bargaining

- ❑ Open high

- ❑ Trade concessions toward a mid-point compromise

- ❑ Disguise true needs, interests and feelings

- ❑ Employ tactics and strategies designed to keep the other party off balance

- ❑ Argue merits of your position; defend it from attack

- ❑ Discredit case and claims made by the other side

Conventional Bargaining is Positional

- ❑ Negotiators become locked into positions. The more you clarify and defend your position; the more committed you become to it.

- ❑ As more attention is paid to positions, less time is devoted to meeting the underlying concerns of the parties.

- ❑ Ego becomes identified with positions.

- ❑ Creative invention and exploration of interests is ignored.

- ❑ The parties get locked into positions and lose focus on possibilities for a settlement.

- ❑ Relationships are damaged as each party tries by power to force the other side to give way.

- ❑ Relationship and substance are put in conflict.

The Basic Philosophy Underlying IBB

→ People are free to choose to help or hinder, to cooperate to mutual benefit or to manipulate to personal advantage.

→ Organizational survival and growth are facilitated by joint problem-solving.

→ Seeking the ideas of others can lead to better solutions and greater enthusiasm for the job at hand.

→ Interest based conflict resolution is an attempt to get people to synthesize aims rather than enter into win-lose competitiveness.

→ Participants in a dispute need to recognize and clarify one another's interests and attempt to see that each gets something of what they want and need.

→ Specific ways of behaving create particular effects. The surest way of changing any human situation is to change the way you, yourself behave.

→ Interest based conflict resolution employs no trick or posturing.

Interest Bargaining: Some Definitions

Negotiation:	A basic means of getting what you want from someone else
Position:	A single solution to a problem or a single answer to a need
Interests:	What underlies a position: the answer to the question "why do you take that position?"; the underlying needs, concerns and desires of a party in negotiations
Integrative Bargaining:	Bargaining to attain objectives that are not in fundamental conflict; negotiating solutions where both parties can gain without necessarily incurring a loss for either side, where interests overlap, can be dovetailed, or met simultaneously
Distributive Bargaining:	Bargaining to resolve pure conflict of interest, where what exists can only be divided up; what one party gets, the other does not
Transaction Cost:	The cost in dollars, time, energy or relationship to accomplish a negotiated agreement

What's a Good Conclusion?

Ask yourself . . .

→ Will it work for us? for them? (Does it satisfy interests?)

- Is my side satisfied?
- Is the other side acceptably satisfied?
- Will this solution be at least acceptable to third parties?

→ Will people go along with it? (Is it compliance prone?)

→ Is it operational? (Does it minimize transaction costs: stress, time, money?)

→ Does it improve my relationship with the other party?

→ Is it better than the next best alternative should this conflict resolution attempt break down? (BATNA)

Possible Outcomes

– *Complete failure* (no agreement)

– *One-sided* (winner/loser)

– *Semi-success* (agreement to compromise)

– *Success* (joint maximization of each other's interests)

Integrative Solutions

→ *Interests* seldom, if ever, clash inherently -- but may be left unreconciled due to the limited alternatives under consideration. Viable solutions are often overlooked.

→ *Human Imagination* in devising new alternatives is the major key to integrating interests and successfully concluding negotiations. Think out of the box.

→ *Compromise* is one form of integration, but should be the solution of last resort. Compromise comes easily to mind. Integrative solutions take work, but they're worth it.
Don't rush to compromise; try to get MORE.

How to Get There . . .

Use Questions + Listen!

Good questions are the most direct route to understanding and understanding is the best route to a satisfactory settlement. Questions can also be used to govern the pace and direction of negotiations.

Ask questions

→ questions offer no target to strike at

→ questions offer no position to attack

→ questions lead to **INFORMATION**

→ clarify information

→ questions facilitate **PROBLEM SOLVING**

Practice Active listening

→ use attentive body language

→ paraphrase to check comprehension

→ avoid jumping to conclusions

→ avoid getting defensive

→ listen to learn

→ avoid challenging what's being said while it's being said

Simply ask - WHY?

- – Why do you want that?

- – How did you come to that conclusion?

- – What is it about that idea that's most attractive to you?

- – What do you need that for?

- – So, you need a solution that will . . .

- – What would it take to resolve this?

- – Tell me more about . . .

- – What led you to that position?

- – Let me be sure I understand. Would you explain . . .

- – Why is that important to you?

- – What is it about that position that's most important to you?

- – What are you trying to achieve with . . .

- – Can you give me an example of why this is a concern?

- – Talk to me some more about . . .

Then *listen*.   To check for understanding**, *paraphrase*** back to the speaker what you've just heard. Now, you're getting information you need to work with.

Key Distinctions for Negotiation

Issue	That which needs to be resolved
Position	Just one party's opinion of a solution or way of resolving the issue
Interest	The desire, want, need, fear which needs to be addressed to resolve the issue satisfactorily

"Where there's an issue, there's an interest."

Anon

The easy way to tell what's what . . .

A position is a single solution. Interests have many solutions. There's usually more than one way to get what each party needs. Put the problem before the answer and see what possibilities open up.

Basic Elements of Negotiation

The outcome of a dispute will reflect the extent and manner in which the sides deal with the basic elements of conflict resolution.

POWER   I'll have it my way because I can.

RIGHTS   I'll have it my way because I'm entitled to it. It's the moral thing to do.

INTERESTS   This is what I need.

Negotiation Strategies

The outcome of any dispute or conflict will reflect the extent and manner in which the parties deal with the basic elements of negotiation.

POWER

- It is difficult to determine who is more powerful without a destructive power contest.
- The perception of other's power often is incorrect.
- The other party may respond irrationally.


RIGHTS

- Rights are rarely clear.
- Two rights are sometimes contradictory.
- Rights assertion can frequently be costly.
- Rights assertion frequently needs third party intervention.

INTERESTS

- Interests are needs, desires, concerns, fears.
- Interests reflect what one really cares about.
- Interests usually underlie positions.

Transaction Costs

	POWER	**RIGHTS**	**INTERESTS**
REQUIRED RESOURCES	always high time, money, stress	generally costly time, money, stress	time, talent
SATISFACTION WITH OUTCOME:	one sided: the winner	mixed: not satisfied to highly satisfied	both interests must be better satisfied than next best possibility or no agreement
QUALITY OF THE RELATIONSHIP	always runs the risk of destruction	"one-up-man-ship"	mutual respect, valued partner, joint problem-solvers

POWER

RIGHTS

INTERESTS

Distressed   **Effective**
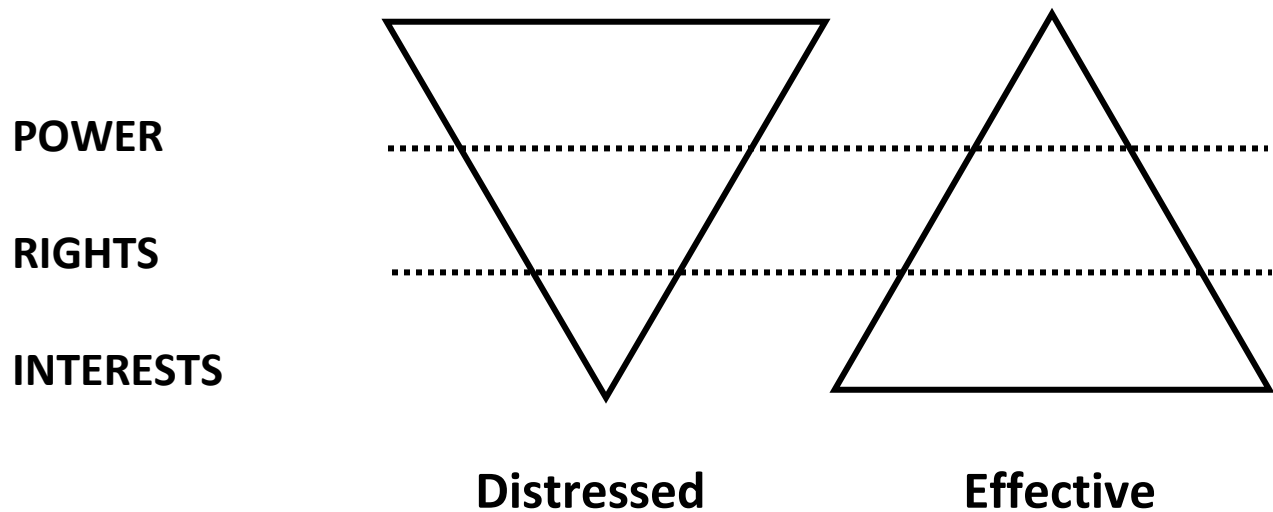
Interest Based Negotiation Principles

1. Separate the people from the problem.

2. Exchange and focus on underlying concerns, needs, fears, worries and interests, not stated positions. ASK WHY? WHY NOT?

3. Look for mutual interests or ways to dovetail different interests.

4. Jointly seek information on relevant objective standards or criteria.

5. Generate multiple options before making offers.

6. Evaluate options by interests and objective criteria or standards. (Use fair procedures if standards can't be found.)

7. Accept the outcome only if it is better than the best alternative should the conflict resolution process break down -- the BATNA. (Identify your BATNA before negotiating)

Three Key Distinctions

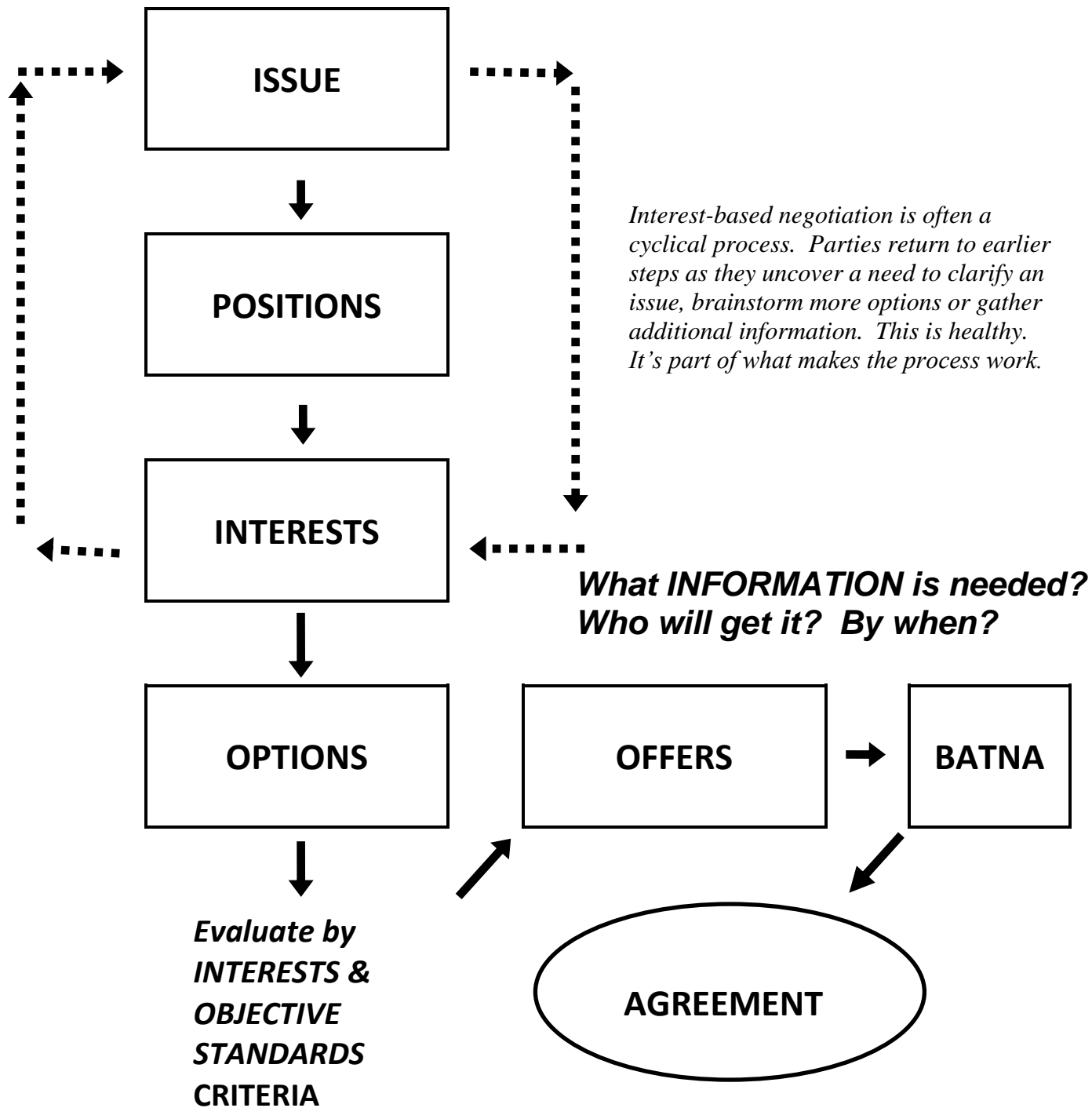Issues — Interests — Positions
Power — Rights — Interests
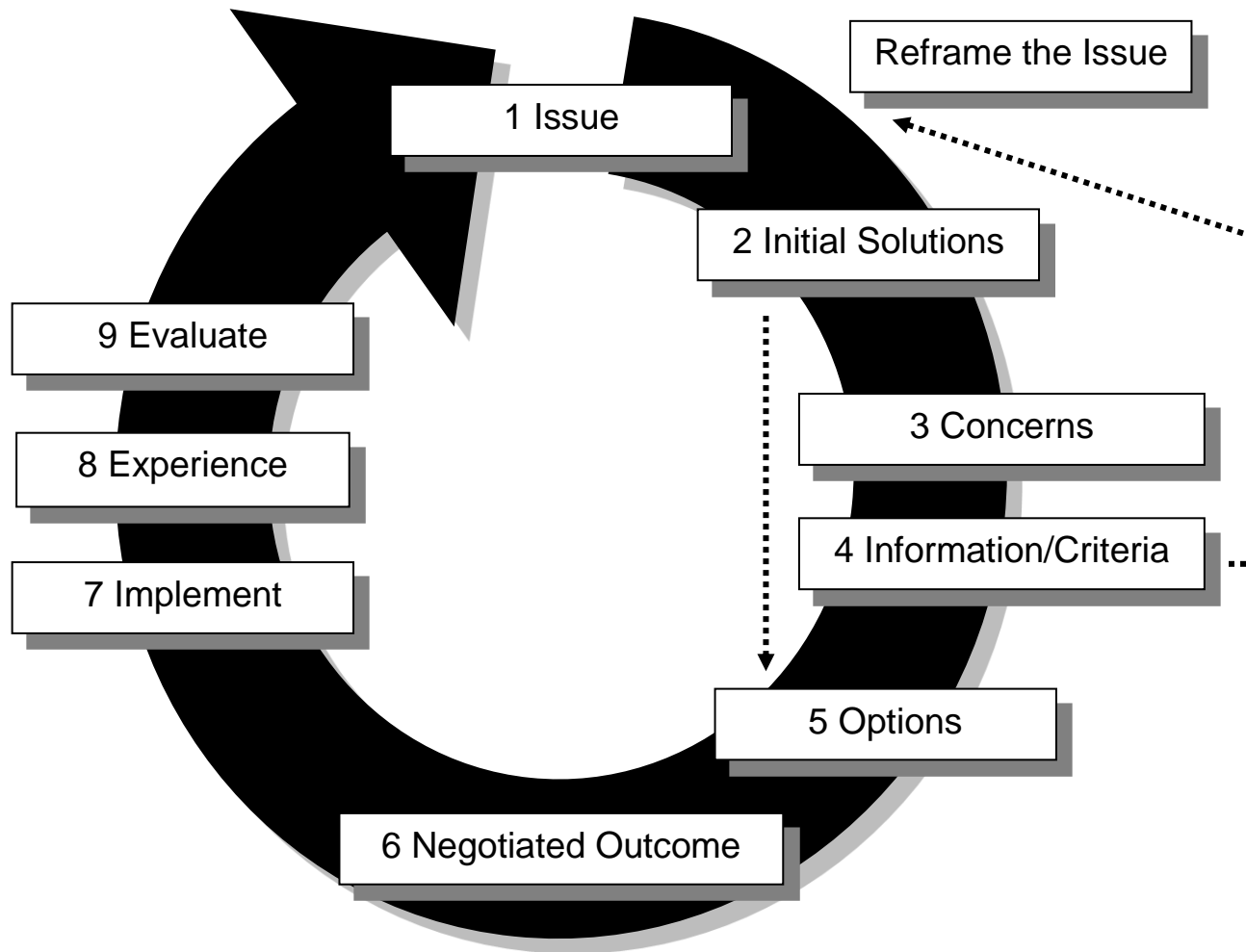Political Aspects — Technical Aspects

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Source Note: Much of this manual is based on materials in Fisher and Ury, GETTING TO YES (NY: Penguin, 1981)

Interest Based Negotiation in Sequence

Before you begin ➔ Know your BATNA?

ISSUE

POSITIONS

INTERESTS

Interest-based negotiation is often a cyclical process. Parties return to earlier steps as they uncover a need to clarify an issue, brainstorm more options or gather additional information. This is healthy. It's part of what makes the process work.

What INFORMATION is needed? Who will get it? By when?

OPTIONS

OFFERS

BATNA

Evaluate by INTERESTS & OBJECTIVE STANDARDS **CRITERIA**

AGREEMENT

Working Together: Information, Communication, Problem-Solving

Reframe the Issue

1 Issue

2 Initial Solutions

9 Evaluate

8 Experience

3 Concerns

7 Implement

4 Information/Criteria

5 Options

6 Negotiated Outcome

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Keys to Success

1) Have a general discussion of the issue. *What does it mean from your constituency's perspective?* Listen for learning. Share data and information. Also ask: What will happen if we can't resolve this issue?

2) Label initial solutions/positions as options. And move on.

3) Shift the focus from solutions to concerns. *Why does your initial solution appeal to you? What concerns does it address?* Recognize and understand both yours and theirs. Ask why. Listen for understanding. Identify shared and different concerns.

4) Education Information/Criteria – *What do both sides need to understand about the issue to address it competently? What information is missing?* Jointly establish objective criteria for the solution. Does the issue need to be reframed? *What are we really talking about here?*

5) Create multiple options. Brainstorm to get new ideas.

6) Convert the option that best meets objective criteria and addresses the concerns of both parties into a proposed outcome. Accept it if it is better than what you could achieve acting alone.

7-9) Plan implementation; experience results; evaluate and improve.

Separate the People from the Problem

- Try to see the situation as the other side sees it.

- Try to understand the power of their point of view and feel the emotional force with which they believe it.

- Don't deduce their intentions from your fears.

- Don't blame the other side for the problem.

- Look for opportunities to act inconsistently with the perceptions of the other side, especially if their perceptions are negative.

- Give the other side a stake in the outcomes by making sure they participate in the process.

Focus on Interests, Not Positions

- Look behind the position(s) to identify interests - theirs and yours. Ask why? Ask why not?

- Make your interests known.

- Let the other side know that you understand their interests.

- Ask yourself: How can we help them solve their problem in a way that doesn't harm us?

- Put the problem before the answer.

Information, Education & Objective Standards

Each issue should be framed as <u>a joint search for information and objective standards</u>. Parties negotiate over the objective standards, then use these agreed upon standards or criteria to suggest options or to evaluate the selection of which options should be developed into offers.

Objective criteria should:

> ➢ **apply to both (all) sides**
> ➢ **be independent of the will (power) of either side**
> ➢ **be practical and legitimate**
> ➢ **be jointly agreed to**

Here are some examples: Scientific judgment
Professional standards
Legal rights
Quality standards
Cost
Seniority
Safety & health standards
Tradition, common practices
Moral standards

If standards can't be found, use fair procedures -- draw lots, take turns, <u>agree to abide by the decision of a third party</u>.

Anchoring

On quantitative issues, like wages, the first offer made tends to anchor the discussion.

Is this bad?

If it happens too early in the discussions, it can shut off the likelihood of gathering information and exploring options.

So, what to do? GET INFORMATION

Explore interests first.

Search for objective standards.

Let objective standards make the first offer.

Explore options.

Remember <u>your</u> interests.

<u>Know</u> your BATNA.

Invent Options for Mutual Benefit

→ Don't assume a fixed pie. Search hard for options to create mutual gain, before rushing to decision-making.

→ Look at the problem through the eyes of different experts and from the other side's point of view.

→ Brainstorm, following the rules of quantity over quality, no judgment or censorship, build off of each other's ideas.

→ Bundle related ideas. Use (jointly agreed to) objective standards and interests to winnow the brainstormed list. Convert the best ideas into options.

→ Separate the act of inventing from evaluating.

Confusing Options with Offers

Offers	Options
– imply commitment	– carry no commitment
– imply trade-offs, if, . . then	– just ideas
– come one at a time	– come in bunches
– solve problem in one swoop	– need to be knit together

Brainstorming for Creative Problem-Solving

Why Do It?
 – To foster creativity and broaden the field of vision

When?
 – When serious problems need a wider view

What Procedures Should Be Used?
 – Change the environment -- relaxed, informal
 – Side-by-side seating
 – Record ideas in full view using a flip chart

Brainstorming Groundrules
 – No criticism or judgment of ideas is allowed!!!
 – Brainstorm as many ideas as your can.
 – Encourage offbeat or far-fetched ideas.
 – Combine and build off each other's ideas.
 – Bundle related ideas to craft into options.

Idea Killers to AVOID
 – That will never work!
 – When pigs fly!
 – Been there; done that.
 – Are you nuts?
 – They'll never go for that.
 – There's no way.

Practice Out of the Box Thinking

BATNA
(Best Alternative to a Negotiated Agreement)

Why Bother?

Protects you against accepting a resolution you should reject, or rejecting a resolution you should accept. It tells you what will happen if this negotiation breaks down. If the negotiated outcome is better than your BATNA, take it. If not, reject it. Use BATNA, rather than a bottom-line, to guide acceptance. The bottom-line is a wish; it may or may not be realistic.

How to Determine the BATNA

Generate a list of alternatives, for example:
- save this issue for another day
- accept less and get more somewhere else
- cut off discussion
- go to arbitration
- reach impasse
- go to fact-finding

Select the best option and develop it. (Avoid the tendency to consider alternatives in the aggregate.)

Develop BATNA prior to negotiations. Don't start without one!

When Should the BATNA Be Revealed?

If your BATNA is strong, it may be in your interest to describe it to the other side. If the other party thinks you do not have a good BATNA when in fact you do, then you should let them know. It shortens the dance. If you have a very poor BATNA, disclosing it will weaken rather than strengthen your hand.

The Role of POWER

→ Power is used to bring the other side into a conflict resolution discussion and to move the process forward.

→ Power is not the basis for settlement.

To Build Influence . . .

Enhance your ability to influence the outcome by:

– Developing a good working relationship

– Understanding interests

– Asking questions to get needed information

– Inventing creative options which dovetail interests

– Using objective criteria or fair procedures

– Developing a strong BATNA

B-A-T-N-A spells POWER

Obstacles To Successful Outcomes

→ Premature judgment

→ Fear of taking risks

→ Looking for a single answer

→ Assuming a fixed pie

→ Thinking "solving their problem is their problem"

→ Failing to get the information needed to solve the problem

→ Emotion and reason out of balance

→ Jumping to conclusions too quickly

→ Failing to think "out of the box"


Keep the Keys to Success Handy

- Positions are **ONE POSSIBLE OPTION.**

- Find out *WHY* they want what they want. **INTERESTS**

- Get **INFORMATION** and educate all concerned.

- Agree on the **CRITERIA** for a desirable outcome

- Generate many **OPTIONS** before deciding

- **INFORMED DECISIONS** are best.

What Makes a Good Negotiator?

☑ High tolerance for ambiguity

☑ Doesn't see the world in black & white, good guys and bad guys -- can empathize with the other side

☑ Enjoys problem-solving – tenacious, probing, relentless

☑ Doesn't fear creativity / imagination

☑ Good connections with constituency

☑ Self-confident – doesn't worry about being liked

☑ Understands negotiating authority and is able to make a decision

Section 2:
When People Issues Block Progress on Technical Solutions . . .

We All Have Choices

Provocation		Choice		Outcome
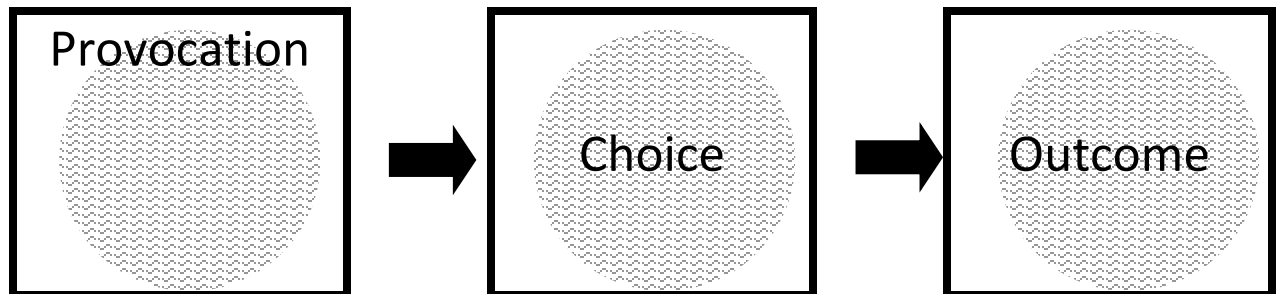
Choices to Avoid Conflict Escalation

→ Don't be the first to defect from a relationship.

→ Take every chance to communicate. Use techniques that make communication work for you.

→ Forgive them:
- for not getting your message
- for making a mistake

→ Rush to admit errors.

→ But be provokable -- be ready to react if they persist in untrustworthy behavior. Flex you BATNA. Bring them back to the Interest-Based Bargaining table.

The Psychological Trap

What Leads You In?
- Greed
- Competition –
    - Ego
    - Don't want to be second best
    - Don't want to be pushed around
- Previous step drives the next step
- Failure to consider consequences of your actions
- Failure to communicate

What Keeps You In?
- Believe goal is close
- Focus on bait
- Fear losing investment
- Don't want to abandon original plan
- Peer/constituent pressure
- Easier to do nothing than change
- Ego – difficult to apologize

The Game Changes
- New goals come into focus: look better, punish, discredit
- Adversary gets blamed for conflict
- Adversary is dehumanized
- Attribute negative traits to adversary – they're self-centered, evil, unfit

The Psychological Trap (cont.)

Structural Changes May Follow

- Development of collective goal of defeating the enemy
- Increased cohesiveness as a result of an outside enemy
- New, more militant leadership emerges
- Doves replaced by hawks

What Can You Do To Get Out?

- Communicate
- Admit errors
- Put yourself in other's shoes --
  Their problem is your problem.
- Analyze the costs of continuing and cut losses quickly
- Give other party way to save face.
  Let the other guy off the hook.

Make Communication Work

Be hard on the problem, soft on the people.

Human (personal) factors may be more important in reaching agreement than the terms proposed (substance). The way statements are phrased and delivered can threaten or wound others. This happens both on purpose and by accident.

→	Ask questions + listen

→	Say "Yes, . . . and my concern is . . . + question?"
	Avoid "No, but . . ."

→	Use only "I" statements

→	Avoid "you" statements & absolutes -- never, always, etc.

→	Warn, don't threaten

→	Use constructive feedback - When, Then, & I would prefer. . .

Use Questions!

Good questions are the most direct route to understanding and understanding is the best route to effective and respectful interactions.

Frame questions

–   to acknowledge their concerns

–   to clarify understanding

–   to invite open ended responses

–   to get needed information

–   to facilitate problem-solving

–   to test reality without threatening

So you're really concerned about not being misperceived, right?

How do you see that working? Who's going to do what?

How would that help you?

What is it about that idea that you like? Why does it work for you?

What could we do to make <u>this</u> happen without doing <u>that</u>?

What do you think might happen if she learns of our decision through the rumor mill instead of directly from you?

The Yes Technique

Yes, and + question

Say   *Yes, and . . .*   instead of   *No, but . . .*

Say "yes" and then suggest alternative solutions or reintroduce an old one for review once more. Acknowledge their concern and frame a question that facilitates mutual problem solving.

 "Yes, we understand your concern for (state their interests) and wonder how we might accomplish that without causing (state your interests)?

> *"Yes, we understand your concern for officially representing the office and we are concerned that we get proper recognition for what we've accomplished. So, how might we approach the issue without sending the wrong signals? Any ideas?"*

Advantages

→ Recasts the discussion in a positive way

→ Avoids outright rejection

→ Clarifies understanding of discussion point

→ Recognizes the validity of the other party's interests

→ Frames my problem as your problem and visa versa

→ Keeps them listening and engaged

Use "I" Statements

"I" messages can get the point across without threatening or causing "listener shutdown."

"I" Messages

– *I think we've talked about this point before. I want to*
– *make a different point.*

– *I don't think I'm explaining myself. Let me try again.*

– *I'm interested in your reasons for saying that.*

– *I'm having trouble understanding that connection.*
  Would you explain it to me?

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compare with

"You" Attack Messages

– *You don't know what you're talking about . . .*

– *You don't get the point I'm trying to make . . .*

– *You won't give an inch . . .*

– *You never listen to what we're saying . . .*

– *You don't care what that means to us . .*

Warn, Don't Threaten

Threats	assert what you will do to them if they don't agree.
Warnings	ask what will happen if agreement is not reached.

→ *Threats are interpreted as being subjective and confrontational. They challenge the other party to take a risk, to test you're assertion.*

→ *Warnings encourage the other side to think about the consequences.*

→ *Warnings are a way to communicate your BATNA without escalating the confrontation.*

→ *Warnings ask reality testing questions.*
  – *What would happen if . . .?*
  – *What do you anticipate will be the reaction if . . .?*

Threat	*If you take away our wash-up time, that will be the biggest mistake you've made yet. You'll have a revolt on your hands and I'm gonna say I told you so.*
Warning	*If the employees lose their wash-up time, how do you think they'll react? What do you think they'll do?*

Constructive Feedback - Tell It Like You See It

→ **When I (see, hear, experience) . . .**
include an objective observation based on your experience, not an accusation

→ **Then I think . . .**

→ **And I feel . . .**
use words that express feelings, such as angry, mad, frustrated or happy, recognized, etc.

→ **I would prefer . . .**
the behavior you would prefer or want to encourage

When I heard that you'd made the equipment decision before we had a chance to meet, I thought my opinion, and my knowledge of the job, didn't matter much. I wondered whether being a part of this office made any difference at all. And, I have to admit, I felt angry and discouraged. I would prefer that the decision had waited until we'd all had a chance to meet and I could give my input.

When you asked me about the new software before the purchase order was submitted, then I knew my input was included in the selection process and I felt like I was really a part of this operation. I'm excited about the new program and am really looking forward to learning how to use it.
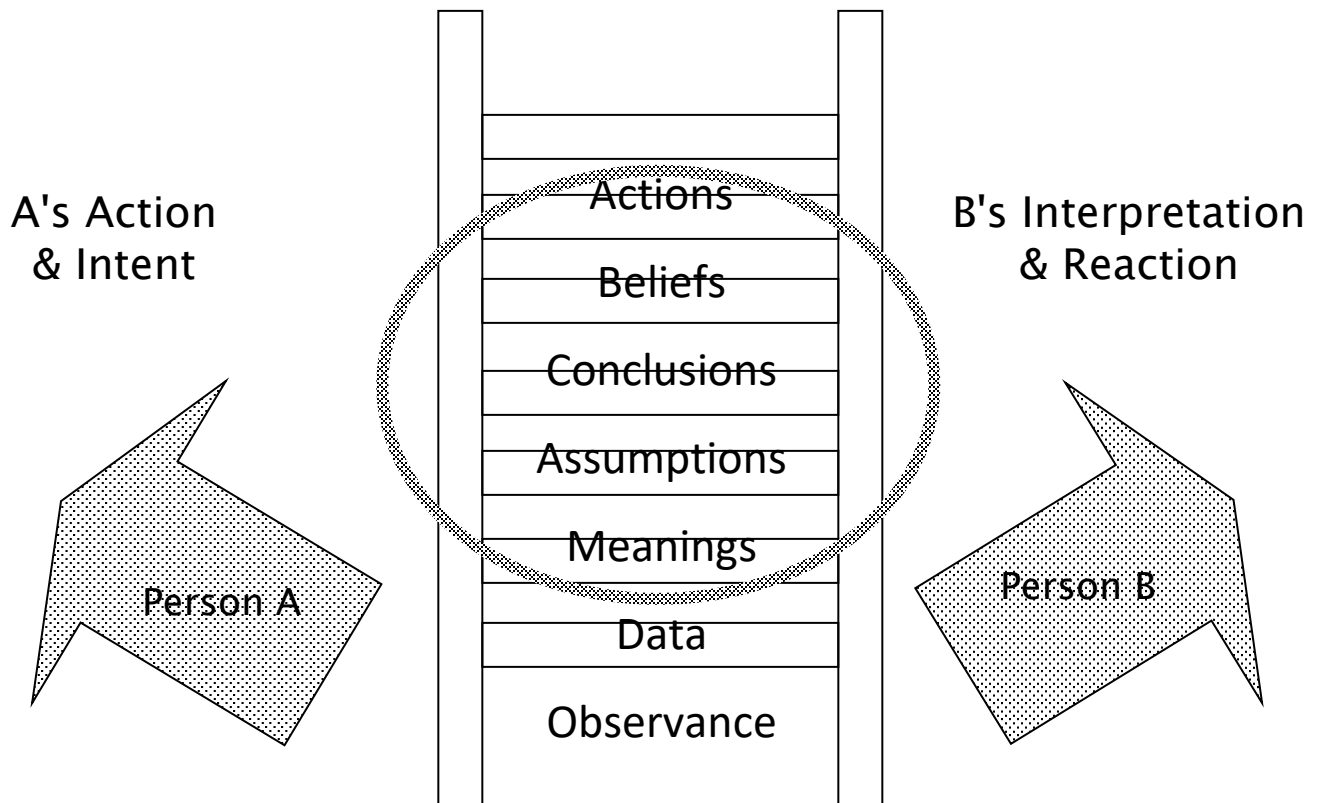
What Interferes with Communication

→ We need to make things fit.

→ We fill in the blanks --
- by leveling   discarding what we don't understand

- by heightening   exaggerating what we do understand

- by assimilating   making up what we think is missing

→ We work off assumptions and jump to conclusions

Productive Communications

→ Listen (for content and feelings)

→ Validate feelings

→ Paraphrase to check for understanding

→ Clarify what's not understood or missing

→ Avoid challenging what's being said while it's being said

Six Suggestions to Improve Listening Skills

1. Concentrate on what the other person is saying

2. Avoid early evaluations

3. See it from the other's viewpoint

4. Avoid getting defensive

5. Do not express shock at what you hear

6. Practice paraphrasing

7. Avoid climbing the ladder of inference.*

A's Action
& Intent

Actions

Beliefs

Conclusions

Assumptions

Meanings

Data

Observance

B's Interpretation
& Reaction

Person A

Person B

*Adapted from Ross in Senge, The Fifth Discipline Field Book, 1994 & the Interface of CDRC

Openings for Active Listening

From your point of view . .

So it seems you . . .

So in your experience . . .

As you see it . . .

You think . . .

I wonder if . . .

Let me see if I understand . . .

It appears that . . .

What I think I'm hearing is . . .

You mean . . .

Tell me if this is right, from your perspective, . . .

Three Maneuvers of Hardball Players

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1. **They assert their position forcefully . . .**
    Treat it as only one option,.
    Look for interest behind it.

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2. **They attack your ideas . . .**
    Don't push back and get defensive.
    Ask for advice and suggestions to reveal interests.
    Initiate discussion of criteria.
    ("What would you do in my position?)

---

3. **They attack you personally . . .**
    Don't defend yourself, invite criticism and advice.
    Recast their attacks as an attack on the problem.

Break the vicious cycle by refusing to react.

When they push, side-step the attack and deflect it against the problem -- channel their(and your own) energy into exploring interests and inventing options for mutual gain. – So what could we do that would meet your concerns and mine as well?

How to Counter Hardball Tactics

→ **Don't react. Step Back and Be an Observer.**

Take a break. Buy yourself time to think. Defuse their tactics by naming their game. Keep focused on getting what you want, not getting even or getting back.

→ **Step to Their Side.**

Don't argue with them. Instead listen to what their saying, acknowledge their point of view and agree with them whenever possible. Try to dissuade the anger, fear, hostility and suspicion on the other side.

→ **Change the Game.**

Reframe what they've said as an attempt to deal with the problem. Ask problem-solving questions, like "What if we were to . . ." or "Why is it that you want that?"

→ **Make It Easy for Them to Say YES.**

Address their interests. Help them save face. Involve them in the process. Think of yourself as a mediator.

→ **Use Power to Show the Costs of Saying NO.**

Make it unwise for them to say NO. Ask reality testing questions. Warn, don't threaten. Demonstrate your BATNA. Use power to bring them back to the Interest-Based Bargaining table.

Section 3:
Interest-Based Bargaining in Practice

Taking a Quick Look . . .

Negotiation Alternatives

Position-Based	Interest-Based
Agree on Procedures	
Procedures	Procedures
Groundrules	Groundrules
Educate/Get Information	
Identify Issues	Identify Issues
Present Positions	Exchange/Clarify Interests
Justify Positions	Jointly Gather Information
Develop Options	
Proposals	Create Multiple Options
Counter Proposals	Brainstorm Ideas
Trade-off	Evaluate by Interests
	Objective Standards/Criteria
Reach Agreement	
Agreement	Agreement

Interest-Based Bargaining utilizes communication, information sharing and creative, out-of-the-box problem-solving as part of the negotiation process.

Adapted from Multi-party Collaborative Problem-Solving, Center for the Environment

What's Different?

➢ Asks the parties to really **KNOW THEIR INTERESTS** -- to think through what lies behind positions

➢ Seeks to find solutions that **DOVETAIL INTERESTS** of both parties, separate as well as shared and interests

➢ COMPROMISE AND TRADE-OFFS ONLY AS A LAST RESORT

➢ COMMUNICATION -- Encourages the parties to exchange and clarify interests and requires each side to understand the other

➢ INFORMATION -- Parties jointly educate themselves on the issues, must be informed and knowledgeable to discover the possibilities

➢ Implies obligation of each party to help the other satisfy its interests - THEIR PROBLEM IS OUR PROBLEM & VISA VERSA

➢ Requires reliability, integrity -- BUT DOESN'T REQUIRE TRUST

➢ Requires UNDERSTANDING OF AUTHORIZATION and ABILITY TO MAKE DECISIONS

➢ USE OF TIME -- not used as a tactic, more regular schedule, slower to start but may reach conclusion earlier

➢ Logistics -- use of FLIP CHARTS, ROUND TABLES, SIDE-BY-SIDE SEATING

➢ BATNA -- bargaining power expressed through alternatives should negotiations break down, power used to bring other side to Interest-Based Bargaining table

In general, Interest-Based Bargaining negotiation emphasizes problem-solving over tactics as a means to reach settlement.

Definitions

Issue: A subject under discussion or negotiation; the what; the problem to be solved.

Position: One party's initial preferred solution to a problem.

Interest: One side's concern, need or desire behind an issue; why the issue is being raised. Some interests are held in common, some do not inherently clash with the other party.

- ➤ **Interest Statement:** Focuses on the problem
- ➤ Articulates one of a range of needs
- ➤ Makes no valuations
- ➤ Establishes a climate and a common language for discussion so that the real issue or problem can be understood, discussed, and negotiated.

Option: A potential, often partial solution that can meet one or more interests.

Standard: Agreed-upon qualities or measures of an acceptable solution.

Technique: A skill or structure useful for interest-based negotiations.

Principles: Guidelines for behaviors; a behavior which supports the way negotiators deal with each other.

Principles of Interest-based Negotiations

→ Separate the people from the problem.

→ Focus on interests, not positions.

→ Work to create value before negotiating a claim on value.

→ Invent lots of options before deciding what to do.

→ Look for a result that can be based on an objective standard (for example, procedures, the opinion of an outside expert, legal regulation).

→ Remember the other person's problem is your problem.

Adapted from: Roger Fisher and William Ury, <u>Getting to Yes,</u> Penguin Books (1983)

Separating People from the Problem

- Don't blame the person for the problem.

- Put yourself in the other person's shoes.

- Don't challenge legitimacy of other party.

- Don't deduce their intentions from your fears.

- Don't blame them for your difficulty.

- Discuss each other's perception.

- Never trade substance for a relationship.

- Look for opportunities to act inconsistently with the other party's perceptions.

How to Focus on Interests, Not Positions

- Look behind the position(s) of the other side to identify interests:
    - Ask "Why?"
    - Ask "Why not?"

- Frame questions to acknowledge their concerns and to facilitate mutual problem solving.

- Describe the problem in terms of its impact on you rather than what the other side did or said and why that is unreasonable.

- Analyze the consequences, as the other side would probably see them, of agreeing or refusing to make the decisions you are asking for.

- Make your interests known, and establish the legitimacy of those interests.

- Let the other side know that you understand and appreciate their interests, paraphrase and restate positively, from their point of view.

- Put the problem before the answer.

- Accept the task at hand as a shared problem-face it jointly.

Invent Options for Mutual Gain

- Don't assume a fixed pie. Search hard for options to create mutual gain, before rushing to decision-making.

- Look at the problem through the eyes of different experts and from the other side's point of view.

- Brainstorm, following the rules of quantity over quality, no judgment or censorship, build off of each other's ideas.

- Bundle related ideas. Use (jointly agreed to) objective standards and interests to winnow the brainstormed list. Convert the best ideas into options.

- Separate the act of inventing from evaluating.

Develop Standards to Evaluate Options

1.   Standards are developed to judge which option or options is/are best to satisfy the interests on an issue. They are factors to evaluate the options.

2. Use one of the following two starting points detailed below to arrive at an agreed list of standards:

   a) Use brainstorming to develop a list of standards that will help to make a decision on the options.

   b) Start with the list of commonly used standards (acceptable, fair/equitable, legal, understandable/simple, workable, manageable, affordable/cost effective, flexible, mutually beneficial) and make modifications to the list by adding or deleting from the list.

3. Whatever method is used to develop the initial list of standards, use consensus to reduce the list to a manageable number by:

   a) Eliminating or combining redundancies

   b) Eliminating any that are not, in fact, standards

   d) Deciding which are too difficult to apply

   d) Determining which are most relevant to the issue under discussion

   e) Clearly defining the scope of each standard

4. Once a workable list of standards has been agreed upon, move to the next step: judging the options using the Standards.

Judging Options with Standards

1. This is a consensus process.

2. Before you apply the standards to the options, you may need to prepare your options for evaluation by:

    a) Eliminating or combining redundancies
    b) Eliminating any that are not, in fact, options
    c) Determining which are most relevant to the issue under discussion
    d) Clearly defining the scope of each option

3. <u>The parties should always discuss and agree on how to proceed</u>. For example, each option can be discussed to determine if it meets any standards. Those that meet none or few can be eliminated or a ranking process can be used.

4. If there are a large number of options, they can be quickly tested against critical standards (i.e. legal, workable, acceptable, interests, resources, sell-ability) to see if there is a quick consensus to eliminate obviously flawed options.

5. The options may logically lend themselves to being grouped into a number of categories. This works best when, within each category, most of the options are mutually exclusive. The groups can then order the categories and work through each category in turn.

6. Some options can be combined or expanded to create a new option which will address the parties interests.

7. Using consensus, develop the option(s) chose into a solution.

8. Reduce the solution to writing.

9. The solution can take the form of contract language, letter of agreement or action plans.

The Three Cut Method* for Selecting Best Option

The three cut method can be used to narrow the list of options generated in brainstorming. The parties may want to caucus during the process. In the caucus, assign one
person to be the devil's advocate.

1st Cut: Interests

Review the entire list of options against the union and management interests. An option is still viable if it has the potential to meet the interests of both parties.

2nd Cut: Resources

Review the list of viable options based on resources. Options for which resources are, or would be, available remain viable.
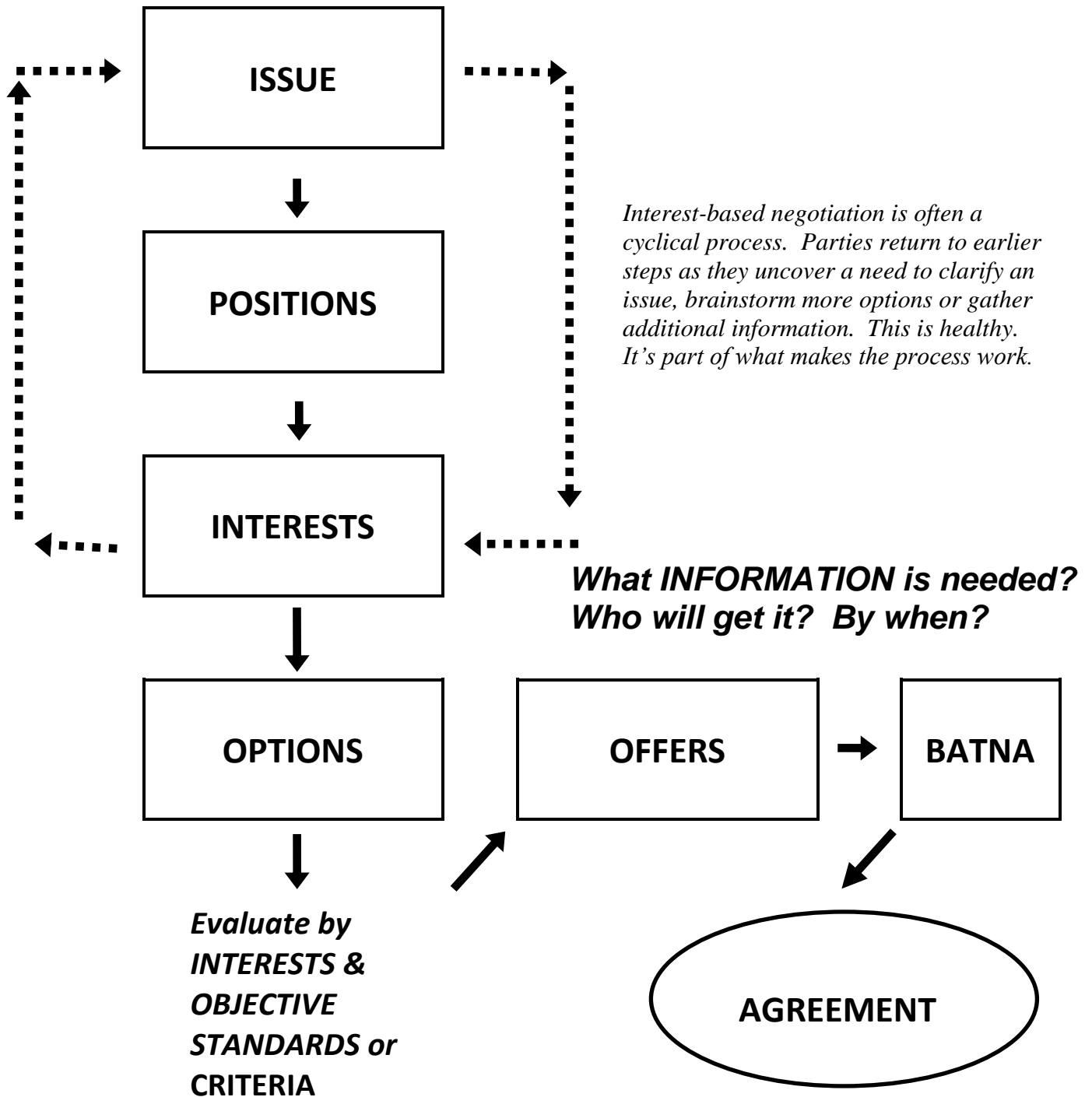
3rd Cut: Sell-ability/Acceptability

Review those options still viable after the second cut to determine which one would be most acceptable to constituents (union and management) who have not been involved in the process. Each side may want to select the worst option from the list and explain why they don't like it.

One approach to winnowing down the options list is for each party to check those options that are most appealing. Compare lists, looking for double checks. Where there are only single checks, explore what interests are or are not addressed. Improve options or return to brainstorming to find a solution that works for both sides.

*Developed by Pam Strausser, Cornell University ILR

Interest Based Negotiation in Sequence

Before you begin ➔ Know your BATNA?

ISSUE

POSITIONS

INTERESTS

Interest-based negotiation is often a cyclical process. Parties return to earlier steps as they uncover a need to clarify an issue, brainstorm more options or gather additional information. This is healthy. It's part of what makes the process work.

What INFORMATION is needed? Who will get it? By when?

OPTIONS

OFFERS

BATNA

Evaluate by **INTERESTS &** *OBJECTIVE* **STANDARDS or** **CRITERIA**

AGREEMENT

Interest-based Negotiation Steps

Prior to Bargaining:
- *Agree on Protocols: Housekeeping & Groundrules*
- *Opening discussion: Big Picture*
- *Identify Issues and exchange issues*
- *Develop information gathering plan*

During Bargaining:
- *Categorize and order list of issues*
- *Use IBB discussion process on each issue*
- *Craft language and final agreements*

After Bargaining:
- *Present outcomes to all constituents, jointly or separately*
- *Constituents ratify agreements*
- *Optional labor-management activities to implement agreements or continue further discussion of issues*

Steps in the Negotiating Process

Prior to Bargaining	*Step 1*	**Agree on Protocols: Housekeeping & Groundrules** – Physical setting – Public note-taking, flipcharts, use of facilitator – Issues of time, schedule, expenses – Group composition & participation, caucuses, use of sub-committees – Communications during negotiations – Opening Discussion: Big Picture
	Step 2	**Identify Issues and Exchange Issues** – What is the problem to be solved or strategic need to be met?
	Step 3	**Inform and Educate** – Identify where more information is needed – Jointly seek needed information to build competency
During Bargaining	*Step 4*	**Opening Discussion on Each Issue** – Little picture discussion of nature of issue **Interests Discussion** – Clarify for understanding, ask why – Validate emotions to get to the underlying drivers
	Step 5	**Generate Options** – Create multiple alternatives/ideas – Brainstorm – Craft/combine ideas into options
	Step 6	**Select Best Options and Convert into Offers** – Identify objective standards, look for closely shared values & interests – Cull by interests and objective standards – Further refinements by resources and "sellability"
	Step 7	**Reach Agreement** – Compare best offer with BATNA, accept if better
After Bargaining	*Step 8*	**Plan Implementation and Communication** – What? What will be done? – Who? Who will be in charge of doing it? – When? When will it be done, if in phases, select benchmark dates – How? How will the plan be presented, carried out, evaluated? – How will you know if it's working?

Issue Analysis Sheet for Health and Safety

(Know BATNA before beginning.)

Issue *(one sentence or less description of problem)*

Background *(short discussion of how the issue came to be a problem)*

Interests:

Party A's & Party B's Interests

Obj. Standards/Criteria for Solution *(agree on criteria for narrowing the options)*

Options *(brainstorm a variety of potential options to address interests, criteria and solve the problem)*

- ❑
- ❑
- ❑
- ❑
- ❑
- ❑

Best Negotiated Outcome *(accept is better than BATNA)*

Preparing for Interest-based Negotiation

- Consider your constituency's wants, needs, and concerns, consider theirs.

- Consider your history.

- Gather information from your constituents on issues. Ask for their interests.

- Prepare your constituents to think in terms of interests. Avoid getting locked into expectations framed as positions.

- Identify all possible issues and begin list of interests on each issue, theirs as well as yours.

- Begin gathering facts and data on each issue. (Later these will be applied in the joint search for objective standards.)

- Develop your BATNA

Preparing for Interest-based Negotiation

Consider issues related to negotiation structure and protocol:

- – How do you want to apply the process?

- – Do you want to use it overall or just for certain issues?

- – Which parts do you want to do jointly, separately?

- – What should be the roles at the table?

- – Do you want to use caucuses?

- – Do you want to use taskforces to work on specific issues?

- – What about the physical setting?

- – What about using flipcharts and one set of notes?

- – What about a facilitator?

- – How will you communicate with constituents?

- – What about communications during negotiations?

How to Proceed

Big Picture Discussion
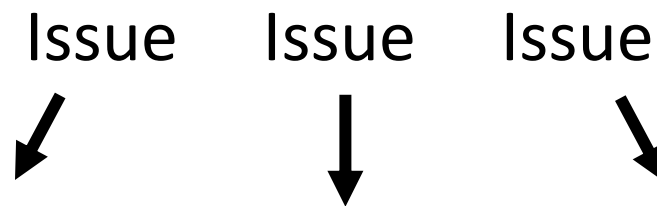
Issue   Issue   Issue

Opening Discussion: The Big Picture

If possible, before exchanging any proposals on a given issue, have an open discussion of the issue. Even if proposals have been made, this opening general discussion can be useful. The goal is to develop understanding; so active listening is crucial.

Issue Discussion

- ➲ Hold a "mini big picture" discussion about   the issue

- ➲ Acknowledge positions?

- ➲ List interests

- ➲ Identify information/objective standards

- ➲ Generate options before making offers

- ➲ Select best acceptable option using objective standards

➲ The Issue Discussion Process

→ The party who will bring the issue to the table can begin.

→ The talk should include background, why the issue is important, how it fits in with the big picture of things.

→ Use active listening -- paraphrase to check for meaning -- to be sure you understand. As you listen, watch for your own assumptions that may be coloring what you hear. When you speak, remember to speak from <u>your</u> perspective. Your job is not to tell the other party what he or she think; you don't really know.

→ Anyone is free to ask questions, but these questions are for clarification and understanding, not to challenge or question the presenting party's motives.

→ If you are concerned that there might be more underlying the issue, it is appropriate to ask non-accusatory questions, eg. "Does our last bargaining experience have an impact on this issue?"

Sample Issues List

Process Issues:

1. **Grievance Procedure** - How to insure Step One will be used and be useful?
2. **Emergency Facility Closing** - What should happen when someone is on leave (vacation, sick, etc.)? What is the impact on those required to work?
3. **Worker's Compensation** - How to control rapidly rising costs?
4. **Comp Time Policy** - How to meet needs of employees and organization?
5. **Transportation Dept Policy** - Can processing time and complexity be reduced?
6. **Vacancies** - How to communicate vacancies to employees and when (how) to permit employees to seek vacancies?
7. **Health Insurance** - Coverages, costs, responsibilities
8. **Wages**

Housekeeping Issues:

1. 1:037 - Change contract to agreement
2. 11:032 - Change discharge to termination
3. Section 14:032 change adn to and
4. Change "Quality Control Inspector" to
5. "Quality Assurance Technician"

Sample Issue

Funeral Leave How to deal with occasional employee need for additional time and employer need to staff?

Issue Focused: On some occasions individuals have a need for additional time to handle legal matters, long distances, and prolonged grieving. The Administration policy of allowing employees to take vacation time to extend funeral leave, provided staffing and scheduling allow, has been unevenly applied and is not known by everyone, employees and supervisors alike. Also, there has been some number of individuals simply calling in sick or just not showing up following a funeral leave.

Interests*
1. Ability to handle matters.
2. Emotional needs.
3. Travel time.
4. Out of town needs.
5. Scheduling coverage.
6. Public service.
7. Staffing level.
8. Promote good attendance.
*All eight interests were deemed by the group to be mutual.**Options**
1. Put current practice into contract.
2. Communicate current policy.
3. Verify funeral leave need.
4. Adjust pre-scheduled vacations.
5. Give supervisor input into decision.
6. Personnel department decides on extension.
7. #6 with appeal to administrator.
8. Supervisor decides based on scheduling/staffing needs.
9. Automatic extension of _____ day's vacation.
10. #9 plus option for more vacation with approval.
11. #9 with supervisor approval.
12. Extension with unpaid time if no vacation available.

Tentative Agreement   Put current practice into contract with language that allows additional time if at all possible, providing reasonable accommodations for sufficient staffing and scheduling can be made.

Communication During the Process

Communication can prepare constituencies to understand the outcome of negotiations, especially in the case of technically innovative but politically unfamiliar solutions.

Issues	used to educate each other can communicate with constituencies
Interests	used to educate each other can communicate with constituencies
Standards	used to narrow options used to educate each other & constituents can communicate with constituencies
Options	**KEEP CONFIDENTIAL AMONG NEGOTIATORS -- DO NOT SHARE WITH CONSTITUENCIES**
Outcomes	presented to/ratified by constituencies

Evaluating the Negotiation Process

1)   Are we moving forward?
     Are we focusing on our interest?

2)   Are we wasting time, energy/stress or money?

3)   Is our process leading us toward agreements that will work?
     Compliance? Efficiency?

4)   Will agreements be understood?

5)   Are relationships improved?

You have succeeded when:

→   Each side's interests are addressed.

→   Each side acknowledges the interests/objectives of
    the other.

→   Each side believes the other was fair.

→   Each side looks forward to dealing with the other in the future.

→   Each side believes that both sides will uphold the promises of
    the agreement.

Selected Resources

Barrett and O'Dowd (2005) <u>Interest-based Bargaining: A User's Guide</u>
    Provides advice for labor and management negotiators on how to negotiate effectively while building relationship.

Cutcher-Gershenfeld, Joel and Thomas Kochan, "Taking Stock: Collective Bargaining at the Turn of the Century," <u>Industrial and Labor Relations Review</u>, October 2004: 3-26.

Cutcher-Gershenfeld, Joel, Thomas Kochan and John Calhoun Wells, "In Whose Interest: A First Look at National Survey Data on Interest-Based Bargaining in Labor Relations," <u>Industrial Relations</u>, Jan. 2001
    Reports on national survey of private sector negotiations and collective bargaining patterns among large bargaining units.

Cutcher-Gershenfeld, Joel, "Case Analysis: Bargaining When the Future of an Industry is at Stake: Lessons from UAW-Ford Collective Bargaining Negotiations," <u>Negotiations Journal,</u> April 2011

Deery, Stephen and Iverson, Roderick, "Labor-Management Cooperation: Antecedents and Impact on Organizational Performance," <u>Industrial and Labor Relations Review</u>, July 2005
    Reports on research on labor-management cooperation and highlights relationship with interest-based negotiation approaches.

Fisher, R., Ury, W., & Patton, B. (1991). <u>Getting to Yes</u>**.** New York: Penguin.
    The second edition of the classic Fisher and Ury book the introduced interest based negotiations as a set of principles and practices available to anyone negotiating. Like the other books from the Harvard Program on Negotiation, this one is easy to read and understand and it's chock full of concrete examples.

Lipsky, David and Kochan, Thomas (2003) <u>Negotiations and Change: From the Workplace to Society</u>. Ithaca, NY ; Cornell University Press
    A collection of short articles documenting emerging issues and wide variety of applications of integrated negotiation, including excellent summary piece by Cutcher-Gershenfeld on interest-based bargaining trends.

McKersie, R., et. al., "Kaiser Permanente: Using Interest-Based Negotiations to Craft a New Collective Bargaining Agreement," <u>Negotiations Journal</u>, January 2004

Kolb, D. and Willliams, J., "Breakthrough Bargaining," <u>Harvard Business Review</u>, Feb. 2001
    Discusses strategy for the "shadow negotiations," the informal negotiation of persuading the other side to engage with the issues.

Stone, D., Patton, B., and Heen, S. (2000) <u>Difficult Conversations</u>. New York: Penguin Books.
    An excellent resource for approaching and managing the hard conversations.

Ury, W., <u>Getting Past No</u> **(1993)** New York: Bantam Books
    This resource build on the Getting to Yes and extends the process introduced in Getting to Yes to explore strategies for negotiating with difficult people and hardball negotiators.

Walton, R., Cutcher-Gershenfeld, J. and McKersie, R., <u>Strategic Negotiations: A Theory of Change in Labor-Management Relations</u> **(1994)** Boston: Harvard Business School Press
    This analysis of labor-management relations identifies three strategies – forcing, fostering and escape – and offers detailed case studies of individual firms and whole industries as illustration of tactical advantages and risks of each.

Weeks, Holly, <u>Failure to Communicate: How Conversations Go Wrong and What You Can Do to Right Them</u> (2010) Boston: Harvard Business Press
    Provides insight for discussion at the table to prevent being blindsided and losing control when communication threatens to become toxic and emotions flair.