

INTEREST BASED NEGOTIATIONS

by

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There are two essential paradigms of negotiations; position-based and interest-based.

We are born with the natural human behavior that leads us towards positional bargaining. Put two toddlers in a room with toys and sooner or later there will be a negotiation between the two. MINE! NO MINE!

In position-based negotiations, substance is important. Both parties focus in on the actual item being negotiated. The other party is seen as the enemy. Each party tends to be self-serving in an attempt to see victory over the other. They push for their own predetermined solutions and, if they concede, they see themselves as losers. The problem in position-based negotiations is that it often breeds resentment. If you win in a negotiation and the other party feels as if they lost, they'll walk away resentful and they're probably going to attempt to get back what they lost one way or the other. If your relationship is going to continue with the other party for a long time, such as raising children, a win-lose outcome in negotiations may plant the seeds for resentment and continuous conflict.

The first lesson we learn in the Collaborative Process is that the feelings of the parties' matter.

In interest-based negotiations, substance is still important, however, the importance of the relationship is of equal or greater importance. In interest-based negotiations, the intent is to reach a mutually acceptable outcome, something that is mutually beneficial to both parties. The negotiation is successful if the interests of both parties are being met. If a problem does emerge, the parties are heard on the problem. And if they do yield, people yield to objective criteria, something that both parties can agree to as being legitimate and fair. The outcome of an interest-based negotiation is one where credibility is built between both parties as they develop trust in the Process.

All negotiation methods should be judged by three criteria:

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

In typical negotiations, each side picks a position and argues for it, making concessions to reach a compromise. This type of positional bargaining fails all the criteria:

1. **It produces unwise outcomes.** Parties are entrenched in their positions... making it less likely that any agreement will wisely reconcile the parties original interests. Energy is paid to positions vs. meeting the underlying concerns of the parties.
2. **It's inefficient.** Bargaining over positions creates incentives which stall settlement. This is why we often enter positional bargaining with an unreasonable proposal hoping we may meet half way in the end.
3. **It endangers the relationship.** Positional bargaining becomes a contest of will, resulting in anger and resentment when a side bends to the rigid will of the other while its own legitimate concerns go unaddressed. Bitter feelings are difficult to heal.

The answer to the question of whether to use soft positional bargaining or hard is "neither". The Harvard Negotiation Project has been developing a method of negotiation explicitly designed to produce wise outcomes efficiently, called principled negotiation or negotiation on the merits. It has four basic principles which are relevant from the time you begin to think about negotiating until the time either an agreement is reached, or you decide to break off the effort. That period can be divided into three stages: analysis, planning, and discussion.

1. Separate the people from the problem.

Human beings are not computers, and emotions typically become entangled with the objective qualities of the problem. Taking positions makes this worse because peoples egos become tied to their positions. Making concessions "for the relationship" is equally problematic, because it can encourage and reward stubbornness, which leads to a poor outcome and resentment that ends up damaging the relationship.

Before working on a problem, the "people problem" should be disentangled from it and addressed on its own. The participants should come to see themselves as working side by side, attacking the problem, not each other.

2. Focus on interests, not positions.

Good agreements satisfy underlying interests, yet most often participants focus on stated positions. A negotiating position obscures what you really want and compromising between positions is not likely to produce an agreement that will address the real need that led people to adopt those positions.

3. Invent multiple options looking for mutual gains before deciding what to do.

It is difficult to design optimal solutions while under pressure. Trying to decide in the presence of an adversary narrows your vision. Having a lot at stake inhibits creativity. So does searching for the one right solution. These constraints can be offset by setting a designated time within which to

think up a wide range of possible solutions that advance shared interests and creatively reconcile differing interests.

Before trying to reach an agreement, invent options for mutual gain.

4. Insist that the result be based on some objective standard.

When interests are directly opposed, a negotiator may be able to obtain a favorable result simply by being stubborn. You can counter such a negotiator by insisting that his single say-so is not enough and that the agreement must reflect some fair standard independent of the opinions of either side. Neither party need give into the other, both can defer to a fair solution.

The primary principle of interest-based negotiations is to get a good understanding of both party's interests and to develop or invent creative options that will meet those interests. This approach increases the chance of establishing a good relationship with the other party and achieving outcomes that are mutually beneficial. Criteria of fairness and legitimacy are used to establish standards both parties can agree to. Having a good alternative to walk away from is equally important. Finally, effective communication is absolutely critical.

Collaborative law is an interest-based process.

It is a process that requires that you look at the true interests, goals, and priorities of the couple and their family, so you can discuss them and use them as the basis for your settlement. When decisions are based on what is important to the parties, you honor and help achieve their goals. Collaborative law allows both parties to honor each of their goals, interests, and priorities as best as possible.

Positions and Interests

A position is what you decide you want in a particular situation. It's a predetermined and a specific solution to a problem you want to solve or a need that must be met. It may be the amount of money that you want. It may be the way that you want work to be done. It may be about the type of equipment that you need and so forth. **Behind every position is an interest. An interest represents the need or wants that motivated you to select the item you want to arrive at your solution. Interests are often rooted in human needs.** When you tell the other party what you must have, you are taking a position. When a person or group becomes overly focused on their position, they can become entrapped. Entrapment is a process in which an individual becomes overly committed to a course of action as the result of having invested time, energy, self-esteem, pride, and can lead a negotiation to a stalemate.

Interests are different from positions. A position usually has only one possible answer – such as who will get the Tesla? An interest has a myriad of possible answers: the interest behind the position of wanting the Tesla might be the need to have appropriate and reliable transportation. Interests form the basis for truly satisfying your needs and are often wide-ranging.

A position is what you decide you want in a particular situation. It's a predetermined and a specific solution to a problem you want to solve or a need that must be met. It may be the amount of money that you want. It may be a certain asset or the length of alimony. Behind every position is an interest. An interest represents the need or want that motivated you to select the item you want to arrive at your solution. Interests are often rooted in human needs. When you tell the other party what you must have, you are taking a position. When a person becomes overly focused on their position, they can become entrapped.

Consider the story of the two men in a library. One wants the window open and the other wants it closed. They bicker back and forth about how much to leave it open: a crack, halfway, three-quarters of the way. No solution satisfies them both. Enter the librarian. She asks one why he wants the window open: "To get some fresh air." She asks the other why he wants it closed: "To avoid the draft." After thinking a minute, she opens wide a window in the next room, bringing in fresh air without a draft.

Reconciling interests rather than positions works because for every interest there usually exists *several* possible positions that could satisfy it.

To help identify interests:

- Ask why? "What's your basic concern, Mr. Smith, in wanting the Tesla?"
- Put yourself in the other side's shoes and think about what interests of theirs are standing in the way of them saying "yes" to what they see you asking for
- 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) – if you can take care of such basic needs, you increase the chance of both reaching an agreement.

Discuss interests in an open forum:

- Be upfront and specific – make sure the other side understands exactly how important and legitimate your interests are.
- Actively listen to and acknowledge the other side's interests
- State the problem before your interest
- Focus on the future, not justifying the past
- Be firm in talking about your interests but at the same time soft on the people you are negotiating with – listen with respect, show them courtesy, express appreciation for their effort, emphasize your concern for meeting their needs.

Once the interests are defined, the next step is to generate options using brainstorming. In brainstorming our intent is to come up with as many ideas as possible no matter how ridiculous they may sound. When brainstorming has been exhausted, then we can evaluate and take a closer look at each option.

Four common obstacles inhibit the inventing of an abundance of options:

1. Premature judgement
2. Searching for the single answer - People in negotiations naturally focus on achieving the position they want instead of expanding the scope of solutions from which to address each other's interests.
3. Cookie cutter mentality
4. Not caring about coming up with creative solutions for addressing the *other side's* interests

To successfully invent options:

- At sessions in which you are inventing options, all parties postpone criticism and evaluation of ideas. Participants sit side by side facing the problem to reinforce the mental attitude of tackling a common problem together. After brainstorming, recap and star the most promising ideas and decide which to carry into the negotiation process

While brainstorming with the other side, reduce risk of appearing committed to any given idea by advancing at least two alternatives at the same time.

- Broaden your options by identifying themes from specific ideas from which you can generate more ideas, looking at the problem from a different perspective
- Look for mutual gain by identifying shared interests and treating them as a shared goal to make the negotiation smoother and more amicable.
- Try to make the decision easy for the other side by putting yourself in their shoes and looking for precedents.

The Negotiation Process

The negotiation process consists of four major components or stages: the establishment of ground rules, the selection and clarification of issues, problem solving to select viable options, and establishing a mutually beneficial agreement.

Establishing ground rules is comprised of three elements and sets the stage for the behavior and process that will follow:

1. Make introductions; gain rapport.
2. Clarify expectations on purpose, length, and process of the meeting.
3. Reach agreement on the agenda.

Taking the time to establish ground rules and norms is often overlooked or seen as a waste of time. Negotiation is a communication process where relationship is as important as substance. To develop a relationship time is needed to build trust. Establishing ground rules is a preventive

measure that provides a foundation and expectation that all parties can work from. It establishes a direction, helps parties to stay on track, and provides the means to prevent the escalation of conflict when it arises. Ground rules and norms should address how people will communicate how conflict will be resolved, how issues will be discussed, etc.

Having an agenda provides a plan for conducting the meeting. It is the primary means by which the participants learn and commit to the content, objectives, and process of the negotiation meeting. It is also the primary tool that helps the facilitator to keep the participants on track.

Once an issue is selected for negotiation, we must **identify and clarify the underlying interests of each party**. This is the point for each party to express their understanding. The facilitator may have to remind people to avoid judging or defending behavior. Information should be written down on an easel pad in full view of the participants. This act symbolically gets everyone on the same side of the problem. When everyone is satisfied that all interests have been expressed and all agree, an interest-based problem statement can be formed.

Once the problem statement has been formed participants can begin to **generate options using brainstorming**. The facilitator may have to remind people to avoid justifying their option and that criticizing others is not appropriate. The objective at this stage is to generate as many creative options as possible.

When the participants have exhausted the bank of ideas the facilitator can move the group to evaluation. **During the evaluation the facilitator will use interest-based questions to get clarification on the meaning of each option.** “What specifically do you mean by this?” “How does this option meet the interests of both parties?” “How would this be implemented?” The final test of an option is whether it meets the interests defined in the problem statement. If it does not, then it should be removed from the list, unless both parties agree that it should remain.

The remaining list of options provides a group of alternatives for the participants to select from or to combine to create other options. The list, when prioritized, can also form the basis of an action plan. At this point the participants are in the process of crafting an agreement. The objective criteria defined during preparation can be discussed at this time to analyze and **finalize the agreement in a way that is fair to everyone**.