

Can we talk?

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Dispute Resolution Processes

Primary-party dispute resolution processes

Avoidance

Run

Do nothing
Control
Safety
Save emotional costs

Negotiation

TALK

Rights
Positions
Interests
Values
Priorities
Mutually beneficial gains

Confrontation

Fight

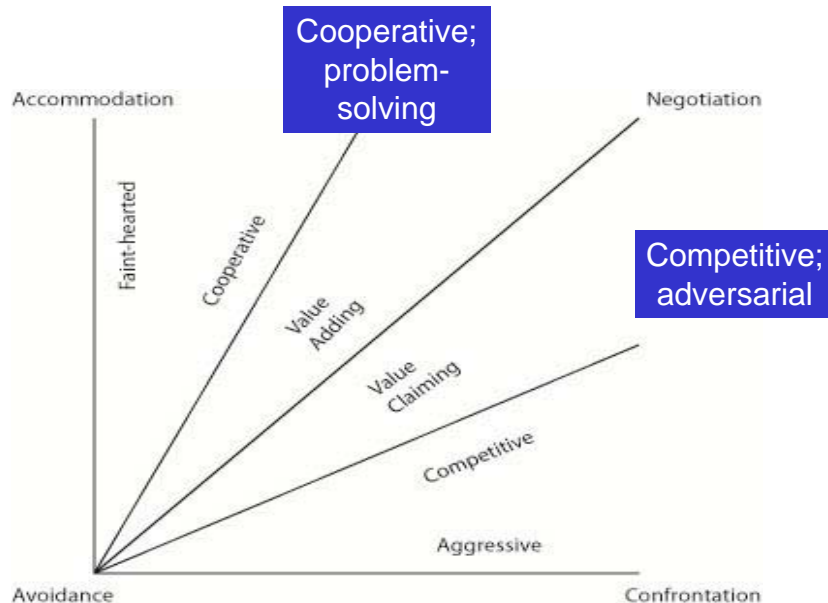
Power/Position
Aggression
Dominance
Ego-centric behavior
Expend everything

Point to Ponder

If I am right about our skill deficiency at talking, then that short-coming may contribute as much to the dilemma of the conflict or impasse as the substance of the dispute itself!!

What do you think?

NEGOTIATION STYLE—DEFAULT OR DESIGN?



NEGOTIATION OVERVIEW

Facilitating the “talk”—finding words that

provide a frank exchange of information

promote a productive level of emotional expression

encourage flexibility

help each party

- feel that his/her views are communicated and understood
- understand the other’s viewpoint AND appreciate its reasonableness—at least from the other person’s perspective

shift the focus—past to the future

shift the focus—conflict to the resolution

FOUR-PHASE NEGOTIATION PROCESS

ORIENTATION

INFORMATION

OPTION

RESOLUTION

FOUR-PHASE NEGOTIATION PROCESS

ORIENTATION—FOCUS UPON PROCESS

Introductions

Ground rules

Issues

Agenda

 Substantive matters

 Collateral matters

Rapport—a relationship bridge. Is it strong enough to support the weight of the “heavy” negotiations? When the talk gets difficult?

FOUR-PHASE NEGOTIATION PROCESS

ORIENTATION—FOCUS UPON PROCESS

Collateral Matters

Would you like to dance [negotiate] ?

- who’s leading ?
- “chit-chat”— “face” issues
 - shaping face
 - saving face
 - lifting face
 - disfiguring face
- Hey, you are stepping on my ego !
- Oh, has the music stopped?

FOUR-PHASE NEGOTIATION PROCESS

ORIENTATION—FOCUS ON SUBSTANCE

Pre-negotiation preparation

- Case preparation—issues; facts & figures
- Factual arguments / legal arguments
- BATNA—WATNA
- Planned strategies
 - agenda control; who bids first?
 - what information is viewed as confidential?
 - concessions; bottom line
 - adversarial; cooperative—aggressive; conciliatory
- Effective “sound-bites”—ready to deliver
- Opponent’s position; opponent’s interests

FOUR-PHASE NEGOTIATION PROCESS

INFORMATION

Communication—enhance it !!

Speaker’s views are valued—communicated

Confidentiality is kept intact—communicated

Desire to help and willingness to allow
expression of feelings—communicated

Understanding—communicated

Verbal and non-verbal judgment is suspended—
not communicated

FOUR-PHASE NEGOTIATION PROCESS

INFORMATION

Four Keys to Effective Communication

1. Speaker is focused

FOUR-PHASE NEGOTIATION PROCESS

INFORMATION

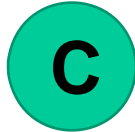
Collateral Matters



PARENT EGO STATE
Behaviors, thoughts, and feelings copied from parents or parental figures



ADULT EGO STATE
Behaviors, thoughts, and feelings which are a direct response to the here and now



CHILD EGO STATE
Behaviors, thoughts, and feelings replayed from childhood

FOUR-PHASE NEGOTIATION PROCESS

INFORMATION

Collateral Matters



PARENT EGO STATE
Behaviors, thoughts, and feelings copied from parents or parental figures

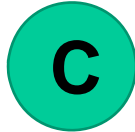
Be quiet. You should be ashamed of yourself. You are stupid!!

Hang in there; I will take care of you.



ADULT EGO STATE
Behaviors, thoughts, and feelings which are a direct response to the here and now

Well, let's see what we could do about that. Given your interest in "____", one option might be to . . .



CHILD EGO STATE
Behaviors, thoughts, and feelings replayed from childhood

I will not go to bed!
I just can't; I'm useless; I'm not good enough. I never get anything right.

Wow!! This is fun! I'm so special!

FOUR-PHASE NEGOTIATION PROCESS

INFORMATION

Collateral Matters



PARENT EGO STATE
Behaviors, thoughts, and feelings copied from parents or parental figures



7% of the message is in the spoken words;



ADULT EGO STATE
Behaviors, thoughts, and feelings which are a direct response to the here and now



38% the way the words are said; and



CHILD EGO STATE
Behaviors, thoughts, and feelings replayed from childhood



55% the body language

FOUR-PHASE NEGOTIATION PROCESS

INFORMATION

Four Keys to Effective Communication

1. Speaker is focused
2. Listener is attentive

FOUR-PHASE NEGOTIATION PROCESS

INFORMATION

Listener Attentiveness—perception

Did you say what I'm hearing?
seeing?
understanding?

Communicated !!

Rights
Positions
Interests
Values
Priorities
Mutually
beneficial
gains

FOUR-PHASE NEGOTIATION PROCESS

INFORMATION

Passive Listening—listener attentiveness

Posture

Eye contact

Nods—facial expressions—gestures

Silence

Verbalization

“Uh-huh”

“Please continue. What else happened?”

“Can you tell me more about the . . . ?”

FOUR-PHASE NEGOTIATION PROCESS

INFORMATION

Four Keys to Effective Communication

1. Speaker is focused
2. Listener is attentive
3. Speaker feels that the listener hears what the speaker is saying

FOUR-PHASE NEGOTIATION PROCESS

INFORMATION

Active Listening—content and feeling

“What I hear you saying is that you are worried that you are being treated unfairly.”

“Sounds like you were very disappointed when your brother agreed to meet with me.”

“If I hear you correctly, your primary concern is that your access to the barn and the back 40 acres never be blocked.”

“So, your main concern about the lease is”

FOUR-PHASE NEGOTIATION PROCESS

INFORMATION

Four Keys to Effective Communication

1. Speaker is focused
2. Listener is attentive
3. Speaker feels that the listener hears what the speaker is saying
4. Speaker feels that the listener understands the speaker’s viewpoint and appreciates its “reasonableness”—at least from the speaker’s perspective

FOUR-PHASE NEGOTIATION PROCESS

Emerge
Generate—problem-solving; “brainstorming”
Exchange
 Offers
 Demands
 Developed collaboratively
Evaluation—tied directly to interests
Priorities; combination
Optimum solution

OPTION

FOUR-PHASE NEGOTIATION PROCESS

Full agreement
Partial agreement
Conditional agreement
Memorialize—terms of the deal
Progress
 Information exchanged
 Stipulations entered
 Goals set
Impasse—no music; no dance; no talk; no deal;
no operation

RESOLUTION

IMPASSE—NEGOTIATIONS STALLED

What barriers prevent a successful negotiation

- ✓ Resolution of a factual and/or legal issue is critical
- ✓ Insufficient information and/or incentive
- ✓ Position taken—save face—ego
- ✓ Ineffective negotiation process—“take it or leave it” approach
- ✓ Collateral matters “muddy the water”
- ✓ Procrastination—we don’t talk
- ✓ Unreasonableness—we won’t talk
- ✓ Unskilled—we can’t talk

Other considerations?

IMPASSE—NEGOTIATIONS STALLED

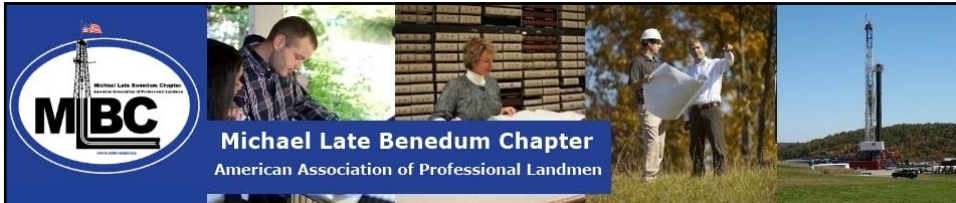
Consider a third-party dispute resolution process

Facilitator

Rights/reasons
Interests
Mediator
Ombuds
Court-annexed
Civil Mediation
Family Mediation
West Virginia
employees’
grievance board

Decision-maker

Rights/proof
Positions
Judge/jury
Arbitration
Voluntary/binding
Compulsory/non-
binding
ALJs
Private Judge/Jury



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