

6.1: Negotiations

Negotiations

Learning Objectives

1. Be able to apply the five phases of negotiation to your work or personal life.
2. Learn negotiation strategies for use at work or in your personal life.

A common way that parties deal with conflict is via negotiation. **Negotiation** is a process whereby two or more parties work toward an agreement. There are five phases of negotiation, which are described in the following section.

The Five Phases of Negotiation

Phase 1: Investigation



Fig. 1. The Five Phases of Negotiation

The first step in negotiation is the **investigation**, or information gathering stage. This is a key stage that is often ignored. Surprisingly, the first place to begin is with yourself: What are your goals for the negotiation? What do you want to achieve? What would you concede? What would you absolutely not concede? Leigh Steinberg, the most powerful agent in sports (he was the role model for Tom Cruise's character in *Jerry Maguire*), puts it this way: "You need the clearest possible view of your goals. And you

need to be brutally honest with yourself about your priorities.”Webber, A. (1998, October). How to get them to show you the money. [Fast Company](#), 198. Retrieved November 14, 2008, from Knowing your goals during the investigation phase can relate back to our earlier discussion on emotional intelligence and self-awareness. Going into the negotiation with your own emotions and thoughts in check will likely make it a more successful negotiation.

During the negotiation, you’ll inevitably be faced with making choices. It’s best to know what you want, so that in the heat of the moment you’re able to make the best decision. For example, if you’ll be negotiating for a new job, ask yourself, “What do I value most? Is it the salary level? Working with coworkers whom I like? Working at a prestigious company? Working in a certain geographic area? Do I want a company that will groom me for future positions or do I want to change jobs often in pursuit of new challenges?”

Phase 2: Determine Your BATNA

One important part of the investigation and planning phase is to determine your **BATNA**, which is an acronym that stands for the “best alternative to a negotiated agreement.” Roger Fisher and William Ury coined this phrase in their book *Getting to Yes: Negotiating without Giving In*.

Thinking through your BATNA is important to helping you decide whether to accept an offer you receive during the negotiation. You need to know what your alternatives are. If you have various alternatives, you can look at the proposed deal more critically. Could you get a better outcome than the proposed deal? Your BATNA will help you reject an unfavorable deal. On the other hand, if the deal is better than another outcome you could get (that is, better than your BATNA), then you should accept it.

Think about it in common sense terms: When you know your opponent is desperate for a deal, you can demand much more. If it looks like they have a lot of other options outside the negotiation, you’ll be more likely to make concessions.

As Fisher and Ury said, “The reason you negotiate is to produce something better than the results you can obtain without negotiating. What are those results? What is that alternative? What is your BATNA—your Best Alternative To a Negotiated Agreement? That is the standard against which any proposed agreement should be measured.”Fisher, R., & Ury, W. (1981). *Getting to yes: Negotiating agreement without giving in*. New York: Penguin Books.

The party with the best BATNA has the best negotiating position, so try to improve your BATNA whenever possible by exploring possible alternatives. Pinkley, R. L. (1995). Impact of knowledge regarding alternatives to settlement in dyadic negotiations: Whose knowledge counts? *Journal of Applied Psychology*, 80, 403–17.

Going back to the example of your new job negotiation, consider your options to the offer you receive. If your pay is lower than what you want, what alternatives do you have? A job with another company? Looking for another job? Going back to school? While you’re thinking about your BATNA, take some time to think about the other party’s BATNA. Do they have an employee who could readily replace you?

Once you’ve gotten a clear understanding of your own goals, investigate the person you’ll be negotiating with. What does that person (or company) want? Put yourself in the other party’s shoes. What alternatives could they have? For example, in the job negotiations, the other side wants a good employee at a fair price. That may lead you to do research on salary levels: What is the pay rate for the position you’re seeking? What is the culture of the company?

Greenpeace’s goals are to safeguard the environment by getting large companies and organizations to adopt more environmentally friendly practices such as using fewer plastic components. Part of the background research Greenpeace engages in involves uncovering facts. For instance, medical device makers are using harmful PVCs as a tubing material because PVCs are inexpensive. But are there alternatives to PVCs that are also cost effective? Greenpeace’s research found that yes, there are. Layne, A. (1999, November). Conflict resolution at Greenpeace? *Fast Company*. Retrieved November 14, 2008, from [Fast Company \[www.fastcompany.com\]](#). Knowing this lets Greenpeace counter those arguments and puts Greenpeace in a stronger position to achieve its goals.

Phase 3: Presentation

The third phase of negotiation is **presentation**. In this phase, you assemble the information you’ve gathered in a way that supports your position. In a job hiring or salary negotiation situation, for instance, you can present facts that show what you’ve contributed to the organization in the past (or in a previous position), which in turn demonstrates your value. Perhaps you created a blog that brought attention to your company or got donations or funding for a charity. Perhaps you’re a team player who brings out the best in a group.

Phase 4: Bargaining

During the **bargaining** phase, each party discusses their goals and seeks to get an agreement. A natural part of this process is making **concessions**, namely, giving up one thing to get something else in return. Making a concession is not a sign of weakness—parties expect to give up some of their goals. Rather, concessions demonstrate cooperativeness and help move the negotiation toward its conclusion. Making concessions is particularly important in tense union-management disputes, which can get bogged down by old issues. Making a concession shows forward movement and process, and it allays concerns about rigidity or closed-mindedness. What would a typical concession be? Concessions are often in the areas of money, time, resources, responsibilities, or autonomy. When negotiating for the purchase of products, for example, you might agree to pay a higher price in exchange for getting the products sooner. Alternatively, you could ask to pay a lower price in exchange for giving the manufacturer more time or flexibility in when they deliver the product.

One key to the bargaining phase is to ask questions. Don't simply take a statement such as "We can't do that" at face value. Rather, try to find out why the party has that constraint. Let's take a look at an example. Say that you're a retailer and you want to buy patio furniture from a manufacturer. You want to have the sets in time for spring sales. During the negotiations, your goal is to get the lowest price with the earliest delivery date. The manufacturer, of course, wants to get the highest price with the longest lead time before delivery. As negotiations stall, you evaluate your options to decide what's more important: a slightly lower price or a slightly longer delivery date? You do a quick calculation. The manufacturer has offered to deliver the products by April 30, but you know that some of your customers make their patio furniture selection early in the spring, and missing those early sales could cost you \$1 million. So you suggest that you can accept the April 30 delivery date if the manufacturer will agree to drop the price by \$1 million.

"I appreciate the offer," the manufacturer replies, "but I can't accommodate such a large price cut." Instead of leaving it at that, you ask, "I'm surprised that a two-month delivery would be so costly to you. Tell me more about your manufacturing process so that I can understand why you can't manufacture the products in that time frame."

"*Manufacturing* the products in that time frame is not the problem," the manufacturer replies, "but getting them *shipped* from Asia is what's expensive for us."

When you hear that, a light bulb goes off. You know that your firm has favorable contracts with shipping companies because of the high volume of business the firm gives them. You make the following counteroffer: "Why don't we agree that my company will arrange and pay for the shipper, and you agree to have the products ready to ship on March 30 for \$10.5 million instead of \$11 million?" The manufacturer accepts the offer—the biggest expense and constraint (the shipping) has been lifted. You, in turn, have saved money as well. Adapted from Malhotra, D., & Bazerman, M. H. (2007, September). Investigative negotiation. *Harvard Business Review*, 85, 72.

Phase 5: Closure

Closure is an important part of negotiations. At the close of a negotiation, you and the other party have either come to an agreement on the terms, or one party has decided that the final offer is unacceptable and therefore must be walked away from. Most negotiators assume that if their best offer has been rejected, there's nothing left to do. You made your best offer and that's the best you can do. The savviest of negotiators, however, see the rejection as an opportunity to learn. "What would it have taken for us to reach an agreement?"

Recently, a CEO had been in negotiations with a customer. After learning the customer decided to go with the competition, the CEO decided to inquire as to why negotiations had fallen through. With nothing left to lose, the CEO placed a call to the prospect's vice president and asked why the offer had been rejected, explaining that the answer would help improve future offerings. Surprisingly, the VP explained the deal was given to the competitor because, despite charging more, the competitor offered after-sales service on the product. The CEO was taken by surprise, originally assuming that the VP was most interested in obtaining the lowest price possible. In order to accommodate a very low price, various extras such as after-sales service had been cut from the offer. Having learned that the VP was seeking service, not the lowest cost, the CEO said, "Knowing what I know now, I'm confident that I could have beaten the competitor's bid. Would you accept a revised offer?" The VP agreed, and a week later the CEO had a signed contract. Malhotra, D., & Bazerman, M. H. (2007, September). Investigative negotiation. *Harvard Business Review*, 85, 72.

Sometimes at the end of negotiations, it's clear why a deal was not reached. But if you're confused about why a deal did not happen, consider making a follow-up call. Even though you may not win the deal back in the end, you might learn something that's

useful for future negotiations. What's more, the other party may be more willing to disclose the information if they don't think you're in a "selling" mode.

Should You Negotiate for a Higher Salary?

Yes! According to a survey conducted by CareerBuilder.com, 58 percent of hiring managers say they leave some negotiating room when extending initial job offers. The survey also found that many of the hiring managers agree to a candidate's request for a higher salary. "Salary negotiation has become a growing opportunity in the job acquisition process," says Bill Hawkins, president and CEO of the Hawkins Company, a full-service executive search firm with offices in Los Angeles and Atlanta. "Candidates who fail to make a counteroffer could forfeit significant income."

Source: Adapted from information in Reed-Woodard, M. (2007, April). Taking money off the table. *Black Enterprise*, 37(9), 60–61.

Negotiation Strategies

Distributive Approach

The **distributive view** of negotiation is the traditional fixed-pie approach. That is, negotiators see the situation as a pie that they have to divide between them. Each tries to get more of the pie and "win." For example, managers may compete over shares of a budget. If marketing gets a 10 percent increase in its budget, another department such as R&D will need to decrease its budget by 10 percent to offset the marketing increase. Focusing on a fixed pie is a common mistake in negotiation, because this view limits the creative solutions possible.

Integrative Approach

A newer, more creative approach to negotiation is called the **integrative approach**. In this approach, both parties look for ways to integrate their goals under a larger umbrella. That is, they look for ways to *expand* the pie, so that each party gets more. This is also called a win-win approach. The first step of the integrative approach is to enter the negotiation from a cooperative rather than an adversarial stance. The second step is all about listening. Listening develops trust as each party learns what the other wants and everyone involved arrives at a mutual understanding. Then, all parties can explore ways to achieve the individual goals. The general idea is, "If we put our heads together, we can find a solution that addresses everybody's needs." Unfortunately, integrative outcomes are not the norm. A summary of thirty-two experiments on negotiations found that although they could have resulted in integrated outcomes, only 20 percent did so. Thompson, L., & Hrebec, D. (1996). Lose-lose agreements in interdependent decision making. *Psychological Bulletin*, 120, 396–409. One key factor related to finding integrated solutions is the experience of the negotiators who were able to reach them. Thompson, L. (1990). Negotiation behavior and outcomes: Empirical evidence and theoretical issues. *Psychological Bulletin*, 108, 515–32.

Seven Steps to Negotiating a Higher Salary

- Step 1: *Overcome your fear.*
 - The first step is to overcome your fears. Many people don't even begin a salary negotiation. We may be afraid of angering the boss or think that because we are doing a good job, we'll automatically be rewarded. But just because you're doing a good job doesn't mean you'll automatically get a raise. Why? If you don't ask for one, the boss may believe you're satisfied with what you're getting. So why should he pay you more? Imagine going into a car dealership and being absolutely delighted with a car choice. The sticker price is \$19,000. Would you pay the dealer \$23,000 just because you really like the car? Of course not. You probably wouldn't even offer \$19,000. If the car was up for auction, however, and another bidder offered \$20,000, you'd likely increase your offer, too.
 - That's what salary negotiation is like. Your boss may be thrilled with you but at the same time is running a business. There's no reason to pay an employee more if you seem satisfied with your current salary.
- Step 2: *Get the facts.*
 - Before you enter into the negotiation, do some background research. What are other companies paying people in your position? Check sites such as Payscale.com, Salary.com, and Salaryexpert.com to get a feel for the market. Look at surveys conducted by your professional organization.
- Step 3: *Build your case.*

- How important are you to the organization? How have you contributed? Perhaps you contributed by increasing sales, winning over angry customers, getting feuding team members to cooperate, and so on. Make a list of your contributions. Be sure to focus on the contributions that your boss values most. Is it getting recognition for the department? Easing workload? If another employer has shown interest in you, mention that as a fact. However, don't use this as a threat unless you're prepared to take the other offer. Mentioning interest from another employer gets the boss to think, "If I don't give this raise, I may lose the employee." (By the way, if you don't feel you have a strong case for your raise, perhaps this isn't the time to ask for one.)
- Step 4: *Know what you want.*
 - Set your target salary goal based on your research and the norms of what your organization will pay. Now ask yourself, if you don't get this figure, would you quit? If not, are there other alternatives besides a salary increase that you'd consider? For example, would you accept a higher title? More vacation time? Paid training to learn a new skill? Flexible hours?
- Step 5: *Begin assertively.*
 - Start the discussion on a strong but friendly tone. "I think I'm worth more than I'm being paid." List the ways you've contributed to the company.
- Step 6: *Don't make the first offer.*
 - Let your boss name the figure. You can do this by asking, "How much of a raise could you approve?" However, if the boss insists that you name a figure, ask for the most that you can reasonably expect to get. You want to be reasonable, but you need to allow room to make a concession. Your boss will assume your opening number was high and will offer you less, so asking for the actual figure you want may leave you feeling disappointed.
 - If the boss opens with, "The salary range for this position is \$66,000 to 78,000," ask for the high end. If your goal was higher than that range, challenge the range by explaining how you are an exception and why you deserve more.
- Step 7: *Listen more than talk.*
 - You'll learn more by listening rather than talking. The more you listen, the better the boss will feel about you—people tend to like and trust people who listen to them.
 - If you can't get a raise now, get your boss to agree to one in a few months if you meet agreed-upon objectives.

Sources: Adapted from information in Brodow, E. (2006). *Negotiation boot camp*. New York: Currency/Doubleday; Nemko, M. (2007, December 31). The general way to get a raise. *US News & World Report*, 57.

Avoiding Common Mistakes in Negotiations

Failing to Negotiate/Accepting the First Offer

You may have heard that women typically make less money than men. Researchers have established that about one-third of the gender differences observed in the salaries of men and women can be traced back to differences in starting salaries, with women making less, on average, when they start their jobs. Gerhart, B. (1990). Gender differences in current and starting salaries: The role of performance, college major, and job title. *Industrial and Labor Relations Review*, 43, 418–33. Some people are taught to feel that negotiation is a conflict situation, and these individuals may tend to avoid negotiations to avoid conflict. Research shows that this negotiation avoidance is especially prevalent among women. For example, one study looked at students from Carnegie-Mellon who were getting their first job after earning a master's degree. The study found that only 7 percent of the women negotiated their offer, while men negotiated 57 percent of the time. CNN. (2003, August 21). Interview with Linda Babcock. Retrieved November 14, 2008, from CNN.com [transcripts.cnn.com]. The result had profound consequences. Researchers calculate that people who routinely negotiate salary increases will earn over \$1 million more by retirement than people who accept an initial offer every time without asking for more. Babcock, L., & Lascheve, S. (2003). *Women don't ask: Negotiation and the gender divide*. Princeton, NJ: Princeton University Press. The good news is that it appears that it is possible to increase negotiation efforts and confidence by training people to use effective negotiation skills. Stevens, C. K., Bavetta, A. G., & Gist, M. E. (1993). Gender differences in the acquisition of salary negotiation skills: The role of goals, self-efficacy, and perceived control. *Journal of Applied Psychology*, 78, 723–35.

Letting Your Ego Get in the Way

Thinking only about yourself is a common mistake, as we saw in the opening case. People from the United States tend to fall into a self-serving bias in which they overinflate their own worth and discount the worth of others. This can be a disadvantage during

negotiations. Instead, think about why the other person would want to accept the deal. People aren't likely to accept a deal that doesn't offer any benefit to them. Help them meet their own goals while you achieve yours. Integrative outcomes depend on having good listening skills, and if you are thinking only about your own needs, you may miss out on important opportunities. Remember that a good business relationship can only be created and maintained if both parties get a fair deal.

Having Unrealistic Expectations

Susan Podziba, a professor of mediation at Harvard and MIT, plays broker for some of the toughest negotiations around, from public policy to marital disputes. She takes an integrative approach in the negotiations, identifying goals that are large enough to encompass both sides. As she puts it, "We are never going to be able to sit at a table with the goal of creating peace and harmony between fishermen and conservationists. But we can establish goals big enough to include the key interests of each party and resolve the specific impasse we are currently facing. Setting reasonable goals at the outset that address each party's concerns will decrease the tension in the room, and will improve the chances of reaching an agreement." Rothenberger, C. (2008, September 11). Negotiation 201: Refine your skills. *Fast Company*. Retrieved January 11, 2008, from [Fast Company](http://www.fastcompany.com) [www.fastcompany.com]. Those who set unreasonable expectations are more likely to fail.

Getting Overly Emotional

Negotiations, by their very nature, are emotional. The findings regarding the outcomes of expressing anger during negotiations are mixed. Some researchers have found that those who express anger negotiate worse deals than those who do not. Kopelman, S., Rosette, A. S., & Thompson, L. (2006). The three faces of Eve: An examination of the strategic display of positive, negative, and neutral emotions in negotiations. *Organizational behavior and human decision processes*, 99, 81–101. and that during online negotiations, those parties who encountered anger were more likely to compete than those who did not. Friedman, R., Anderson, C., Brett, J., Olekalns, M., Goates, N., & Lisco, C. C. (2004). The positive and negative effects of anger on dispute resolution: Evidence from electronically mediated disputes. *Journal of Applied Psychology*, 89, 369–76. In a study of online negotiations, words such as *despise*, *disgusted*, *furios*, and *hate* were related to a reduced chance of reaching an agreement. Brett, J. M., Olekalns, M., Friedman, R., Goates, N., Anderson, C., & Lisco, C. C. (2007). Sticks and stones: Language, face, and online dispute resolution. *Academy of Management Journal*, 50, 85–99. However, this finding may depend on individual personalities. Research has also shown that those with more power may be more effective when displaying anger. The weaker party may perceive the anger as potentially signaling that the deal is falling apart and may concede items to help move things along. Van Kleef, G. A., & Cote, S. (2007). Expressing anger in conflict: When it helps and when it hurts. *Journal of Applied Psychology*, 92, 1557–69. This holds for online negotiations as well. In a study of 355 eBay disputes in which mediation was requested by one or both of the parties, similar results were found. Overall, anger hurts the mediation process unless one of the parties was perceived as much more powerful than the other party, in which case anger hastened a deal. Friedman, R., Anderson, C., Brett, J., Olekalns, M., Goates, N., & Lisco, C. C. (2004). The positive and negative effects of anger on dispute resolution: Evidence from electronically mediated disputes. *Journal of Applied Psychology*, 89, 369–76. Another aspect of getting overly emotional is forgetting that facial expressions are universal across cultures, and when your words and facial expressions don't match, you are less likely to be trusted. Hill, D. (2007). *Emotionomics: Winning hearts and minds*. Edina, MN: Adams Business & Professional; Holloway, L. (2007, December). Mixed signals: Are you saying one thing, while your face says otherwise? *Entrepreneur*, 35, 49.

Letting Past Negative Outcomes Affect the Present Ones

Research shows that negotiators who had previously experienced ineffective negotiations were more likely to have failed negotiations in the future. Those who were unable to negotiate some type of deal in previous negotiation situations tended to have lower outcomes than those who had successfully negotiated deals in the past. O'Connor, K. M., Arnold, J. A., & Burris, E. R. (2005). Negotiators' bargaining histories and their effects on future negotiation performance. *Journal of Applied Psychology*, 90, 350–62. The key to remember is that there is a tendency to let the past repeat itself. Being aware of this tendency allows you to overcome it. Be vigilant to examine the issues at hand and not to be overly swayed by past experiences, especially while you are starting out as a negotiator and have limited experiences.

Tips for Negotiation Success

- *Focus on agreement first.* If you reach an impasse during negotiations, sometimes the best recourse is to agree that you disagree on those topics and then focus only on the ones that you can reach an agreement on. Summarize what you've agreed on, so that everyone feels like they're agreeing, and leave out the points you don't agree on. Then take up those issues again in a different context, such as over dinner or coffee. Dealing with those issues separately may help the negotiation process.

- *Be patient.* If you don't have a deadline by which an agreement needs to be reached, use that flexibility to your advantage. The other party may be forced by circumstances to agree to your terms, so if you can be patient you may be able to get the best deal.
- *Whose reality?* During negotiations, each side is presenting their case—their version of reality. Whose version of reality will prevail? Leigh Steinberg offers this example from the NFL, when he was negotiating the salary of Warren Moon. Moon was forty-one years old. That was a fact. Did that mean he was hanging on by a thread and lucky to be employed in the first place? “Should he be grateful for any money that the team pays him?” Steinberg posed, “Or is he a quarterback who was among the league leaders in completions and attempts last year? Is he a team leader who took a previously moribund group of players, united them, and helped them have the best record that they’ve had in recent years?” All those facts are true, and negotiation brings the relevant facts to the forefront and argues their merit.
- *Deadlines.* Research shows that negotiators are more likely to strike a deal by making more concessions and thinking more creatively as deadlines loom than at any other time in the negotiation process.
- *Be comfortable with silence.* After you have made an offer, allow the other party to respond. Many people become uncomfortable with silence and feel they need to say something. Wait and listen instead.

Sources: Adapted from information in Stuhlmacher, A. F., Gillespie, T. L., & Champagne, M. V. (1998). The impact of time pressure in negotiation: A meta-analysis. *International Journal of Conflict Management*, 9, 97–116; Webber, A. (1998, October). How to get them to show you the money. *Fast Company*. Retrieved November 13, 2008, from [Fast Company \[www.fastcompany.com\]](http://www.fastcompany.com).

When All Else Fails: Third-Party Negotiations

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) includes mediation, arbitration, and other ways of resolving conflicts with the help of a specially trained, neutral third party without the need for a formal trial or hearing. New York State Unified Court System. (2008, October 28). Alternative dispute resolution. Retrieved November 14, 2008, from [NY Courts \[www.courts.state.ny.us\]](http://www.courts.state.ny.us). Many companies find this effective in dealing with challenging problems. For example, Eastman Kodak Company added an alternative dispute resolution panel of internal employees to help them handle cases of perceived discrimination and hopefully stop a conflict from escalating. Deutsch, C. H. (2004, August 24). Race remains a difficult issue for many workers at Kodak. *New York Times*.

Mediation

In **mediation**, an outside third party (the mediator) enters the situation with the goal of assisting the parties in reaching an agreement. The mediator can facilitate, suggest, and recommend. The mediator works with both parties to reach a solution but does not represent either side. Rather, the mediator's role is to help the parties share feelings, air and verify facts, exchange perceptions, and work toward agreements. Susan Podziba, a mediation expert, has helped get groups that sometimes have a hard time seeing the other side's point of view to open up and talk to one another. Her work includes such groups as pro-choice and pro-life advocates, individuals from Israel and Palestine, as well as fishermen and environmentalists. According to the US Equal Employment Opportunity Commission, “Mediation gives the parties the opportunity to discuss the issues raised in the charge, clear up misunderstandings, determine the underlying interests or concerns, find areas of agreement and, ultimately, to incorporate those areas of agreements into resolutions. A mediator does not resolve the charge or impose a decision on the parties. Instead, the mediator helps the parties to agree on a mutually acceptable resolution. The mediation process is strictly confidential.” The US Equal Employment Opportunity Commission. (2007, December 4). *Mediation*. Retrieved November 13, 2008, from [EEOC \[www.eeoc.gov\]](http://www.eeoc.gov). One of the advantages of mediation is that the mediator helps the parties design their own solutions, including resolving issues that are important to both parties, not just the ones under specific dispute. Interestingly, sometimes mediation solves a conflict even if no resolution is reached. Here's a quote from Avis Ridley-Thomas, the founder and administrator of the Los Angeles City Attorney's Dispute Resolution Program, who explains, “Even if there is no agreement reached in mediation, people are happy that they engaged in the process. It often opens up the possibility for resolution in ways that people had not anticipated.” Layne, A. (1999, November). Conflict resolution at Greenpeace? *Fast Company*. Retrieved November 11, 2008, from [Fast Company \[www.fastcompany.com\]](http://www.fastcompany.com). An independent survey showed 96 percent of all respondents and 91 percent of all charging parties who used mediation would use it again if offered. Layne, A. (1999, November). Conflict resolution at Greenpeace? *Fast Company*. Retrieved November 11, 2008, from [Fast Company \[www.fastcompany.com\]](http://www.fastcompany.com).

You Know It's Time for a Mediator When...

- The parties are unable to find a solution themselves.
- Personal differences are standing in the way of a successful solution.
- The parties have stopped talking with one another.
- Obtaining a quick resolution is important.

Sources: Adapted from information in Crawley, J. (1994). *Constructive conflict management*. San Diego: Pfeiffer; Mache, K. (1990). *Handbook of dispute resolution: Alternative dispute resolution in action*. London: Routledge.

Arbitration



Image: Joe Ravi. [Supreme Court at Dusk](#). Wikimedia Commons. CC-BY

In contrast to mediation, in which parties work with the mediator to arrive at a solution, in **arbitration** the parties submit the dispute to the third-party arbitrator. It is the arbitrator who makes the final decision. The arbitrator is a neutral third party, but the decision made by the arbitrator is final (the decision is called the “award”). Awards are made in writing and are binding to the parties involved in the case. [American Arbitration Association](#). (2007). Arbitration and mediation. Retrieved November 11, 2008, from . Arbitration is often used in union-management grievance conflicts.

Arbitration-Mediation

It is common to see mediation followed by arbitration. An alternative technique is to follow the arbitration with mediation. The format of this conflict resolution approach is to have both sides formally make their cases before an arbitrator. The arbitrator then makes a decision and places it in a sealed envelope. Following this, the two parties work through mediation. If they are unable to reach an agreement on their own, the arbitration decisions become binding. Researchers using this technique found that it led to voluntary agreements between the two parties 71 percent of the time versus 50 percent for mediation followed by arbitration. Conlon, D. E., Moon, H., & Ng, K. Y. (2002). Putting the cart before the horse: The benefits of arbitrating before mediating. *Journal of Applied Psychology*, 87, 978–84.

Key Takeaways

- Negotiation consists of five phases that include investigation, determining your BATNA, presentation, bargaining, and closure.
- Different negotiation strategies include the distributive approach (fixed-pie approach) and the integrative approach (expanding-the-pie approach).

- Research shows that some common mistakes made during negotiations include accepting the first offer made, letting egos get in the way, having unrealistic expectations, getting overly emotional, and letting past negative outcomes affect the present ones.
- Third-party negotiators are sometimes needed when two sides cannot agree.

Exercises

1. What are the negotiation phases and what goes on during each of them?
2. When negotiating, is establishing a BATNA important? Why or why not?
3. What are the third-party conflict resolution options available?

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