

4.2: Negotiation

Imagine that Han is a tent manufacturer. Han's supplier of tent fabric routinely supplies him with appropriate water-resistant fabric to construct tents, so that he can make and sell them. After many years of a good working relationship, Han's fabric supplier delivered nonconforming goods. Specifically, the fabric delivered was not water-resistant, despite the need for water-resistant fabric to make tents. However, when Han notified the supplier of the problem, the supplier denied that the fabric was nonconforming to his order. Han refused to pay for the goods. The fabric supplier insisted on payment before future delivery of any additional fabric. Without water-resistant fabric, Han cannot continue to make tents.

This is an example of a **business to business dispute**. Despite the problem, Han wants to continue working with this supplier, since they have a good, long-standing relationship. This problem seems to be a "hiccup" in the regular business relationship so they want to resolve this dispute quickly and without hard feelings. It is very unlikely that Han will immediately hire an attorney to file a formal complaint against his supplier. However, that does not change the fact that there is a dispute that needs to be resolved.

One of the first strategies that Han and his supplier are likely to use is negotiation. **Negotiation** is a method of alternative dispute resolution in which the parties retain power to resolve their dispute. No outside party is vested with decision-making power. Negotiation requires the parties to define the conflict and agree to an outcome. Often, this can take the form of a compromise. Note that a compromise does not mean that anyone "loses." If both parties are satisfied with the result of the negotiation and the business relationship can continue moving forward, then both parties will likely consider the settlement a "win."

Benefits to negotiation as a method of ADR include its potential for a speedy resolution, the inexpensive nature of participation, and the fact that parties participate voluntarily. Drawbacks include the fact that there are no set rules, and either party may bargain badly or even unethically. In a negotiation, there is no neutral third party to ensure that rules are followed, that the negotiation strategy is fair, or that the overall outcome is sound. Moreover, any party can walk away whenever it wishes. There is no guarantee of resolution through this method. The result may not be "win-win" or "win-lose," but no resolution at all.

In addition, the parties may not have equal bargaining power. If Han's business and the supplier are both dependent on each other for roughly equal portions of their businesses, then they are most likely relatively equal with respect to bargaining power. However, if Han has a small business but his supplier has a large business, then negotiation is potentially unbalanced, since one party has a much more powerful bargaining position than the other. For example, if Han needs that particular type of fabric, which is only available from one supplier. But the supplier does not need Han's business because he does not provide a significant amount of its profit. This would be an example of **unequal bargaining power**.

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