

6.2: Negotiation

Learning Objectives

- Understand the role of negotiation in avoiding and settling disputes.
- Explore negotiation as it is commonly employed in business.
- Understand the implications of bargaining power during negotiation.
- Become familiar with the benefits and drawbacks of negotiation as a form of alternative dispute resolution (ADR).

Imagine that you are a tent manufacturer. Your supplier of tent fabric routinely supplies you with appropriate water-resistant fabric to construct your tents, so that you can produce your products and bring them to market. After many years of a good working relationship, your fabric supplier delivered nonconforming goods. Specifically, the fabric delivered was not water-resistant, despite your need for water-resistant fabric to produce your tents. However, on your notifying the supplier of the problem, the supplier denied that the fabric was nonconforming to your order. You refused to pay for the goods. The fabric supplier insisted on payment before future delivery of any additional fabric. Without water-resistant fabric, you cannot continue to produce your tents.

This is an example of a business to business (B2B) dispute. Despite the problem, you will likely wish to continue working with this supplier, since you have a good, long-standing relationship with it. This problem seems to be a “hiccup” in your regular business relationship. Accordingly, you will probably want to resolve this dispute quickly and without hard feelings. It is very unlikely that you will immediately hire an attorney to file a formal complaint against your supplier. However, that does not change the fact that there is a dispute that needs to be resolved.

One of the first strategies that you and your supplier are likely to employ is negotiation. Negotiation is a method of alternative dispute resolution (ADR) that retains power to resolve the dispute to the parties involved. No outside party is vested with authoritative decision-making power concerning the resolution of the dispute. Negotiation requires the parties to define the conflicts and agree to an outcome to resolve those conflicts. Often, this can take the form of a compromise. Note that a compromise does not mean that anyone “loses.” Indeed, if both parties are satisfied with the result of the negotiation and the business relationship can continue moving forward, then both parties will be very likely to consider this as a “winning” situation.

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, if they choose to do so. In a negotiation, there is no neutral party charged with ensuring 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. Also, generally speaking, attorneys are not involved in many negotiations. This last point may be seen as a drawback or a benefit, depending on the circumstances of the negotiation.

Though our example involves B2B, the parties may or may not have equal bargaining power. If your business and your supplier are both dependent on each other for roughly equal portions of the respective businesses, then they are most likely relatively equal with respect to bargaining power. However, in our example, if your business is a very small business but your supplier is a very large business—perhaps with a patent protecting the rights to the specialty fabric that you need—then we might say that the B2B negotiation is potentially unbalanced, since one party has a much more powerful bargaining position than the other. Specifically, your business needs that particular type of fabric, which is only available from one supplier. But your supplier does not need your business because it has a legal monopoly in the form of a patent for its product, and it probably sells to many manufacturers. This would be an example of unequal bargaining power.

When the negotiation occurs as a result of a dispute, but not a legal dispute per se, then the party with the weakest bargaining position may be in a very vulnerable spot. This is illustrated in "[Hyperlink: Rubbermaid's Unequal Bargaining Power](#)". When Rubbermaid's raw materials price for resin increased, it needed to raise its prices. However, Wal-Mart refused to accept the necessary price increase for Rubbermaid products. This refusal had a substantial negative impact on Rubbermaid's business, since Wal-Mart was its main customer. In short, Rubbermaid needed Wal-Mart, but Wal-Mart did not need Rubbermaid.

Hyperlink: Rubbermaid's Unequal Bargaining Power

A Question of Ethics

<http://www.pbs.org/wgbh/pages/frontline/video/flv/generic.html?s=frol02s48aq71&continuous=1>

Watch “Muscling Manufacturers,” a clip from *Is Wal-Mart Good for America?* to see how unequal bargaining power can affect the least powerful party in a negotiation.

As economist Brink Lindsey from the Cato Institute commented, “We’ve definitely seen a shift in the balance of bargaining power between manufacturers and retailers...Back in the old days, manufacturing was a high-productivity endeavor; retailing and distribution was fairly low-productivity...And so manufacturers called the shots.” Hedrick Smith, “Who Calls the Shots in the Global Economy?” *PBS*, November 16, 2004, <http://www.pbs.org/wgbh/pages/frontline/shows/walmart/secrets/shots.html> (accessed on August 23, 2010).

That doesn’t appear to be the case anymore.

Negotiation is a skill often developed by people who are charged with settling existing disputes or with creating new agreements. Since we are focusing on dispute resolution in this chapter, we will limit our discussion to the resolution of disputes rather than the negotiation of new contract terms, but keep in mind that these activities essentially draw on the same skills.

In *Getting to Yes*, written by members of the Harvard Program on Negotiation, the goal of negotiation is viewed as “win-win.” Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes* (New York: Penguin Books, 1991). Note that this is a substantially different goal from litigation. Our adversarial legal system requires one party to “win” and the other party to “lose.” *Getting to Yes* focuses on principled negotiation, and it sets forth specific steps and discusses strategies to allow participants to achieve the “win-win” goal. This book’s popularity perhaps suggests that people have a real interest in learning about ADR, avoiding litigation, and ensuring that all parties leave the resolution process as “winners.” Some concepts common in negotiation include the BATNA, WATNA, and the bargaining zone. For example, the authors of *Getting to Yes* encourage negotiators to know their best alternative to a negotiated agreement (BATNA). This ensures that unfavorable terms will not be accepted and terms consistent with a negotiator’s interests won’t be rejected. Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes* (New York: Penguin Books, 1991), 100. Likewise, the worst alternative to a negotiated agreement (WATNA) is a concept used by some negotiators prior to entering negotiations. The bargaining zone is the area in which parties to a negotiation are willing to trade, barter, or negotiate their positions, within which parties can find an acceptable agreement. If you think of a Venn diagram, the bargaining zone would be where the two ovals overlap. The reservation point is essentially a party’s “bottom line,” beyond which it will not agree to terms.

Let’s go back to our example. Imagine that after negotiating with your fabric supplier, the following facts emerged: The fabric supplier believed that it sent the correct fabric to you, because one of your new employees inadvertently ordered the wrong fabric. You reviewed your business records and determined that this allegation was true. This sounds like a misunderstanding that would be easy to clear up in negotiation, doesn’t it? Imagine the embarrassment and hard feelings that would have been caused by immediately filing a formal complaint in court, not to mention the great expense that both parties would have incurred. Through negotiation, chances are very good that this misunderstanding will be resolved in a win-win outcome and that you will be able to continue your working relationship with your supplier.

Key Takeaways

Negotiation is a method of alternative dispute resolution (ADR) in which the parties retain power to decide on a resolution of the issue themselves, without relying on a neutral decision maker. Negotiation is also used between parties entering into agreements, when there is no legal dispute. Negotiation is often the first method of dispute resolution attempted, because it is inexpensive and relatively fast. Additionally, parties that wish to continue working together in the future often employ negotiation as a friendly method to resolve disputes. Negotiation between parties with unequal bargaining power can result in the stronger party being heavy-handed at the negotiation table, which can result in unfair outcomes for the weaker party. Since negotiation does not follow an externally imposed set of rules, parties may negotiate as their conscience dictates. However, negotiation is often considered a dispute-resolution option that can result in a win-win situation for all parties, as illustrated by the popular book *Getting to Yes*, in which negotiation strategies are set forth in detail.

? Exercise 6.2.1

1. Visit www.sfhgroup.com/ca/training/online-training/test-your-skills.php and click “Negotiate with Bill” under “Online Negotiation Course.” This is a free interactive negotiation exercise. After completing the negotiation, answer the following questions: How far did you get? (If you did not get to level three, go back and try it again. See if you can get all the way through to level three.) What negotiation strategies did you learn? In other words, what works? What doesn’t work?
2. What are the benefits of negotiation as a dispute-resolution method? What are the drawbacks?
3. How can parties that have unequal bargaining power negotiate meaningfully, without one party taking advantage of the other? Have you ever negotiated with someone who had more bargaining power than you? What were your strategies during the negotiation? Did you obtain your goal by the conclusion of the negotiation?
4. Watch the video in "Hyperlink: Rubbermaid’s Unequal Bargaining Power". If you were a manufacturer and you had to raise prices due to an increase in price for your raw materials, and if Wal-Mart was your most important customer, what strategies would you employ so that both parties would have a chance to have a “win-win” outcome?

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