How to Negotiate the Issues and Reach Agreement

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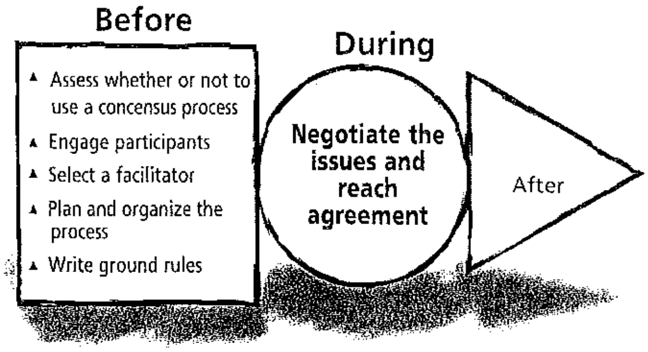
Everything up to this point has been leading to the parties really sitting down to begin talking and negotiating. If you have followed all the steps regarding assessment, engaging participants, and organizing the process, you are ready for the discussions to begin. This chapter outlines ways to create the climate for collaborative problem solving, and some of the most important steps in negotiating the issues and reaching consensus. There are several excellent resources—listed in the bibliography—that provide more in-depth information about this important phase of a consensus process.

Create the climate for negotiations

For parties to feel they can safely express their views, negotiations should occur in an atmosphere that promotes communication and collaboration. It is worth thinking about how to foster that kind of climate before the parties begin working on the issues. The previous steps—designing a process that includes all necessary interests and ensuring that their issues will be addressed—are essential elements in creating a constructive climate for consensus.



Meetings should be held in a place that is comfortable and accessible to all participants. The location should have good meeting spaces and room for break-out groups and caucuses. In difficult situations it may be a good idea to hold the meetings on neutral turf and provide opportunities for people to get acquainted. This is one way to create an informal atmosphere and put people at ease. Arranging for people to eat together also helps them get better acquainted and communicate more easily.

The room should be arranged so that everyone can participate effectively. Usually participants are seated around tables arranged in a square or circle so that everyone can see and hear each other.

Before each meeting, the sponsor or facilitator should ensure that all participants have the necessary information, agendas and supporting materials.

The facilitator's role is to establish and maintain a safe environment for participants and a positive tone for the meetings. Facilitators try to ensure that meetings are productive by keeping discussions focused, summarizing, clarifying and offering process suggestions to help participants achieve their objectives. Facilitators also talk with parties individually to test ideas, deal with sensitive matters and make sure they are communicating with their constituencies.

The facilitator typically manages activities between meetings, including meetings of subgroups, and prepares or supervises preparation of meeting summaries or reports. In addition, s/he should schedule enough time between meetings to enable work groups to meet and make progress on issues that need to be brought to the larger group, and to allow for representatives to meet with their constituents.

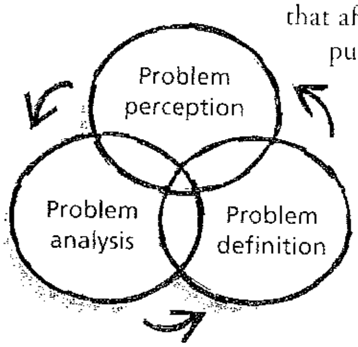
Deal with legal requirements: confidentiality, and sunshine laws

It is important to review applicable statutes and understand whatever requirements may apply when planning and structuring your process. It may be necessary to refer to these arrangements in the ground rules.

The federal government and an increasing number of state governments have passed laws supporting the use of facilitation and mediation. The laws recognize that facilitated processes can improve negotiations among parties and enhance the possibility of reaching agreements. Sometimes these laws are incorporated in administrative procedure acts—laws that also spell out requirements for public notice, review and comment.

Some of these laws include provisions for confidentiality of communications that occur during the course of certain facilitated or mediated discussions. At the same time, sunshine laws require government bodies to conduct their business and make decisions in public meetings with sufficient prior public notice. The presence of members of a governing body at the negotiating table may trigger sunshine provisions. Decisions that affect the public welfare should be made in the open and be subject to public scrutiny. However, some measure of confidentiality is generally necessary when the issues are sensitive and highly charged. This can often be accomplished through informal conversations and caucuses.

Do this



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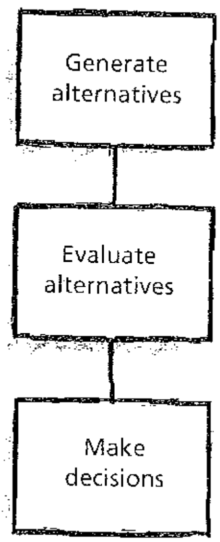

Many groups jump prematurely to solutions without agreeing on the problem

Collaborative problem solving is cyclical, not linear

Once ground rules are established, the facilitator helps parties begin the problem-solving process. One approach to conducting these discussions is to move through the steps in the diagram.

Often, after parties share their perceptions of the issues and learn new facts and information, they can then jointly redefine the issues. This redefinition may lead to further analysis and discovery of new elements of the problem, which in turn stimulates further reframing of the issues. This cycle continues until the parties are satisfied with how the issues are framed and are ready to begin looking for ways to address them. The facilitator should allow sufficient time for this phase during the discussions; it is unlikely that people will agree on solutions until they can agree on what the problem is!

When parties are in conflict, their perceptions are affected by their feelings. For instance, if two people disagree over facts but have been friends for years, they will have different perceptions of what is going on than if they have been adversaries. If they have not gotten along in the past, they may have great difficulty accepting anything the other person says. If people are angry, afraid, or feeling hurt, their emotions may keep them from being able to hear what the other person is saying. In these situations it may be necessary to give people a chance to express their feelings. Parties will learn more about how their actions and perceptions are affecting one another, and these lessons can often help improve the quality and outcome of the discussions.

Use interest-based negotiation

Guiding the group toward interest-based negotiations is one of the keys to developing consensus agreements for complex public issues. Getting participants to discuss interests, concerns, or needs—rather than positions—enhances problem solving. By looking for the interests that lie behind their positions (*why* a person wants something, not *what* they want), participants learn not only about their common and opposing interests but also that they have some interests which simply are different.

Once their interests and concerns are on the table, rather than their positions, it may be easier for participants to find ways to jointly frame the issues they want to address.

Interest-based negotiation is a set of principles for converting competitive bargaining into joint problem solving. This method of reaching consensus, as described by Roger Fisher and William Ury in Getting to Yes, includes the following principles:

- Separate the people from the problem
- Focus on interests, not positions
- Invent options for mutual gain
- Insist on objective criteria to choose among the options

After they have communicated with each other about their interests, the parties can begin developing options in ways that recognize, if not satisfy, each other's interests.

Inform and educate participants

The technical nature of many issues and frequent differences in experience and expertise among participants require thoughtful consideration about how to manage information. At the front end, different approaches can be employed to deal with information. Sponsors and other participants can present information to each other, invite experts to make presentations, take field trips, etc. Information technology and advances in Internet resources and e-mail have made the computer a useful and efficient way to manage and disseminate information. Web sites can provide means to distribute materials, review drafts, and receive comments from the participants, constituents, and the public.

In some cases, information my be missing and the group will need to agree on some process for obtaining it. For example, in the Ohio Medicaid Reform case, at the initial meetings of the working group, experts with different views were invited to meet with the group. The issues were highly technical and with the help of the experts, work-group members were able to make real progress at a critical point in the discussions.

In contentious situations, issues often arise concerning the validity, accuracy, reliability, or uncertainty about available information. People typically present information that supports their positions. To deal with these differences, facilitators can work with the participants to define criteria for developing new data. The objective is to get the parties to specify what information should be generated, for what purpose, and by whom. It may be useful also to identify how gaps in information or disagreements about it will be handled. In the Santa Barbara Channel case, the group identified specific questions they wanted answered, agreed on criteria for selecting experts, and then jointly chose the experts. While they did not commit themselves beforehand to accepting the results of the inquiry, they ultimately approved of them, largely because they had approved the process by which the answers were developed each step of the way.

Sometimes participants need to grapple with uncertainties that cannot be resolved. Under those circumstances, participants must decide what is adequate information. They can then develop agreements that allow for adaptation later as new information becomes available.

The facilitator may need to help experts translate their information to make it more understandable to participants. Some facilitators work with experts on a given subject matter to help manage and translate information.

Six steps to reaching consensus

There is no one right place to begin. The interviews with parties during the assessment may be valuable in determining a starting point. The meetings may begin with informational presentations from experts or participants, or with participants laying out all the issues. Or they may begin by identifying the goals they hope to achieve or criteria for the kinds of outcomes they would like to accomplish. In other instances, where emotions are running high, participants may need to begin by taking turns venting their concerns about what happened before or may happen next. Then they will be able to move toward a mutual definition of the issues and ways to address them.

However the process begins, the following steps are typically taken:

1. Develop a common statement of purpose
No matter how the discussions begin, it is a good idea to develop some statement of what the end product should look like to be acceptable to everyone. This can be a common statement of goals and objectives or a general description of outcomes the group hopes to achieve. This gives the group something by which to measure the end product.

2. Exchange views and information
When parties in a collaborative problem solving process have diverse points of view about difficult issues, they need to develop a shared framework of understanding. That doesn't mean they must agree with one another's perspectives, but rather be able to acknowledge that others hold different views and values. This kind of understanding emerges from carefully listening to each other's perspectives and feelings, and from a willingness to be tolerant and respectful of differences. The facilitator plays a key role by urging people to ask questions about each other's views and by clarifying issues and feelings in ways that help people overcome misunderstandings.

Participants also educate one another. They learn about each stakeholder's perception of the issues and the specific interests that will need to be satisfied. After they have done this, they will need to jointly define the issues to be resolved. This involves reframing the issues in ways that meet all interests. They may identify and exchange additional information to enable everyone to understand the jointly defined issues.

3. Generate options that accommodate the interests
Once the major issues are identified, participants begin developing options for addressing them. It may be useful to encourage participants to generate multiple options so they can begin to see beyond their favorite solutions. Or they may generate comprehensive proposals that attempt to address all the key issues.

The group can create these options in a number of ways. They may work on some issues through task or work groups drawn from their diverse interests. Or they may ask technical experts to help them come up with options. Or each party may develop proposals to bring to the whole group for consideration.

4. Identify criteria by which to judge the options

In order to evaluate the various options and proposals that may be on the table, participants need to establish guidelines or criteria for determining the appropriateness and acceptability of each option. The criteria should arise from the interests that have been identified. Participants may develop these criteria either before or after identifying the options, but in either case the criteria should be objective enough for them to make clear choices among the options. The criteria are applied to the options to determine which are acceptable, which are unacceptable, and which need further work or discussion.

5. Assemble the agreed upon options into a package that addresses all issues and accommodates all interests

The key to getting agreement is often packaging options in ways that can satisfy different interests. A variety of methods can be used to develop such a package as the basis for discussion and modification. Experienced facilitators are familiar with such methods.

Since the group will make decisions by consensus, it may be useful to test whether they are getting close. Participants can use a voting scale that ranks people's options:

1. Wholeheartedly agree
2. Supportive
3. Can live with it
4. Reservations about it—let's talk more
5. Serious concerns exist—must talk
6. Reject it—will block it

This method can help sort out where there is already a measure of consensus and where more time needs to be spent discussing or reformulating the options.

6. Develop the final agreement

Once the group has developed consensus on a package of options, members of the group or a subgroup (or the facilitator) can begin drafting the language of the final agreement, including provisions for implementation. Parties will then review the draft and negotiate until they have a version that satisfies them. Once they have a satisfactory draft, they may wish to present it to their constituencies for review. This must be done carefully because agreements usually represent a series of trade-offs and linkages, so tampering with one element can effect the willingness of the parties to support other elements of the agreement. That is why on-going communication with constituents is so important: there should be no surprises at the end of the process. Any suggested changes are then brought back to the group for further discussion. If participants agree to make the changes, the agreement may need to be returned to constituents for another round of approval.

When the group has reached a full consensus, all participants sign the agreement. While this may be more symbolic than anything else, it can be an important sign of commitment.