

No Child Left Behind School Facilities and Construction Negotiated Rulemaking

Negotiation Capacity Building
The Consensus Building Institute



Win As Much As You Can



- Play in groups of 4.
- The objective is to get the best score for yourself as an individual - Win as much as you can
- There will be 10 rounds.
- In each round you will play either the “X” card or the “Y” card - all at the same time when I say “play.”
- Your individual score each round depends on what you play and on what the others play.
- Talking permitted only prior to certain rounds (5, 8, and 10).
- NO TALKING before the first 4 rounds or between other rounds.

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Payoff Schedule



Combined Code	Your Individual Score
4 Xs	Lose 1 point each
3 Xs	Win 1 point each
1 Y	Lose 3 points
2 Xs	Win 2 points each
2 Ys	Lose 2 points each
1 X	Win 3 points
3 Ys	Lose 1 point each
4 Ys	Win 1 point each

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Scoring Your Results



Round	I played	Group played	My score for round	My Cumulative Score
1		___ X, ___ Y		
2				
3				
4				
5			x 3	
6				
7				
8			x 5	
9				
10			x 10	

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	Player 1	Player 2	Player 3	Player 4	TOTAL
GROUP 1					
GROUP 2					
GROUP 3					
GROUP 4					
GROUP 5					
GROUP 6					
GROUP 7					
GROUP 8					
GROUP 9					
GROUP 10					

Key Dynamics and Themes



- The Tension between Cooperation and Competition
- Imperfect Communication
- Promoting Compliance: Norms and Mechanisms
- The Absence of Authority
- Credibility, Trust and Self-Preservation
- Standards of Fairness and Equity
- When Relationships Matter
- Towards Implementation

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Lessons



- Start Cooperative: seek joint gains
- Be Provocable: only cooperate as long as others do
- Be Forgiving: if others commit to cooperate, you should too
- Be Clear: don't risk your trustworthiness
- Look for opportunities to “change the game” so that a problem-solving approach is easier to achieve.
- Create compliance mechanisms to cement trust, and behave in ways that build trust.

Three Components of Communication



Listening

- Not speaking, asking questions, paraphrasing
- (Initial) suspension of disbelief

Conveying

- Being clear, concise, constructive
- Not provocative, rhetorical, insulting
- Not holding back real concerns, or playing them outside the room

Attending to the situation

- Agenda, participation, time, emotion

Exercise: Bird's Eye View



- Write down a description of what you might see from a “birds-eye” view

What do you mean?



- Always? ____ %
- Sometimes? ____ %
- Frequently? ____ %
- Occasionally? ____ %

Ask, don't assume



- Ask before you draw conclusions
- Ask open ended questions
- Listen and explore
- Don't grill and investigate
- Seek to learn more first, not to tell, educate, or admonish

The Mutual Gains Approach (MGA)



- *Prepare* effectively – focus on Interests
- *Explore* what might be possible = Enlarging the pie
- Find *mutually* acceptable ways to divide the pie
- Create durable agreements by anticipating implementation challenges and *following through*

Focus on Interests, Not Positions



Position = What you want
Interest = Why you want it

- In preparation, analyze your interests, and theirs
- At the table, explain your interests
- Ask questions & listen to discover their interests

How to Explore Interests?



Ask and be ready to answer:

- “Why is that important to you?”
- “What are the key things that underlie that?”
- “Is it really something else that concerns you?”
- “Would we be moving in the right direction if...?”

Multiple Interests



- Take into account **multiple interests** when communicating
 - Substantive (I want to reduce consumer complaints)
 - Procedural (I want a fair process)
 - Personal (I need respect, dignity. . .)
 - Psychological (I am mistrustful, anxious, angry . . .)
 - Cultural (I am a member of . . .)
 - Cognitive (I understand/misunderstand . . .)

Creating Value



- Creating value means inventing solutions that are advantageous to all so as to expand the scope of mutually beneficial options available to the negotiating parties.
- A.K.A. “Enlarging the Pie”

Invent Options



- The more options created, the more likely you’ll find solutions with value for everyone
 - Use a period of inventing (brainstorming), during which no proposals made are binding
 - Ask “What if . . .?” or “Would it be moving in the right direction if . . .?”
 - Seek multiple options and proposing packages of options (rather than dealing with single issues) to deal with differences

Building Trust



“Mean What You Say and Say What You Mean”

- Share information
- Share of yourself
- Follow through on promises and commitments
- Be clear and consistent
- Behave as you want them to behave
- People rarely think of themselves as untrustworthy

Use Objective Criteria



- Fairness is Relative
 - How did you arrive at that?
 - What is the theory behind this?
 - What makes that fair?
 - How are others (people, organizations) handling this problem?
- Develop & Agree on criteria for evaluating options
 - Educational Need
 - Geographic Isolation
 - Economic Efficiency
 - Maximal Impact
 - Equal treatment
 - Prior commitment

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Managing Uncertainty

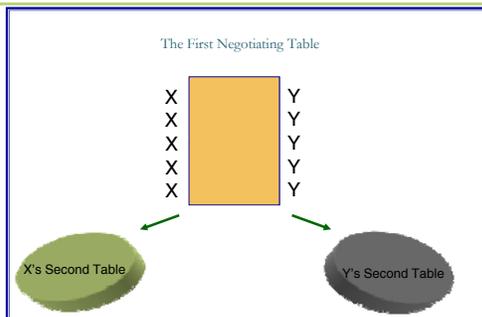


- If perceptions about the future are different, don't argue about uncertainties
- Use if-then formulations to account for multiple potential outcomes
- Allow the time needed to implement change well
- Develop monitoring arrangements and clear assessment strategies

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Second Tables



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Make it implementable:



- Meets interests
- Seen as fair
- Conforms to applicable laws and policies
- Parties have capacity
- Contingencies anticipated
- Can verify actions and results
- Have a way to resolve disputes

Evaluating Results



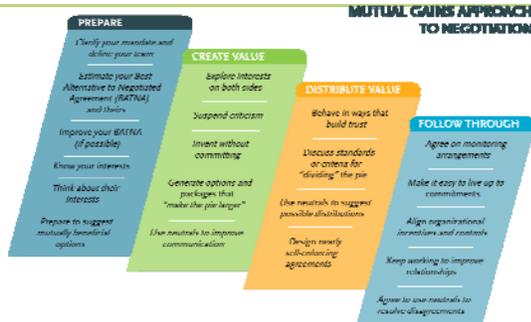
- Strive for outcomes that are:
 - Fair
 - Efficient
 - Wise
 - Stable
- Relevant parties have been involved
- Parties are better off (or at least not worse off)
- Resolution based on use of relevant scientific, technical, and community knowledge
- No joint gains left unrealized
- No one feels “taken” - including the public
- Relationships are maintained or enhanced
- Process for resolving future problems

MGA: Four Key Questions



- **Why?**
✓ Uncovering Interests: Why is that important to you?
- **What If...?**
✓ Creating Value: Inventing without Committing
- **What Makes That Fair?**
✓ Distributing Value: The Power of a Rationale
- **What Might Go Wrong?**
✓ Implementation: Anticipating Predictable Surprises

The Mutual Gains Approach



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Regulatory Negotiation Challenge Areas



- Keeping to the task and scope outlined in the Charter
 - Letting the complexity of the larger issues overwhelm the more specific tasks at hand
- Developing a clear, practical work plan
 - Not being clear, setting expectations
 - Responding to crises and conflict rather than a clear, jointly charted course
- Sharing full information
 - Not fully scoping and surfacing the key issues and areas for discussion
 - Individuals withholding key information due to intent, lack of resources, uncertainty
- Generating proposals
 - Getting proposals out too soon before common understanding, sharing interests, and exploring ideas together
 - Who generates the proposals matters
- Getting ahead of one's constituency
- Leading from within the Group
 - Bridging differences, being respectful, taking chances
- Making ideas fit into administrative mechanisms and constraints

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