



Effectively Negotiating Rep Contracts And Other Agreements

by GERALD M. NEWMAN and ADAM J. GLAZER

The process of entering into an effective rep agreement, or any other type of important contract or understanding, appears to be made more difficult each day. Whether entering into a formal written contract or merely setting the time for a meeting, business requires constant negotiating. In fact, we have been negotiating since birth. As a wet or hungry newborn, we simply cried. Crying brought attention, and usually the desired result. Eventually (as we approached age 35 or so), crying grew unacceptable, and it became necessary to develop alternative negotiating skills.

Many have come away from a negotiation reluctantly admiring the skills of the other participant. Chances are these skills did not come naturally, but were developed and refined over years of practice. With an important negotiation upcoming, such as for a new or modified rep agreement, preparation is essential. Sometimes, shooting from the hip produces only a bullet to the groin.

The most important factor in a successful negotiation is a positive attitude. The importance of entering the session confident of success, or perhaps

even with a view toward a win-win situation for the rep and the principal, cannot be overstated. Self-assurance, gained through preparation for the task, invariably generates results far superior to the negotiation undertaken with the self-perpetuating conviction that, as the Rolling Stones famously intoned, “You can’t always get what you want.”

Skilled negotiators enter meetings with a well-rehearsed plan and a bottom line as to what is acceptable, consistent with the Stones’ further observation that “...if you try sometimes, you just might find, you get what you need.” Skilled negotiators do their homework, including all necessary due diligence. They have command of the positive facts to invoke to their benefit, and anticipate negative factors, pre-

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pared with a response if and when they are raised.

Establishing Parameters

When participating in a negotiation, it is usually preferable to submit the first offer. This represents an attempt to establish the parameters for the discussion and to control the general framework for the proposal. At the same time, the initial offer is never conservative. It necessarily

seeks more than the (confidential) bottom line, and includes a couple of points of more importance to the other side and on which concession is not painful. However, a point should never be conceded quickly or without gaining something in return. "I could consider going along with you on that if you could compromise on this."

Of course, making a strong initial offer can sometimes be met with equally strong resistance or even immediate rejection. Effective negotiation preparations include anticipating this possibility and readying a minor concession in order to get the discussion going. As indicated, any such concession is not to be made without seeking something in return.

Skilled negotiators know when to keep silent. The more an opponent speaks, the more is learned about his position and the route to striking a better deal. The art of conducting negotiations is often compared to playing poker, and the player who fails to keep his cards close to his vest has no one else to blame when an opponent can see a bluff coming by sneaking a look.

The Value of the "Difference"

One of the most common mistakes attorneys see in negotiating settlements is "splitting the difference." For a moment, suppose an attorney proposes to resolve a matter for \$100,000. The hardball opposing attorney then counters this initial settlement demand by stating his client is unwilling to pay anything, and his offer is at zero. He then proposes the parties just "split the difference," and settle at \$50,000. Competent counsel would likely reject this easy attempt to halve the value of her case, and instead repeat the demand of \$100,000, while verbalizing how the

counter is actually \$50,000. From here, some compromise might be attempted, but the attorney rarely permits the "difference" to be split if the goal is to see her client walk away with more than half of the opening demand.

In situations where a principal or other opponent approaches a negotiation with unusual intensity or passion, the responding demeanor should be cool and calm. Meeting intensity with intensity seldom leads to progress. Threats or drama should be avoided. Threats are seldom carried out and usually weaken the rep's position. It is unadvisable to threaten never to do business with the principal again, or even to terminate the negotiations. The door should be left open by suggesting that although the discussions were not successful this time, maybe they will be in the future.

Negotiations are an ever-important part of life. Babies will often cry, grandparents are versed in guilt, and in between, the outcome of negotiations can be improved by investing the time and preparation efforts they deserve. While you can't always get what you want, the rep who polishes his skills can easily become the admired negotiation participant and stand to benefit by earning stronger and more equitable rep agreements. □



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