

GOOD FOR  
YOU



GREAT FOR  
ME



Finding The Trading Zone *and*  
Winning at Win-Win Negotiation

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LAWRENCE SUSSKIND

Co-founder of the Program on Negotiation at Harvard Law School



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Co-Founder, Program on Negotiation at Harvard Law School, and Founder of the Consensus Building Institute



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*To all of my students from whom I have learned so much*

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## FINDING THE TRADING ZONE AT GOLDEN POND

MY WIFE, LESLIE, came dashing up from the beach. We were renting a small cottage by a lake in New Hampshire. For us it was Golden Pond, an idyllic place to spend time with our two young children. We managed to scrape together just enough to afford a two-week vacation.

“You’ll never guess who I was just talking to,” she gushed. “Ralph. He says that they are selling the cottage. Their son is getting divorced. He wants to cash out his share of the property. I told him you would absolutely buy the place.”

I thought for a moment. “How much are they asking?”

“I don’t know,” she said. “I told him you were the negotiator and you would handle the details.”

My mind raced. I could certainly see myself spending a lot more time by the lake, but could we afford it? What had Leslie promised? Owning the cottage would be terrific, but what was Ralph asking price? I had nothing to go on. I tried to estimate what the annual rental income would be if we bought the cabin but didn’t live in it. My back-of-the-envelope estimate (based on the rent we were paying) was that we could clear about \$15,000 each year after taxes and expenses. At prevailing interest rates, calculating very quickly, we could use that money to cover a mortgage of about \$85,000.

When I talked with Ralph later that afternoon, there was an ironic smile on his face. He knew I was boxed in. “You’ve been great tenants, and we know how much you love the place. We were delighted when Leslie said you wanted to buy it.” I thought to myself, “What has Leslie gotten me into?”

“What’s the price?” I ventured.

“We’ll be very sad to leave,” he said. “Since none of the cabins has sold since the original owner bought them seven years ago, it’s hard to know what they’re worth. With the common land owned by the lake association, it makes it hard to calculate the actual value of each cottage. In addition to your own cottage, you know, you’ll own one ninth of the lake.” I could feel his eyes boring into me.

“\$105,000,” he said. “I think that’s really fair. We’re glad to be selling the cabin to people who love the place as much as we do. And, it’s only 90 minutes from Boston. You’ll get to use it all the time.”

Ralph and I both knew that Leslie had more or less made a commitment. I would have to find a way to finance the purchase. He was the business manager for a famous magazine and a highly experienced negotiator. I was just starting out. His wife, a local real estate agent, had been quite firm when Leslie made the original deal with her to rent their cottage. I felt trapped, but excited. I had no time to talk to anyone. Could we handle a second mortgage? Could we swing a \$20,000 down payment by refinancing our primary mortgage?

“Ralph,” I said. “Since you are moving out of state, would you be willing to leave the current furnishings, and include them in the sale price?” “Done,” he said. (I figured that would save me about \$10,000.) That felt like a victory. I could see a deal taking shape. Presumably I could get an \$85,000 mortgage, find \$20,000 for the down payment, and avoid the cost of having to furnish the place.

I’ve always wondered whether he really had \$105,000 (or even less) in mind as his final selling price. Unfortunately, I never asked the questions that would have allowed me to find out. I was in too much of a rush to close the deal. I didn’t try to imagine the speech he would have to give to his wife

and son to be able to declare victory.

Once Ralph talked to Leslie, and she indicated that we would buy the cabin, we were in what I call the “trading zone.” That is, both of us had reason to be optimistic there was a deal to be done. He was under a lot of pressure from his “back table,” and Leslie had her heart set on a family future by the lake, putting pressure on me. I had no idea what the cottage was worth on the open market. I was sure, though, that if I didn’t close the deal quickly another buyer would swoop in and take the cottage from us. You enter the trading zone when both sides begin to believe that a “deal space” exists between the lowest amount one side is ready to accept and the highest amount the other side is willing to pay (I can afford).

In one sense, the trading zone is a state of mind. If both sides are optimistic about reaching an agreement, there’s a good chance they will succeed. Of course, how they interact is important. If Ralph had opened with an entirely unreasonable demand, I would have had to walk away and disappoint my wife. If we hadn’t paid attention to what the other side wanted and needed, we might have slipped right out of the trading zone. So the trading zone is not just a state of mind, it is an actual deal space circumscribed in very specific ways.

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I DIDN’T HANDLE THE PRESSURE of the negotiation very well. I was in too much of a rush. I should have slowed everything down and found a way to do a lot more homework. I should have asked more questions to determine Ralph’s lower limit and to gauge the pressure he was under to get the deal done. Might he have been willing to drop the price another \$10,000 if I agreed to sign a letter of intent that afternoon? On the other hand, I knew Leslie would be terribly disappointed if the cottage slipped through our fingers. There were probably a dozen other summer renters ready to buy the cottage (or maybe rent from us if we bought it) as soon as word got out that the unit was for sale. At least, that’s what I told myself.

Once you are in the trading zone, and the parties are more relaxed about reaching a deal, the chances of reaching a mutually advantageous outcome increase exponentially. The whole point of getting into the trading zone is that information is more likely to be shared that allows both sides to meet their interests at the lowest possible cost. By exploring lots of options, or potential trades, the parties are more likely to do better for themselves, with less tension and a lower risk of failure than would otherwise be the case.

Unfortunately, I never took advantage of the fact that we were in the trading zone. I never pushed to see how low Ralph would go. He anchored the conversation with his opening bid of \$105,000, and I figured Leslie and I could probably borrow that much money. I was able to sweeten the deal a bit by getting him to leave the furnishings, which we liked and he probably had no use for anyway. I assumed he was under some pressure to move quickly, but he never let on that he was eager to close the deal with me in particular. I’m sure he had to report back to his son, Mark, who was half-owner of the cottage. I should have asked to talk with Mark; maybe he would have taken less to get the deal done.

Twenty-five years later, Golden Pond is still our home away from home. My kids want their kids to have the same life-long summer experiences they’ve had there. Today, the property is worth at least three times what I paid for it. Ralph got a deal that was good for him at the time. It turned out to be great for me in the long run. My Golden Pond experience has taught me a number of lessons. At the top of the list is the realization that if both my negotiating partner and I can get into the trading zone

(both the state of mind and the actual deal space), my chances of doing exceptionally well for myself are increased. That is, once I am in the trading zone—which takes some effort on both sides—my chances of winning at win-win negotiation go up. I wish I had been more aware of that when I was negotiating for the cottage; at least I can now share what I've learned.

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THERE IS ALMOST ALWAYS A WAY to find the trading zone if there is one. It requires formulating a deal you can explain to your “back table” (the people to whom you report), and aiming to do well for yourself regardless of how tough your negotiating partner is. Landing deals that are great for you means getting into the right frame of mind, exploring the scope of the deal space, and being ready to claim a disproportionate share of the value you create—something I certainly didn't do when I was negotiating to purchase the cottage at Golden Pond. The same dynamics apply, by the way, in multi-billion-dollar business deals and in small-scale family transactions.

Winning involves three important factors: making sure that

1. the people at your back table are satisfied,
2. you can convince yourself and others that you have been treated fairly, and
3. you generate as much value as possible and use it to produce an agreement that is good for them and great for you.

All of this is a departure from the conventional wisdom about win-win negotiation. Ever since the idea of win-win emerged, and cooperation began to receive as much attention as competition, negotiators have been uneasy about pushing too hard to claim a disproportionate share of the value they create. Not only am I saying that *winning* is OK, but I'm ready to describe how it can be done without violating trust or undermining good working relationships.

## A SHIFT IN THE FIELD OF NEGOTIATION

THE WAY PEOPLE THOUGHT ABOUT NEGOTIATION—and actually negotiated—took a significant turn in the 1980s. The focus shifted from knowing how to dominate opponents in all kinds of bargaining situations—in court, business, international relations, and public affairs—to finding some way of convincing your negotiating partners to accept a mutually beneficial—that is, a pretty good—outcome for all sides. This came to be understood as a shift from “win-lose” to “win-win.”

While a great many thinkers and writers contributed to this shift in thinking, Roger Fisher, William Ury, and Bruce Patton, authors of *Getting to Yes*, are the best known. Four of their insights are familiar to every experienced negotiator: (1) Don't stint on preparation. It is especially important to clarify ahead of time what you will be left with if there is no agreement. (2) Focus on what's really important to the other side (their interests) rather than any inflated claims or positional statements they might make. (3) Set aside time in every negotiation to brainstorm mutually advantageous options or packages before trying to nail down final commitments. (4) Instead of threats, appeal to rational arguments or what are known as “objective standards” such as “What would an independent expert say that would help me justify my claim that I should get the larger piece of the pie?” A whole training industry now teaches executives and managers how to put these four principles into action and move from win-lose to win-win negotiation.

Millions of people all over the world were swept up in this shift. There is, however, a problem.

Once everyone realized that mutually advantageous outcomes were possible, they were confused. (Millions of people read *Getting to Yes* and other books using the win-win framework, but so did the people on the other side of the bargaining table.) How were they supposed to split the value created when they adopted a mutual gains, or win-win, approach to negotiation? In win-win, is everything supposed to be divided evenly? Is that fair? If one side brings more to the table, shouldn't they get a larger piece of the pie? If one side is more powerful, won't their back table expect them to exploit their leverage and bring home a substantial victory? How can a more powerful negotiator explain why they allowed their negotiating partner to do so well?

A second problem was that having learned the cooperative moves of win-win negotiating, many negotiators were not ready to entirely abandon the competitive instincts that had enabled them to achieve good results in the past. Even the most committed win-win negotiators retain a desire to show their back table they can get a very good outcome—and that, of course, is reasonable. While some negotiators worry they will be betraying the win-win ideal if they try to do especially well for themselves, I don't think they should feel guilty. I think it is possible to adopt a win-win approach *and* do especially well for yourself.

Many negotiation experts are quiet on this issue, urging everyone to be aware of the tension that exists between creating and claiming value. That is, there seems to be a conflict between trying to get as much as possible for everyone while trying to get the most for yourself. They are not explicit though, about how this tension should be handled. No one has been clear about how much to claim for yourself when adopting a win-win orientation.

If I had had my wits about me when I was negotiating to buy the cottage at Golden Pond, and I had been able to discover that Ralph was ready to accept as little as \$70,000 as long as the deal was finalized that day, I would have happily paid the \$70,000 *and* asked for the \$10,000 worth of furniture. I would not have been troubled by the fact that I had initially been prepared to pay \$100,000. If Ralph had promised his son and his wife that he would secure twice what they had paid for the cabin several years earlier (which I later discovered was \$35,000), the deal space would have been between \$70,000 and \$105,000. I didn't feel any obligation to split the difference (i.e., pay \$87,500) or pay the full \$105,000 because I was about to get a great long-term deal. Indeed, I would have been comfortable claiming the whole \$35,000—paying Ralph \$70,000—if I had been clever enough to determine that was how low he was prepared to go.

I was quickly in the trading zone with Ralph because Leslie put me there; however, I didn't have the tools or strategies required to win at win-win negotiation.

*Good for You, Great for Me* bridges the gap between what people think win-win negotiation requires and what they need to succeed. It offers both principles and strategies—six operational moves you can make once you've found your way into the trading zone—that will allow you to claim as large a share as possible of the value you help create. And it shows how this can be done without undermining trust or ruining relationships. The principles are very straightforward:

1. Lead them into the trading zone.
2. Create more value.
3. Expect the unexpected.
4. Write their victory speech.
5. Protect yourself.
6. Provide leadership.

The strategies offer a means of operationalizing these principles in any negotiation.

*Good for You, Great for Me* also offers guidance for handling special negotiating circumstances.

like huge power differentials, relationships that are too important to lose, cross-cultural dynamics, an angry public, and situations where someone appears to be lying.

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## THE SIX STRATEGIES FOR CREATING DEALS THAT ARE GOOD FOR THEM AND GREAT FOR YOU

**Reframe your negotiating partner's mandate and priorities.** There are simple moves you can make to press your negotiating partners to reprioritize their interests. If they aren't clear about their objectives or are coping with mixed messages from their back table, you can help them reframe their interests in a way that will benefit both of you. You can also raise doubts in their minds about what their back tables want from them. Your goal should be to get them to refine their mandate and think hard about their priorities in ways that will benefit both of you. For example, if you put two rather different but attractive proposals forward at the same time—both of which are acceptable to you—may force your negotiating partner's back table to clarify their priorities. By asking the right questions, you can push your counterparts to seek a mandate that is more advantageous to you.

**Propose packages that are good for them and great for you.** The key to creating value is inventing trades beneficial to both sides. (That's why it is called the trading zone!) The more value you can create, the more there is to go around; reliable research clearly shows that most negotiators stop far short of generating as much value as possible because they overlook less obvious trades. I demonstrate how to formulate and present trades that the other side cannot afford to turn down, but that are advantageous to you.

**Use contingent offers to claim more than the other side.** When both sides are clear about the point at which they should walk away rather than accept a bad deal, they can place clear limits on the size of the deal space. Of course, each side wants to be at the edge of the deal space that is most advantageous to them. By using contingent offers (what-if proposals), you can figure out how close you are to the edge that is best for you.

**Help the other side sell your best deal to their back table.** Too many people see negotiating partners as adversaries when they are in fact important emissaries to back tables. There are simple techniques for providing an emissary with the arguments they need to sell an agreement that is best for you to their back table, the people you usually don't have an opportunity to speak with directly.

**Insulate agreements against predictable surprises.** Negotiations are not finished until all commitments specified in an agreement are fulfilled. During the follow-up period after an agreement has been signed, lots can go wrong. Market conditions, for example, might change between the time an agreement is reached and the time contractual commitments must be honored. My Harvard Business School colleague Max Bazerman has made it clear that negotiators ought to be able to anticipate the many things that can undermine implementation of a negotiated agreement. It is not too hard to think of the kinds of things that can go wrong, even if we can't predict which one will occur. That's why Bazerman calls them "predictable surprises." Dispute resolution mechanisms can be incorporated into agreements to insulate against some unpredictable surprises. You need to buffer agreements against such surprises, so I outline ways to make your agreements more robust.

**Building your organization's negotiating capabilities (so winning at win-win negotiation gets easier over time).** Negotiation is as much an organizational task as it is an individual one; and most negotiators know that other people in their company can get in the way of their negotiating efforts. Every time you complete a negotiation, let the relevant people in your organization know how the company's standard operating procedures might be modified to make it easier to find the trading zone and win at win-win negotiation in subsequent negotiations. When negotiators skip this step, everyone in their organization is doomed to generating poorer results in the future.

# Six Ways of Winning at Win-Win Negotiation

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# LEAD THEM INTO THE TRADING ZONE

*Help Your Negotiating Partners Reframe Their Mandate and Priorities*

THE WORLD ABOUNDS WITH DIFFICULT PEOPLE; and the various difficulties they pose are enhanced when they are negotiating with you. There are the stubborn and the irrational; those who have more power than you and aren't hesitant to use it; the intransigent; and those who absolutely, positively never will allow anything to be built in their back yard. Is it really possible to treat people like this as partners and move them into the trading zone to create deals good for them and great for you?

## DEALING WITH STUBBORN OR IRRATIONAL PARTNERS

SUPPOSE YOU'RE AN EXPERIENCED SALESPERSON entering into negotiations for a contract renewal with "Enterprise, Inc.," a company you've successfully done business with for years. Unfortunately, Susan, the head of purchasing at Enterprise, has just been replaced (the memo about her departure noted that she was leaving "to pursue other exciting personal interests"). You call Joe, the new guy, to set up your first meeting and immediately realize you're in for some trouble.

"Here are my rules," Joe says, cutting the pleasantries short. "First, we'll meet at my office. Second, I'll let you know what we will talk about and what we won't. Third, I'll tell you the price range we'll be working in. And we won't put anything in writing until we have a deal."

"I'm fine with meeting at your place," you say uneasily, putting off his other demands for the moment. "But we should probably include some of my production people and someone from your operations division. We've got to make sure we meet their interests as well."

"No," Joe says. "That's not how I do it."

"For years," you continue, "your predecessor always brought along your head of operations. I think that's why everything always went so smoothly. We need to talk about more than just price. We want to make sure that our components meet your company's unique needs."

"Let me worry about that," Joe says.

You are completely taken aback. Joe seems impossible to deal with. Is he truly irrational or just trying to drive a hard bargain? Is he interpreting his mandate too narrowly? Is he clear about his back table's or his company's interests? How can you find out for sure?

One of the trickiest aspects of negotiation is figuring out how to deal with an individual who cannot be convinced by the merits of evidence or arguments. How can you put a stop to irrational behaviors and demands—those that don't appear to contribute at all to the effectiveness of negotiation? How can you get someone to be reasonable? How do you move someone like this into the trading zone? We'll look at how this story of the new purchasing agent can help you analyze the various possibilities you face when confronting an adversary who seems stubborn, irrational, or even downright crazy. Obviously, you can't win at win-win negotiation unless you figure this out and find a way to move them into the trading zone.

**Your negotiating partner is perfectly rational; it's just that you don't understand how the world works.**



**looks to him.** One of the first rules of negotiation is to assume that your partner is rational. Approach each new negotiation with an open mind. Differences in life experience may lead to what look like strange behaviors, so instead of jumping to conclusions, try to imagine how the negotiation might look to the other side. Max Bazerman, the psychologist at Harvard Business School I mentioned earlier, has described many of the cognitive biases that can lead people to read and react to the same situation in totally different ways.

When faced with a partner as stubborn as Joe, imagine what might be going on in his head. Perhaps he's dealing with some new corporate guidelines that govern how he is supposed to proceed. Maybe he's been burned in the past because he wasn't able to manage his internal negotiations while proceeding with external negotiations simultaneously. Perhaps he's nervous about having his performance judged negatively by others in his organization.

How can you address such concerns? First, try asking directly what problem your new partner is trying to solve. "I know you may be feeling some heat back at the office," you might say. "Maybe if we understand what you're up against, we can add some new items to the equation." You might offer to help Joe protect himself, such as by promising to circulate a draft summary of any tentative agreement to both sides. This wouldn't create problems for you and it might help Joe.

Second, you might agree to a couple of Joe's demands, while reserving the right to pause the conversation if they turn out to be counterproductive. Sometimes you might have to try proceeding in a new way, even if it feels unproductive. At the very least, an ongoing failure to move talks forward will provide a shared basis for arguing on behalf of a better approach. As long as you don't agree to anything that fails to meet your company's interests, you won't lose anything by agreeing to what appear to be unproductive demands.

Suppose you agree to meet Joe one-on-one at his office, and you start off the talks like this: "We clearly have common interests. Your company needs our components to stay competitive globally. We're prepared to keep providing them, as long as you maintain or increase your current order. And you know, we have to make continual adjustments in our production systems to get you just what you want, when you want it. If I can come back to my people with a minimum five-year deal, at stable prices and increasing sales volumes, we can probably remain at the current price with only modest annual adjustments for inflation. What do you think?"

"No way, no how," says Joe, crossing his arms.

"What do you mean?"

"I'm not interested in doing business if you can't give us a substantial reduction in the current unit price," Joe says. "Also, we need to be able to adjust our order up or down. We also want the right to abandon the contract at any time, with no penalty. And you'll have to guarantee on-time delivery or else pay a big penalty."

"Wait a minute, wait a minute," you say. "A penalty if delivery gets held up for reasons beyond our control? A reduction in unit price? Unpredictable sales volumes? Where is this coming from? No one is paying less than you are for our components. But sales volumes will have to remain constant or at least not decrease or we can't provide customized service."

"If you want to keep our business, you'll have to find a way to cut prices and eliminate all delivery risk," says Joe. "Now, listen. I promised my guys that we'd have something signed by now. What's it gonna be?"

"Look," you say. "Our companies have been working together for almost a decade. We ought to be able to sort this out. Your predecessor and I always put all our cards on the table. What's going on? Is there some problem you're not telling me about?"

“I’m sure you and Sue got along great, but times have changed. Gotta get the price down. Gotta reduce the risk. Gotta maintain flexibility. Those are the rules. Do we have a deal, or not?” Joe faces you with a smug smile on his face.

**Your partner is perfectly rational but has adopted a seemingly irrational stance as part of his hard-bargaining strategy.** Joe may just be pushing to see what he can get away with. If you don’t push back, he’ll keep claiming even more. This strategy is not irrational, especially for someone who has used it successfully in the past.

My Golden Rule of Negotiation says that you should treat your partner the way you’d like to be treated yourself. Negotiation theory suggests that you focus on interests, not positions; separate inventing from committing; invest heavily in what-if questions; insist on objective criteria; and try to build nearly self-enforcing agreements. This advice does not preclude making it clear that there are limits beyond which you will not be pushed. “If you can’t be more flexible, we’re done,” you might tell Joe. “No one is going to give you a better product and better service at a lower price. But if you want to look around, go ahead; then get back to me.”

If modeling effective behavior doesn’t cause your difficult partner to act reasonably, don’t despair. There are several other tactics you can try. First, to test your interpretation of events, insist on bringing others from your organization into the negotiation and press your partner to bring his colleagues as well. In addition, be sure to summarize what’s said in writing and distribute memos after each exchange. By doing so, you’ll put your difficult partner on notice that others will be aware of what he’s up to. Next, put forward multiple proposals that meet your interests very well and that seem to meet the other side’s interests at least reasonably well. Even if you don’t reach a deal, your offers will be on record. Finally, never make unilateral concessions just to appease your partner. You’ll only encourage more of the same unproductive claiming behavior.

Once Joe realizes that there are, indeed, limits to how far he can push you, he may very well temper his demands: “I know you guys do a pretty good job, but there’s always room for improvement, right? How are you going to get me a better deal?”

**Your partner really is irrational.** If so, all rules of normal discourse go out the window. Suppose you’ve tried all of the strategies outlined above, but they’ve failed. Joe refuses to listen to your mutually beneficial proposals and won’t be convinced by arguments on their merits. Now you’re convinced that you are dealing with a truly irrational negotiating partner, someone willing to risk everything to make sure you get nothing. What can you do?

First, prepare a written memorandum laying out several possible deals, and then set an explicit deadline for ending negotiations. Make sure to enumerate all of the evidence and arguments to back up what you are proposing, and spell out why your proposals meet both sides’ interests. Though it can be difficult, try to get the memo into the hands of your partner’s higher-ups.

If Joe refuses to make progress in your one-on-one exchange, fails to respond to a reasonable set of proposals, and remains unwilling to allow others to attend the negotiations, there’s not much reason to go forward. Through his statements, he has signaled a commitment to hard bargaining for its own sake. You’ve made a number of mutually advantageous proposals, and you’re still getting nowhere. It’s time to call off the game, break off talks, and wait to see whether Joe will suddenly back down, as hard bargainers sometimes do.

- *Don't respond to irrational behavior in kind*
- *Don't make unilateral concessions to win them over*
- *Don't lose your cool out of frustration*
- *Focus on meeting your own interests*
- *Prepare carefully for each interaction*
- *Summarize each negotiation exchange in writing*
- *Know when it's time to walk away*

Personally, I don't believe that what we assume to be irrational behavior truly is irrational most of the time. Rather, experience tells me it's more likely that people behave according to Possibility #1: they're trying to advance their interests by shutting down the other side through hard bargaining. They may simply be bad negotiators, not irrational ones. In the final analysis, negotiating with a seemingly irrational partner isn't so different from negotiating with anyone else you hope to lead into the trading zone, where great deals might emerge. Going around a negotiating counterpart to their back table may be the only way to help your negotiating partner get a change in their mandate or their organizational priorities.

Sometimes, the best way of dealing with a negotiating partner who has adopted an irrational negotiating posture is to confront them with the facts and, if possible, try to involve them in a process of joint fact-finding.

## FIRST, FIND THE FACTS

LET'S LOOK AT A SITUATION that is all too familiar: "The Anaconda Company," a major manufacturer of computer chips, wants to build a new facility on the outskirts of a large city. Both the abutters (the people who live in the area) and regulators demand evidence that the new plant will not increase pollution or diminish property values. Anaconda's management responds by hiring consultants who produce studies backing its claim that the plant's negative impact on the area will be small, if in fact negative at all. Plus, the consultants cite the promise of positive economic impact, especially the creation of jobs. In the meantime, the abutters, fearful of potential health risks and financial losses, hire their own consultants, who produce a report finding that the plant will indeed pose a host of threats, including tainted water, traffic congestion, and damage to local infrastructure. In subsequent face-to-face negotiations, Anaconda disparages the abutters' findings and presents additional commissioned studies. The abutters' experts counter that the possible risks posed by the new plant require additional study and delay. There doesn't seem much hope that they can find the trading zone, let alone create value for mutual gain.

What's the way out of such a predictable mess? Peter Galison, a professor of physics and the history of science at Harvard University, defines the trading zone as a place where conflicting ideas and methods can merge into a shared understanding. He describes the ways in which scientists in distinct but related fields find a common language, or "interlanguage," that allows them to exchange ideas and work through problems.

But in the brouhaha between Anaconda and the abutters, as in many negotiations, disagreement of facts and forecasts hinders people involved in the negotiation in their efforts to find the trading zone. Negotiators often lack the technical expertise necessary to formulate credible solutions to the

disputes or find answers to questions such as: What effects will a specific action, such as a new plan have on key constituents? How might possible effects be enhanced or mitigated? Talks are likely remain at a standstill until answers are generated that all parties at the table accept and understand.

The next step in this predictable set of interactions? Too often, a lawsuit. In the worst cases, the parties argue endlessly, often in the press, hiding behind the findings of their respective hired guns. In many quarters this has been dubbed “adversary science.” From the public’s standpoint, if you can hire a scientist to say whatever you want, why take science into account at all? In some instances, the parties decide to ignore all scientific or technical considerations, since there are none that they trust. This is likely to produce an agreement that meets no one’s interests and may even create dangerous and counterproductive results.

## MAPPING THE TERRITORY, TOGETHER

SOME MIGHT ARGUE that such confrontations are inevitable. But a wide range of collaborative efforts, many of which I have been involved in personally, have convinced me that the battle of the printouts can be avoided. For example, groups for and against large-scale development projects or plant closings have come together to undertake joint investigations of potential impacts. These have led to decisions about whether and how to proceed, and also about what compensation should be paid to those who might be adversely affected.

How can negotiators in situations such as the battle between Anaconda and the abutters find the way quickly and easily into the trading zone? One method I’ve seen work time and again in a wide variety of negotiations is joint fact-finding, a multistep, collaborative process for bringing together negotiating partners with different interests, values, and disciplinary perspectives. By agreeing on how information will be gathered, analyzed, and interpreted, the parties lay the foundation for subsequent negotiation. Joint fact-finding, which helps maximize joint gains, has proven successful in helping parties resolve disagreements, particularly highly technical ones. While each party will seek to do the best it can for itself, joint fact-finding enables both to transition into the trading zone. As all sides seek to win, their chances of meeting their own interests while simultaneously meeting the interests of other parties will increase.

Unbiased expert advice is key. Without help from experts they all trust, each party remains too focused on its own interests to move together in the right direction.

Joint fact-finding typically proceeds as follows:

**Scope the dialogue.** People disagreeing about the legitimacy of each other’s claims must first reach agreement on the questions and topics to include on their negotiation agenda. In the case of the siting of the manufacturing plant, Anaconda and the abutters need to agree on a list of questions regarding the potential environmental and financial impacts of the facility. Such questions usually provoke an information-gathering process, although parties may not see eye to eye on the methods or the analysis required. How can they resolve these early differences? By setting written ground rules they can agree to live with.

The simplest way to generate ground rules is to have a trusted intermediary, such as a professional mediator with the appropriate technical background, carry drafts from party to party until they reach agreement. In their ground rules, parties must ensure that all sides have the technical background, at least access to appropriate technical guidance, necessary to engage in a productive dialogue.

It's useful for the ground rules to establish the amount of time and money participants will devote to data gathering and analysis. They may also include guarantees of confidentiality and clarification of the participants' interests.

**Jointly choose expert advisers.** Once there is agreement on ground rules and a fact-finding agenda, Anaconda and the abutters are ready to select technical advisers and analytic methods that will deliver the answers they need. If each selects its own advisers, the likely result is the all-too-common situation of conflicting technical inputs and dueling experts. A more effective alternative is jointly selecting a set of neutral technical advisers. (Note another big benefit of joint fact-finding: a shared analysis can literally cut parties' research costs in half.)

But the task of selecting advisers often brings philosophical differences to the fore. In the dispute over the manufacturing plant, Anaconda, motivated to show the financial benefits the plant would bring to the community, might insist on the joint hiring of an economist. For their part, the abutters might push to employ scientists who will focus on potential environmental risks. The solution? They agree to hire an array of advisers adept at working in a multidisciplinary fashion. Many people are surprised to learn that there are experts in a wide range of fields who prefer to operate in a collaborative mode.

**Define the appropriate methods of analysis.** It is important to ask all advisers to subscribe to the ground rules. They also need to make explicit the assumptions they bring to the task at hand. In the case of the manufacturing plant, the analysts—regardless of their disciplinary backgrounds—need to specify the geographic scope of the area that frames their analysis, for example. A natural scientist might want to look at the larger ecosystem, while an economist might focus on the relevant municipality. Their conclusions cannot be merged until they agree on a set of geographic boundaries for whatever studies need to be done. They also need to make clear the time frame they are using for their analyses, or their separate contributions won't fit together. And they should accept responsibility for making clear the levels of uncertainty built into their analyses. For instance, in forecasting the impact of a new plant on water quality, a great deal will depend on the assumptions made about the chances of a new water treatment system breaking down or being operated improperly. Risk management assumptions can radically alter the forecast of the dangers that might be involved.

If the analysts have a hard time communicating with the parties or with one another, an intermediary with the appropriate technical background may be needed to carry the joint fact-finding process forward.

**Clarify roles and responsibilities.** Whether negotiations are taking place inside a corporation or in a more public setting, all parties need to meet with their hired technical advisers throughout the entire joint fact-finding process. Joint fact-finding will fail unless open communication exists among the technical advisers, the negotiating parties, and each side's constituents.

The jointly chosen advisers may be top experts in their fields, but there are many forms of knowledge that only stakeholders can contribute. In the end, it is the parties themselves who must decide how to act. For this reason, they need to be genuinely engaged with their advisers, but also responsible for drawing their own conclusions.

**Assess tentative findings together.** Once jointly selected technical advisers have produced the data and analyses requested by Anaconda and the abutters, it's important that the parties engage in a face-to-face exchange to consider what their advisers have produced. Advisers can present various courses of

action, highlighting the probable gains and losses associated with each, but decisions should be made by the parties. The analysts should help the parties make sense of the findings by pointing out the extent to which they hinge on critical assumptions. For example, if a team of analysts suggests that the risks associated with the proposed plant are minimal, they need to make clear what they mean. One way to do this is to relate the projected risks to comparable risks that most people choose to accept in their everyday lives. They also need to make explicit what they are assuming about the company's probable response to a system failure, such as its commitment to immediately mitigate any adverse effects that might occur.

By questioning the advisers about their results, Anaconda and the abutters can assure themselves and each other that the joint fact-finding process has indeed answered their questions. The advisers' initial findings are likely to trigger a set of second-order questions, and the parties shouldn't hesitate to send the analysts back to work. Although repeated face-to-face exchanges will be limited by time and money, a collective examination of a range of what-if scenarios is crucial to finding the trading zone.

Note that the analysts' objectivity remains essential even after they've delivered their results. For this reason, they must refrain from recommending any one course of action that might follow from their findings.

**Communicate results.** In many negotiations, the parties at the table represent large constituencies. Whether the negotiators are corporate employees or neighborhood activists, it's unreasonable to expect them to communicate the results of sophisticated technical analyses to their constituents without help. Instead, their shared technical advisers might present the results of joint fact-finding to each constituency separately, or they might put up a website that all participants can use to keep the constituents informed.

#### TO WORK TOGETHER TO FIND THE FACTS:

- *Scope the dialogue*
- *Jointly choose expert advisers*
- *Define the appropriate methods of analysis*
- *Clarify roles and responsibilities*
- *Assess tentative findings together*
- *Communicate results*

**What happens next.** Responding to the results of joint fact-finding is, of course, the next crucial step. Even if all sides agree that they asked the right questions and that the advisers answered those questions satisfactorily, the leap from ideas to action will always reflect the parties' varied interests. Before they can function effectively in the trading zone, negotiators must confront the ways in which their conflicting preferences cause them to interpret the same data differently.

Having a shared database doesn't mean that Anaconda and the abutters will be able to agree on what needs to be done next. But agreed-upon facts and forecasts do ensure that technical considerations won't be brushed aside. And, if jointly developed facts and forecasts (of potential risks or impacts) suggest that a mandate provided by a back table is based on wrong assumptions, they offer a face-saving way for a negotiator to go back to her organization and ask for a new mandate or

clarification of interests. Joint fact-finding helps disputants guarantee that they've received unbiased technical advice—the very advice they need in order to work effectively in the trading zone.

Now, think about the connection between joint fact-finding, as I've just described it, and the first step in winning at win-win negotiation. If your goal is to get your negotiating partner to reframe the mandate or reprioritize their interests—because if they do so, it would be more advantageous to you—you can use the results of a believable joint fact-finding process to push in this direction.

Let's say I'm the Anaconda representative who has been getting stonewalled by the abutter lawyer. All along I've said that the risks involved in building the computer chip plant we are proposing are minimal. I know that my claims are suspect in the minds of a frightened community. After agreeing to engage in a joint fact-finding process (with independent experts that my company, the community, and state and local regulators agreed upon), we now have a risk assessment that pretty much confirms what I have been saying. I know there are promises my company can make that will be meaningful to the abutters if they accept the joint fact-finding report. I can ask the lawyer for the abutters to share the report with his client and maybe even encourage them to meet with the members of the joint fact-finding panel. Now, perhaps, we can move into the trading zone.

You can't win at win-win negotiation until you find your way into the trading zone. A joint fact-finding process can help you get there. You can use the results of such a process to suggest that your negotiating partner has too narrow a mandate, too rigid a sense of how their side's interests might be met, or even the wrong idea about what their interests are. Use the results of joint fact-finding to get your counterparts to go to their back table and force a reconsideration of their interests. Here's yet another example of what it may take to move a difficult partner into the trading zone.

## NEGOTIATING WITH A 900-POUND GORILLA

DO YOU EVER HAVE TO NEGOTIATE with a behemoth that dominates your market—the so-called 900-pound gorilla—and face being forced to take its offer or be squeezed out of the market? Here's how to expand your options, bring a very powerful negotiating partner into the trading zone, and ultimately win at win-win negotiation.

Whether they're big-box retailers with aggressive pricing strategies or well-established computer software providers, one or two companies seem to set all the rules in many industries today. As a negotiator, your apparent choice is between taking what little the other side offers or being squeezed out of the market entirely.

When there was still one-hour photo processing, that is, before everyone had a digital camera, "PictureQuik" had one-hour processing booths in every U.S. branch of "SuperMart," a huge global discount retail chain. Although the arrangement was profitable for both sides, SuperMart abruptly informed PictureQuik that all the booths were up for grabs in a single national contract renegotiation. PictureQuik knew that its competitors would be ready with lowball bids. If another company took over their thousands of booths, PictureQuik could take a devastating financial hit. Soon after its announcement, SuperMart told PictureQuik, "We have a great offer from one of your competitors. To keep the contract, you'll have to pay us 10 percent more of your in-store revenue and 10 percent more to rent the booths in our stores. Take it or leave it." Now what?

What choices do PictureQuik executives have, aside from accepting whatever SuperMart wants? They can take the deal and impose extreme cost-cutting measures, but that isn't a feasible option. An

walking away from their biggest client would be potentially catastrophic.

How should a negotiator in a weak position deal with a seemingly all-powerful opponent? How do you move a 900-pound gorilla like SuperMart into the trading zone? There are three negotiation strategies to use as you think through how to win the negotiation the next time your business confronts an organization like this.

### *Seek an Elegant Solution*

WHEN CONFRONTED WITH an unattractive offer from a powerful competitor, the best way to alter the balance of power may be to seek an elegant solution—a counterproposal that will create even more value for both sides than what the 900-pound gorilla is trying to impose. An elegant solution often exploits the underused resources of one negotiating partner for the benefit of both. Such a solution may require a substantial investment of time, money, and effort—and it doesn't emerge on its own.

How can you generate an elegant solution in your negotiations with a stronger partner? First, improve your walk-away, think about altering your own business strategy. Specifically, look for low-cost ways to generate greater returns under your current contract. For PictureQuik, this means satisfying SuperMart's revenue goals while increasing its own annual take. PictureQuik might, for instance, consider offering additional products or services at its booths, such as software for creating online photo albums. Or it might seek out a partner to sell related goods or services, such as a company that prints images on photo albums or mouse pads. PictureQuik might then be able to come up with the extra 10 percent that SuperMart is demanding while simultaneously increasing its own profits.

Second, to build an elegant solution, further explore the other side's interests. PictureQuik might, for example, try to identify additional segments of the demographic market that SuperMart wants to bring into its stores. What current SuperMart product lines are on a downward profitability trend? In what areas is it losing to its competitors? With this information in hand, PictureQuik may be able to help SuperMart solve an existing problem. PictureQuik could make a side deal to distribute a computer game that SuperMart doesn't currently carry but that would appeal to teenagers who don't usually frequent the store. A potential partner seeking a featured spot in SuperMart's stores might be willing to help PictureQuik create an attractive package to present to the retailer. By preparing a range of proposals, PictureQuik could alter the balance of power in its renegotiations with SuperMart.

Third, consider other ways of creating value for the stronger party. Instead of packaging finished photos in its own distinctive envelopes, PictureQuik could switch to a jointly produced envelope that features SuperMart's logo. It could also include SuperMart coupons in every pack of finished photos or print SuperMart's logo on the back of all finished photos. Through joint branding and other new forms of advertising, PictureQuik could add value to their partnership, demonstrating that SuperMart would be better off continuing their relationship rather than switching to a competitor.

### *Appeal to Principle*

WHEN A STRONGER PARTY is taking a tough financial stance, it's easy to believe that the negotiation is entirely about price. The fact is, nonmonetary considerations are often more important to one or both negotiating partners than you might expect. You can identify these factors by questioning the other side's team about their interests. Once you've identified the underlying principle that the other party is following, you'll be in a better position to brainstorm problem-solving strategies.



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