

Principles of Negotiation

Lawrence Thal

*We arg'ed the thing at breakfast, we arg'ed the thing at tea,
And the more we arg'ed the question, the more we didn't agree.*

William Carleton Farm Ballads

Whereas many authorities believe that good negotiators are born that way or that negotiation is a skill best learned through experience, successful negotiators are almost always those individuals who are best prepared—best prepared with information regarding their own position and the position of the person(s) with whom they are negotiating. This chapter discusses the process of negotiation to help optometrists prepare for a successful negotiating experience, whether it be for a lease, associateship or partnership, purchase of a practice, purchase or sale of equipment, or other opportunity.

Negotiation is a process in which two or more participants attempt to reach a joint decision on matters of common concern in situations in which they are in actual or potential disagreement or conflict. The quality of a negotiated agreement is measured by the extent to which it meets the interests of all parties concerned. Inherent in this process is the need to determine accurately what those interests are, for both parties. It often has been proved that the negotiation that provides a clear winner in the short run provides no winners in the long run. The early “winner” often ends up a loser because the other party has realized that the agreement is unfair.

Conversely, in a “win-win” negotiation, both parties are motivated to abide by their agreements, thereby avoiding conflicts and problems. Negotiation is primarily an exercise in problem solving, an exercise in which the process identifies and exploits opportunities for joint gain.

Competitive tactics, such as threats or demands, undermine a negotiator’s credibility and prevent the attainment of a mutually beneficial outcome. Cooperative tactics, on the other hand, include reasonable offers, fair and just arguments, and concessions designed to encourage reciprocity. The use of cooperative tactics is based on the premise that behavior that is fair, reasonable, and accommodating is more likely to encourage a similar response. Although the rationale for using cooperative tactics is an expectation that the other party will reciprocate, the weakness of this strategy is its vulnerability to exploitation by a negotiator who does not match a cooperative negotiator’s concessions. Cooperative tactics also require an exchange of information between the negotiators and a

responsiveness by the negotiators to each other’s interests and needs. Each negotiator must assess the willingness of the other to be cooperative; if this willingness is not present, the offering of concessions or compromise should be curtailed.

Negotiations should adhere to the following steps:

- Fact-finding
- Planning and preparation
- Establishment of an initial relationship with the other side
- Initial proposals
- Exchange of information
- Narrowing of differences
- Closure and implementation

Each of these steps is described briefly, as applied to negotiation by optometrists.

FACT-FINDING

The optometrist seeking to negotiate an agreement should attempt to obtain useful information regarding the other negotiator. Does this person enjoy a good reputation? Does the person have a past history of legal conflicts or problems? If there were problems, what were their nature and outcome? If the person is an optometrist, what have previous relationships with other optometrists been like? What do other associates (present and past) or other tenants have to say about the person? This type of fact-finding is aimed at determining whether the individual is someone with whom one wishes to negotiate at all.

If this is a lease negotiation, what are the market rents? What are other tenants paying, and what are the terms of their leases? What do other tenants say about the landlord’s willingness to honor the terms of the lease? What is the vacancy rate now, and what has it been in the past? What mortgages exist, and what is the financial condition of the owner?

If this is a partnership, what has been the negotiator’s relationship with other partners, employers, or associates? What are the revenues of the practice now, and what does a pro forma analysis reveal for the future?

If this is the sale of a practice, have there been other attempts to sell it? What was the outcome of those negotiations? What

are the seller's plans: to remain in the area or to move away after the sale? What is the seller's reputation in the community? Is the practice growing? Is it economically sound? The answers to these questions, as well as to questions considering the future economic prospects of the practice, will dictate whether negotiation should be undertaken.

The negotiator with the greater knowledge of the subject matter to be negotiated is in the more advantageous position by far. Fact-finding, however, is not limited to the period before the negotiations begin. Fact-finding continues throughout the negotiations because, to the extent that one side learns of the other side's needs and concerns, it becomes more likely that a compromise can be structured creatively to satisfy everyone's goals.

In Chapter 11, the preparation of pro forma economic analysis is discussed. Such an analysis is essential in determining a "bottom line" in the negotiation process. Too often leases are entered into because the negotiator rationalizes that "it was the best I could find" or "all the leases are at that rate," regardless of what the economic projection might have shown.

If both parties are agreeable, it may be prudent to enter into an "exclusivity agreement" at the outset, whereby both parties agree to negotiate exclusively with one another for a specified period of time. Valuable time and resources will be utilized by both parties; therefore the vested interests of all parties involved in the negotiation may be best served by ensuring that outside distractions will be kept to a minimum during the negotiations.

Part of the fact-finding process should be devoted to considering what sources of influence, leverage, or power one party holds over the other. Each party's alternatives to a negotiated agreement and their relative needs to reach an agreement are the most important factors in determining bargaining power.

PLANNING AND PREPARATION

This part of the negotiation process involves preparing a strategy, developing goals, and anticipating arguments from the other negotiator. It involves the preparation of arguments and demonstrations (e.g., graphs, charts, and economic projections) that justify an offer or show why concessions requested by the other negotiator can or cannot be met.

The willingness to show why certain positions are taken and others are rejected further contributes to a cooperative approach and helps avoid antagonism and mistrust. Anticipating the other negotiator's position and arguments helps improve preparation and may even reveal areas in which more fact-finding is necessary. This part of the process must determine—at a minimum—the specific goals, terms, and conditions necessary for the negotiation to be a success.

ESTABLISHING AN INITIAL RELATIONSHIP WITH THE OTHER SIDE

In using a cooperative strategy to achieve an agreement that is fair and just to both parties, it is necessary to develop a relationship with the other negotiator that is characterized

by goodwill and trust. The first phase of negotiation sets the initial tone of the relationship between the parties and may establish the character of the relationship for the remainder of the negotiation. This phase of the negotiation process may include information gathering and disclosure and exchange of initial proposals, and to some degree, it sets the foundation for later phases.

It is usually advantageous to be the first to present an initial draft agreement or written offer. That act often establishes the first position, from which offers of compromise will be made. Once a draft agreement is offered, it should be possible to determine which issues are contentious. Sometimes it is best to negotiate the least contentious issues first to build rapport and trust between the parties before tackling the most difficult topics. On the other hand, should the parties get through the most contentious issues first, it is unlikely that negotiations will break down over less controversial provisions, thereby jeopardizing the agreements already reached. However, negotiators should avoid the tendency to allow animosity resulting from contentious bargaining on major issues to overflow into negotiations on issues that are less important.

Some negotiators believe that there is a decided advantage to negotiate on one's own premises or in one's own surroundings, and some empirical research seems to confirm that negotiators who bargain on their own territory are likely to increase both their assertiveness and the chances of a favorable negotiation outcome. However, "home" advantage means only as much as the negotiator permits it to mean. Negotiations, like sporting events, cannot always take place in the negotiator's own surroundings, and neutral sites (as diplomats often seek in Geneva or Helsinki) are not always practical. Even if a negotiator feels more comfortable and less likely to lose confidence in familiar surroundings, that seeming advantage may be offset by other factors. For example, if documents are needed to refute a certain contention, one is expected to access them immediately when negotiating in his or her own office. The documents would not necessarily be available in the other negotiator's office; this delay can allow more time for preparation.

In this phase of the negotiation process, it is desirable to create an atmosphere in which negotiators attempt to maximize joint gains by first creating a psychological state characterized by mutual trust, a shared desire to achieve joint gains, and open and honest communication.

INITIAL PROPOSALS

The first proposal in a negotiation, if credible and convincing, usually becomes the focal point from which further bargaining proceeds. It should be thoughtfully and carefully considered before presentation. Justification for this initial proposal should be presented to validate its credibility and to limit the extent of further negotiation.

It is a mistake when presenting an offer to imply that it is the final offer or that the other side must "take it or leave it." Such an attitude destroys the negotiation process, is rarely credible, and demonstrates an attitude completely unfavorable to maximizing joint gains.

An initial proposal should be moderate enough to communicate to the other party that the negotiator is trying to be reasonable in establishing a cooperative bargaining relationship. On the other hand, the initial proposal must contain enough of a cushion to allow the negotiator to make concessions so that he or she does not appear intractable in later phases of the negotiation. Early cooperation facilitates the development of trust and a mutually beneficial and amicable relationship.

EXCHANGE OF INFORMATION

No other aspect of negotiation is as important as the exchange of information between negotiators. Negotiation can be viewed as a process in which each negotiator learns enough about what the other party needs and wants to propose an agreement that is acceptable to both sides. A full and accurate exchange of information allows both parties to participate in the creation of compromises and solutions. Even though providing information to the other negotiator can be risky to one's bargaining position, it dramatically enhances the ability of the negotiator to reach a fair and just compromise. The expectation is that both parties will exchange concessions in the same spirit that they trade information.

Any information that assists in determining the other side's requirements, abilities, or expectations is useful. For example, when leasing an office, it is valuable to learn the terms and conditions of the lease agreements held by other tenants. Knowledge regarding the building owner's costs, renewal rates, vacancy history, financial condition, and related matters can be obtained independently, before negotiations begin. This information can be expanded during the negotiations themselves.

The most effective way to gather information is to ask questions. Even the most direct question ("What will it take to resolve this issue?") can be helpful. Less direct and openended questions often yield more information. Different forms of questioning should be attempted to determine which will elicit the most information. Specific questions work best, however, when the questioner's information needs are well-defined.

Silence is an overlooked information gathering technique. Obviously, it is difficult to gain information when one is doing all the talking. However, there are ethical and legal considerations involved with failing to disclose material facts. Such concealment could be fraudulent. It is important to be truthful in responses because the other negotiator relies on the information provided as a basis for agreements.

NARROWING OF DIFFERENCES

This phase involves the bargaining or "haggling" part of the negotiation process. Even while narrowing down the differences in their positions, negotiators continue to gather information. Awarding concessions is an affirmative step. It is taken to elicit cooperation and to receive concessions in return; it is not an indication that the negotiator is losing. Human nature is such that individuals tend to cooperate with those

who cooperate in return. Therefore the willingness to offer concessions should not be viewed as a weakness in the negotiation process. Sometimes it is best to indicate flexibility on an issue before offering a specific concession, since once a concession is offered, it usually cannot be withdrawn easily.

If fatigue, irritability, or anger during this phase of negotiations threatens the success of the negotiation process, it is advisable to take a recess and resume negotiations at a later time. Often a break will allow one side or the other to develop a compromise. For example, if a lease agreement hinges on the insistence by the owner that the prospective tenant pay \$2,300 per month for 7 years, when, during the first 2 years, the prospective tenant can only pay \$1,600 per month, an impasse is obviously reached. During a break in the negotiations, the prospective tenant can calculate a counteroffer (based on his or her knowledge or with assistance from someone who has that knowledge) that would provide the owner exactly the same total rent in today's dollars and yet meet the prospective tenant's financial expectations. Such a counteroffer might entail the use of graduated payments during the 7 years, starting with \$1,600 per month in the first year and increasing each year, so that during the 7-year period a \$2,300 per month average is obtained (see Chapter 38).

Occasionally, it may appear that negotiations are breaking down entirely. It is better to allow this to happen than to enter into a completely unfavorable agreement. Sometimes a more creative approach may be able to salvage the negotiations. A perfect example of creativity in the case of a practice sale is to consider purchase on the basis of an earn-out (conditional sale price) vs. a fixed price (see Chapter 40). This provides flexibility and yet preserves the financial expectations of both parties. The use of expert advice or a mediator might help. Options are limited only by the creativity of the negotiator.

CLOSURE AND IMPLEMENTATION

When it appears that the parties have reached an agreement, all the elements agreed on should be repeated in summary form to ensure that there has been mutual understanding and that a "meeting of the minds" has resulted on each issue. It may be advisable to reduce the agreement to a written summary at this time. At a minimum, a letter summarizing the terms agreed on should be prepared the next day. This summary or letter can be used as the basis for a formal written contract.

Typically, one of the negotiators volunteers to have an attorney draft the written agreement. It is often to one's advantage to have one's own attorney do this, rather than the other negotiator's attorney; the language used will not necessarily be the same from attorney to attorney.

Additionally, minor details not specifically negotiated are often identified in this first draft. It is important that each party review the written contract carefully to ensure that it clearly and correctly describes each and every point. Each party will expect the other side to abide by the contract's provisions, and the contract will be used to settle any disagreements or questions arising after it has been signed.

CONCLUSION

Negotiation is a vital skill that every optometrist will be required to demonstrate periodically during a professional career. The most important phase of the negotiation process is the gathering of information, which is used to prepare for negotiations and to justify the offering of compromise positions when negotiations have reached an impasse. The underlying principle that should guide negotiators is one of fairness, which is usually attained through compromise by both parties. If an agreement is not fair, it usually will fail— with the complications and difficulties that are attendant to such failure. Therefore negotiators should enter into discussions having obtained the necessary information, with “winwin” alternatives prepared for presentation. They should be willing to propose compromises that will obtain a successful result for both parties.

BIBLIOGRAPHY

- Cleary PJ: *The negotiation handbook*, Armonk, NY, 2001, M.E. Sharpe.
- Gifford DG: *Legal negotiation, theory and applications*, St. Paul, Minn, 1989, West Publishing.
- Gulliver PH: *Disputes and negotiations: a cross-cultural perspective*, New York, 1979, Academic Press.
- Lewicki RJ: *Negotiation*, ed 3, Boston, 1999, Irwin/McGraw-Hill.
- Lewicki RJ: *Essentials of negotiation*, ed 2, Boston, 2001, Irwin/McGraw-Hill.
- Martindale DA: Territorial dominance behavior in dyadic verbal interaction, *Proceedings of the 79th Annual Convention of the American Psychological Association* 6(1): 305–306, 1971.
- Rubin J, Brown B: *The social psychology of bargaining and negotiation*, New York, 1964, Academic.
- Thal L: The practice sale: getting to the bottom line, *Optom Management* 10 (6): 66 – 67, 1986.