The Importance of Effective Negotiation Skills and Strategies in Environmental, Health, and Safety Management

Bruce D. Groves - Emilcott
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www.emilcott.com
Negotiations in EH&S -

- Introduction and Background
  - The Journey
Why Negotiate?

- Belief: A Career in EH&S Requires one to Negotiate
- A *Successful* Career in EH&S Requires one to *Successfully* Negotiate
- Belief - A successful career in EH&S requires one to *Make a Difference*
- To make a difference one must be skilled at negotiation
Where are the opportunities to Negotiate in EH&S?

- There are no shortages of disputes!
- Four Areas of Negotiation - Simulations
  - Managing Upwards
  - Managing Downwards
  - Working with Vendors and Consultants
  - Enforcing and Interpreting Regulations
Summary of Current Approaches to Negotiation Training

- Pundits
- Scholars
Pundits

How to get exactly what you want in any business or personal situation (and most of what they wanted too!)

– Heavy on Tactics - Silence, Playing Dumb, Playing the Crazy, Showing off the Goods, Flattery, Lowballing, Strawman, Good Guy/Bad Guy…

– Many Fortune Cookies: 10 steps in effective negotiations
Fortune Cookies:

- “Never cut what you can untie”
- “Improvisation is too good to leave to chance”
- “It is unwise to do unto others as you would have them do unto you. Their tastes may not be the same”
In business, you don’t get what you deserve, you get what you negotiate.
Scholars

- The Art and Science of Negotiation
- Creating value
- Establishing Metrics while Creating and Claiming Value
- Establishing and Adhering to Core Principles
A Summary of our Observations

- There is Science, Logic and Art to Negotiation
- There is a Large Gap in understanding the Science in EH&S Negotiation
- There is a Common Misapplication of the Tactics in EH&S Negotiations
Science of Principled Negotiation for EH&S Professionals

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Core Principles of EH&S Negotiation

- Always create value when given the opportunity
- Seek mutual gains over unilateral outcomes
- Negotiate as if relationships matter
Taking the Principles and Making it Work

◆ Two Major Steps of the Negotiation Process:
  
  – Creating Value
  
  – Claiming Value
Negotiation Simulation

- H&S Regulatory Negotiation between an OSHA Type Administrator and EH&S Manager for a Manufacturing Company
The Problem - Common Info:

- 3 OSHA Type Citations - 2 serious and 1 Willful
- Fines $84,000
- Employee in Trench without shoring (captured in Videotape)
- H&S Plan clearly states no one will enter trench
More Common Info:

- The Supervisor (Competent Person) did nothing and in fact took the videotape.
- Union Shop steward showed OSHA the tape.
- Informal conference scheduled.
- In 20 years, 3 inspections and 3 minor recordkeeping citations ($1500).
EH&S Manager Info:

- Has been with Vessel for 20 years
- Company desperately does not want willful violation
- OSHA citation hurts Managers reputation
- Belief that this is a one-time occurrence
- Will recommend to contest willful citation
- Union thinks company is doing the right thing.
- Belief that OSHA solicitors would offer a more favorable settlement.
OSHA Director

- You have been with OSHA for 20 years
- Compliance Officer is hard-line and stalwart
- Compliance Officer has been with OSHA for 20 years
- When a violation is contested, OSHA Area Director looses some control
- Solicitors have a reputation for giving up too much
- The videotape clearly shows a violation
Informal Conference

- Informal Conference Agreement

- Post Contest Agreement
Step 1 - Creating Value

Major Assumption is that not all parties know all the negotiating possibilities in advance - Very Inefficient

- Opportunities Where Joint Gains are formed (an improvement from each others point of view)
  - Private Value
  - Common Value
Why Even Bother to Negotiate?

- Negotiating Parties have two Common Interests
  - Desire to improve on their respective current position or alternative
  - Desire to realize all possible gains beyond doing marginally better than their alternative
Key to Creating Private and Common Value

- Exploiting Differences - Differences or Diversity identifies Creative Gain Possibilities for Common Value
How to Begin:

- Develop inventory on how parties are different from each other… not how they are alike.
  - Differences in Risk Aversion, Time, Probability Assessment, Attractiveness
- Try to identify gains that are high valued by one but lower value by the other
"To create value one must learn about his counterpart’s interests and perceptions and help his counterpart learn about his.

This fosters creativity and ingenuity and blunts the escalation of conflict"
Conventional Options for Negotiation

- Citation Penalties
- Citation Classifications
- Abatement Dates
Options for creating value in this scenario.

- Outreach Possibilities
- Voluntary Program Evaluation
- Bi-lingual Training/Cross Training
- Promotion of H&S in Industry Sector
- Union Recognition and Involvement
- Employee Involvement
- Re-allocation of fine
- Partnering
Assigning Values to Options

- Values Costs versus Gains
  - Value and Weighting

- Example -
  - Outreach Value - Bilingual Training 1(low), 5 (high)
    » Co - 2 low cost/small bilingual workforce
    » OSHA - 4 high value large regional bilingual workforce
## Assigning Numbers to Options

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<th>Priorities</th>
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<th>Total Co</th>
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|                      |            |            | Total        |          |
|                      |            |            | OSHA         | Co.      |
|                      |            |            | 67           | 66       |
### Normalized Weighting of Options

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- **Loss of Value**
- **Easy to get Impasse**
Achievable joint evaluations from which no joint gains are possible.

R - optimizes Party A and partially optimizes Party B
S - optimizes Party B and partially optimizes Party A
Q - optimizes Party B and Party A equally.
Creating Efficient Frontier

- Clearly understand all issues
- Identify all factors that affect each issue
- Use a scoring system to assign value to each factor
- Manipulate numbers to achieve highest score for the issue
- Know your tradeoffs
- Know your BATNA
- Know your opponent’s BATNA and expectations
Creating Efficient Frontier

- Generate a number of acceptable scenarios
- Develop packages for each scenario
- Find the conditions at which the sum of the scores for manufacturer and regulator is greatest

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Optimizes sum of Manuf. and Reg. scores
2nd Step - Claiming Value

- Two Broad Strategies
  - To make the other parties perceived “bottom line” worse
  - Focus and enhance the potential of joint action.
- Identify and Reassess BATNA
Bottom Line - Best Alternative to Negotiated Agreement - BATNA

- Would no agreement be better than a negotiated agreement?
- Is there an opportunity to get more than BATNA?
- How to determine your BATNA?
BATNA Value Determination

- Considerations in estimating BATNA
  - probabilities of worst and best case scenarios
  - consequences of no agreement
  - future benefits
  - estimation of other party’s BATNA
  - value of tradeoffs

- Value assignment considerations

- Additive scoring

Diagram:
- Party A BATNA = 10
- Party B BATNA = 70
- Zone of no Agreement
- Zone of Agreement
Beginning the Process of Claiming Value

- Let the negotiation begin!
The Classic Negotiation Dance

Tactics:
- Who will open first?
- Should the opening offer be an extreme value?
- What the succession pattern should be?
- At which point a Party becomes indifferent whether to continue negotiations or to walk away?

(Example)
Major Quandary of Negotiation:

- Claiming value must be as much a part of negotiation as creating value.
- Often, however, claiming tactics are opposite to those essential to creating mutual gains. Therefore, one must be careful not to lose opportunities for joint gain by creating impasses while claiming value.
Tactics and Strategies of Claiming Value:

- Shaping Perceptions of Alternatives,
- Making commitments,
- Influencing Aspirations,
- Taking Positions,
- Manipulating Patterns of Concessions,
- Holding Prime Values Hostage,
- Linking Issues & Interests,
- Misleading other parties,
- Exploiting Cultural Expectations.
More Tactics:

- Cooperative versus Competitive Strategies,
  - Use of language - Verbal and Body
  - Communication psychology
Competitive

- Listen, get the other side to talk
- Small concessions to control expectations
- Question or use “legitimacy” as needed
- React to decrease the other side’s expectations
- Take others statements with a grain of salt
Competitive (con’t)

- Take time before responding
- When buying ask for the “sale” price
- Highlight the “blemish”
- When deal is done ask for something extra
- Pick a comfortable location
Cooperative

- Rapport and trust is key
- Be easygoing and not intimidating
- Seek help instead of expecting surrender
- Talk with anyone who will help you
- Ask questions and remember you need their information
- Share information
Ultimate Goal is Reaching Agreement
Summary and Challenge

- Always create value when given the opportunity
- Seek mutual gains over unilateral outcomes
- Negotiate as if relationships matter
- Learn how to create and claim Value
- and......
Have Courage
The Science of Principled EH&S Negotiations

Two Day Seminar
October 7-8, 2003
Chatham, NJ

For more information contact:
www.emilcott.com or
Bruce Groves at bdg@emilcott.com