



**ISBA ANNUAL
NEGOTIATION WORKSHOP:**

*A DAY WITH
RANDY J. HARVEY, PhD, JD*

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NEGOTIATION IS A SYMPHONY

JOURNAL



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2004 World Champion of Public Speaking

Dr. Harvey earned a PhD at the University of Oregon in Education, Policy and Management and a Juris Doctorate at Concord University. He has a Masters in Education from Eastern Oregon University and Bachelors degrees in Education and History respectively. He has thirty-years of experience in education as a school administrator and director of human resources. Since 1995 he has been providing human resources consulting services to school districts and served as chief labor negotiator at the bargaining table for both large and small school districts in Oregon. He is an expert in dealing with workplace misconduct and regularly conducts training seminars teaching HR professionals to conduct investigations. He is a professional member of the National Speakers Association, a member of the Association of Certified Fraud Examiners, and a member of the American Bar Association. His law focus is labor relations and employment.

Dr. Harvey is an adjunct professor at Lewis and Clark College teaching Labor Negotiations, Contract Management and Dispute Resolution. He won Toastmasters International World Champion of Public Speaking title in August 2004 from a field of 25,000 contestants.

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The heights by great men reached and kept were not attained by sudden flight, but they while their companions slept, were toiling upward in the night. Henry Wadsworth Longfellow

Preparing For Negotiations Should Begin With Three Questions: WWW







Contract Assessment Checklist

Major Contract Item	Currently In Contract	Grievances	Are Changes Needed	Anticipated budgetary cost	Change needed
RECOGNITION OF EXCLUSIVE REP.					
FAIR SHARE/ AGENCY SHOP					
MAINTENANCE OF STANDARDS					
MANAGEMENT RIGHTS					
EMPLOYEE RIGHTS					
WORK DAY/YEAR					
Preparation time					
Start-End time					
Teaching load					
Student contact days					
In service days/ grade days					
BASIC COMPENSATION					
EXTENDED DUTY COMPENSATION					
INSURANCE					
Health					
Dental					
Visual					
Disability					
Life					
LEAVES					
Sick					
Personal					
Professional					
Maternity					
Bereavement					
FMLA/IMLA					
Other Paid Release					
EVALUATION					
DISCIPLINE/ DISCHARGE					

REDUCTION IN FORCE					
GRIEVANCE PROCEDURE					
BINDING ARBITRATION					
TERM AND REOPENING					
SEVERABILITY					
NO STRIKE PROVISION					
ZIPPER CLAUSE					
DURATION					

“Where there is no vision; people are unrestrained”

Proverbs. 29:18 New American Standard Version

1. Developing your vision means seeing clearly what you want to accomplish in the District over the next 50 years and what opportunities this negotiations presents to forward that vision.

2. “Plans are nothing; Planning is everything.” Dwight Eisenhower

3. Issue analysis and prioritizing:

Level I: Important and Urgent

Level II: Important but not Urgent

Level III: Not important but Urgent

Level IV; Not important and not Urgent

FOUNDATION FOR ACTION

Pride Points in the District	Disappointing Detractors in the District	Clear Keepers	Purposeful Change Points
1.	1.	1.	1.
2.	2.	2.	2.
3.	3.	3.	3.
4.	4.	4.	4.
5.	5.	5.	5.
6.	6.	6.	6.
7.	7.	7.	7.
8.	8.	8.	8.
9.	9.	9.	9.
10.	10.	10.	10.
11.	11.	11.	11.
12.	12.	12.	12.
13.	13.	13.	13.
14.	14.	14.	14.
15.	15.	15.	15.
.			

ACTION DELEGATION MATRIX

	POLICY ISSUE	ADMINISTRATIVE ACTION ISSUE	TASK FORCE/ COMMITTEE	NEGOTIATION ISSUE
Level I.				
Level II				
Level III				
Level IV				

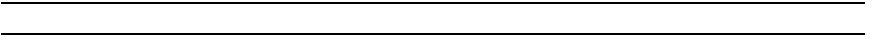
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5. Translate your "VISION" into bargaining "GOALS."

BRAINSTORM--

BUNCH--

BUMPER STICKER: LEGACY LINES



Behind his folksy façade, Lincoln was three things—a brilliant intellectual, a shrewd politician, and a literary genius. Garry Wills, author Lincoln at Gettysburg

6. Negotiation in the public sector, is the art of using words to express interests, leverage assets (physical, financial and political), and move to resolution while the world looks on.

Simple Sells:

Mother and Apple Pie:

“All politics are local” (Thomas Tip O’Neil)

3 by 5 with 4 or 5: Will Keep the Vision Alive

BARGAINING GOAL BUMPER STICKERS

	Short and Simple S.C.R.E.A.M.E.R.¹
1.	
2.	
3.	
4.	
5.	

He mobilized the English language and sent it into battle.
President John F. Kennedy said of Winston Churchill

**COMMUNICATION PLAN:
Turtle (Defensive) vs. Tarantula (Offensive)**

1. Identify your key audience: _____

2. Compile contact information: _____

3. Construct your Communication Committee: _____

4. Joe Friday style of writing: _____

5. Understand the Emotion-Energy-Inertia Dynamic: _____

6. Write, right when sessions are done _____

B.A.T.N.A.
“Best Alternative To Negotiated Agreement”

Understanding your BATNA prevents accepting an unacceptable agreement and facilitates achieving your goals.

Insecurity of an unknown BATNA: _____

Warning track (Sub-BATNA)—provides you with notice that you are running at a wall.

Knowledge is Power: Strong BATNA equals a strong bargaining position

1. Create a list of actions to take when no agreement is reached _____

2. Improve on the most promising possible actions _____

3. Tentatively select the best alternative _____

4. Be aware of the other side's BATNA _____

NEGOTIATION STYLES AND STRATEGIES

"Speak when you are angry and you will make the best speech you will ever regret."

Ambrose Bierce

TRADITIONAL BARGAINING: SOVIET TACTICS WIN vs. LOSE

Traditional bargaining in the public sector is typified by each side creating a proposal that addresses all of the issues in the contract in an effort to "win" concessions that will place the party in a stronger position and the other party in a weaker, "lose," position.

Dealing with Hardball Negotiations

1. Prepare _____

2. Natural Reactions _____

a. _____

b. _____

c. _____

MANAGING MONGO

1. Get to know MONGO (Reptilian Brain) _____

2. Training _____

3. Risk of Reaction _____

Keep your friends close and your enemies closer.
Sun-tzu 400 BC

Collecting Point

Process programming is a strategy you use:

1. MONGO awakes-- _____

2. Threat Assessment-- _____

Three kinds of Tactics (William Ury, Getting Past No)

a. Stone Walls

b. Attacks

c. Tricks

3. Recognize the tactic/control MONGO _____

a. Know your own buttons

4. Take time to think— _____

a. Pause and don't say anything—

b. Ask for a do over—

c. Caucus—

d. Don't make prompt decisions—

11 Means/ Ends Rules for Radicals: Saul Alinsky

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

11. _____

TAKING A HARDASS OFF THEIR GAME

Questions, questions, questions _____

Never wrestle with a pig, you both get dirty and the pig loves it!
Annon

DON'T ARGUE— _____

Strategies from "Getting Past No" by William Ury

Listen Actively

1. Let them get it out & listen intently— _____

2. Paraphrase and ask questions— _____

Acknowledge their Point

1. Acknowledging is not accepting _____

2. Acknowledging their feelings _____

3. Consider an Apology _____

Agree Wherever You Can

1. Agree without conceding _____

2. Accumulate yeses _____

3. Master the ECHO (paraphrase) _____

Acknowledge the Person

1. Cognitive dissonance-- _____

2. Acknowledge their competence _____

3. Build a working relationship _____

Express Your Views—without provoking

1. Mindset change: either/or becomes both/and _____

2. Don't say "But", say "And" _____

3. Make "I" not "U" statements _____

4. Stand up for yourself _____

5. Acknowledge differences of opinion _____

"At the feast of EGO, everyone leaves hungry."
Annon

SHIFT FOCUS TO INTERESTS

QUESTIONS, QUESTIONS, QUESTIONS

1. Columbo style questioning _____

2. Soviet Oriented Bargainers (“SOB”) try to maintain positions _____

3. Strategic attacks on SOB’s style must uncover “INTERESTS.” _____

4. Use W Problem Solving questions strategies.

a. Why? _____

b. Why not? _____

c. What if? _____

5. Ask open ended questions _____

6. Master silence as a weapon _____

“Never argue with an idiot. They drag you down to their level and beat you with experience.”

Annon

DEALING WITH ATTACKS: PERSONAL AND OTHERWISE

1. A soft answer turns away anger (and makes them wonder what you are up to). _____

2. Personal attack, threats, insult. _____

a. Ignore _____

b. Reframe as an attack on the problem _____

c. Reframe it as friendly banter _____

d. Reframe from past wrong to future remedy _____

e. Reframe to we _____

f. Tack _____

3. Cheats, Liars & Tricksters

a. Liking liars-- _____

b. Catching cheaters- _____

c. Turning tricks- _____

Build your opponent a golden bridge to retreat across.

Sun Tzu

1. Ask for their ideas _____

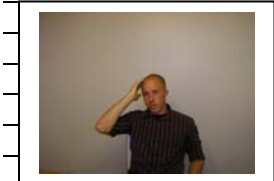
2. Ask for their criticism _____

3. Offer multiple solutions to chose from _____

DEFENSIVENESS

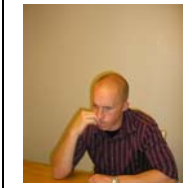


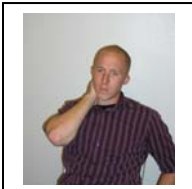
DECISION/ MAKING



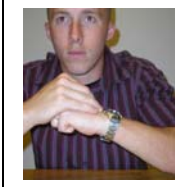
REASSURANCE







FRUSTRATED/ HOLDING BACK





MAINTAINING CONTROL





INTEREST BASED BARGAINING

1. What is Interest based bargaining?

a. _____

b. _____

c. _____

d. _____

e. _____

IDENTIFY YOUR INTERESTS

Position _____

Interest _____

Discovering "Interests" _____

Benefits of focusing on Interests instead of positions:

1) _____

2) _____

3) _____

4) _____

POSITION STATEMENT: _____

INTEREST STATEMENT: _____

THE PROBLEM SOLVING PROCESS
Oregon Conciliation Service 1995

- Step 1. Define and Frame the Issue**
- Step 2. Exchange Data and Interests**
 - 2.1 Identify Available Data
 - 2.2 Identify Other data that is needed and how it will be collected
 - 2.3 List the Interests—the concerns and needs that must be addressed when solving this problem
- Step 3 Develop Options**
 - 3.1 Reaffirm Rules for Brainstorming Each Time
 - 3.2 Brainstorm Options
 - 3.3 Clarify, “Banana Split” and Organize Options
- Step 4. Evaluate Options Based on the Interests of the parties**
 - 4.1 Select Option or Options to be Evaluated
 - 4.2 Compare the interests with the Options to Determine Which Options Meet the Interests
- Step 5. Select Solution Based on Mutual Gain by Testing for Consensus**
 - 5.1 What Interest is Not Met
 - 5.2 How Can the Solution be Modified to Meet this interest and Other Interests as well?

- Step 6. Closure—Where you Reach a Solution**
 - 6.1 Tentative Agreement—Write it up
 - 6.2 Contingency Agreement

- Step 7. Where No Solution Reached**
 - 7.1 Set Aside with Understanding of Where the Parties Agree and Disagree
 - 7.2 Determine Next Step, if any—When, How and by Whom

BRAINSTORMING RULES

- 1. Make NO CRITICISM (judging is forbidden)**

- 2. Understand THESE ARE IDEAS (Not offers or proposals)**

- 3. Be FREE-WHEELING (Use imagination, take risks)**

- 4. Go for Quantity**

DEFINITION OF CONSENSUS

A group reaches consensus when all members agree upon a single alternative, and each group member can honestly say:

- 1) _____
- _____
- _____
- 2) _____
- _____
- _____

Nobody just gives in; No one gets all they want; Not always a compromise; but the best solution for us at this time.

GUIDELINES FOR REACHING CONSENSUS

1. Communicate effectively: _____

2. Encourage participation by all: _____

3. Share: _____

4. Open Mind: _____

5. Step by Step: _____

6. Don't vote: _____

7. Meet Interest of both parties: _____

8. Alternatives: _____

9. Re-evaluate: _____

10. Totally committed: _____

PITFALLS

MAKING AND BREAKING INTEREST BASED BARGAINING

To make the process work you must:

1. _____

2. _____

3. _____

4. _____

5. _____

You will break the process if you:

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

TIPS FOR UNBIASED FACILITATION AND RECORDING

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

Sample Issue for Interest Based Practice

Article 14.1 Training for Teachers

Teachers: Among several interests teachers have an interest in getting training and having it paid for.

Board: Among several interests they want teachers to get more training and want teachers to share in the cost of their training.

Apply the Interest based process at your table to come up with a solution. Divide your table into management and labor.

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