

Keeping on Track: Strategies for Dealing with Controversial Public Policy

Successful Negotiating Skills

Part five of six



Resolving public disputes typically requires finding compromise between stakeholders who may have competing positions. Bringing stakeholders to the point of agreement can be a challenging task. Doing so requires exerting interpersonal influence and structuring an environment conducive to agreement. This publication, the first of two publications dealing with the resolution of public disputes, focuses on the interpersonal skills required for successful negotiation. The companion publication, dealing with multiparty dispute resolution, addresses ways to structure an environment where negotiation can be successful.

What is Negotiation?

A city wants to annex a nearby subdivision with known water quality problems that potentially threaten the public water supply. Residents want safe and dependable water, but are concerned about the cost of hooking up to sewer and water services. City officials and residents bargain to determine how connection costs will be shared and homeowner financing will be structured.

This is a relatively common situation in many communities — two groups with related but differing interests, and the need to act. Finding a solution acceptable to both sides is what negotiation is about. Negotiation is part compromise, part new solution, and part mutual agreement. It is a blending of perspectives to come up with an answer acceptable to everyone involved. It involves finding a way each party can win.

The bottom line to finding compromise is structuring an agreement acceptable to all parties. The process of getting there, however, can be difficult. Individuals who help secure such agreements can exhibit considerable skill and understanding of human motivation and behavior. Indeed, seemingly irreconcilable differences can be bridged when the parties sincerely want to do so, and someone can help them find common ground. While few local officials may have inclination to assert themselves as expert negotiators, the skills involved are used in many situations. Understanding a few of the principles employed by professional negotiators may help resolve some of the ordinary conflicts common to local government.

About this Series

Public issues are matters of widespread concern in the community. They are resolved by group decision processes that create local public policy. We often assume the responsibility for resolving public issues is in the domain of government. But as society becomes more complex, and we acknowledge the limits of what government can achieve, we recognize the need for public and private interests to work together. Involving diverse interests in public issues, however, can often heighten local conflict and make the resolution of community issues more difficult.

Keeping on Track, a series of publications for local officials and community leaders, deals with managing controversial public policy. The issues vary, but all too often the problem is the same. Whether it's corporate farming, school bond issues, or new development proposals, communities often get bogged down in controversy, and nothing seems to get done. This series of publications presents strategies local leaders can use to navigate the minefield of controversial public policy so the community can resolve the issue and keep moving forward.

Frequently Asked Questions about Negotiation

When is negotiation needed? Negotiation is frequently used when stakeholders to an issue are willing to mutually resolve differences instead of haggle over competing positions. It is a voluntary process where parties sincerely wish to find a solution.

What skills are needed to negotiate? Various interpersonal communication skills can facilitate a negotiated agreement: listening intently to each party; thinking creatively about alternatives; understanding the back-



ground to the situation; communicating and restating ideas clearly; being diplomatic, yet assertive.

What is the value of a formal negotiation process?

It renders a solution that the people most interested in an issue will commit to willingly.

What's the difference between negotiating and old fashioned "horse trading"? Horse trading is a win-lose proposition where one party tries to make the best deal possible without particular regard for the other parties. Negotiation focuses on maximizing benefit to all parties. Negotiation seeks to solve problems, not engage in a competition.

Isn't competition impossible to avoid? Of course, everyone tries to maximize their own benefit in negotiation. In the negotiation process, however, there is the explicit recognition that other parties also have a right to benefit.

A Foundation and Building Blocks for Negotiating

Trust is a significant factor to successful negotiation. A sense of trust determines how much risk individuals are willing to take with one another. Trust is built over time, based on the reputation an individual or group. Once lost, trust is difficult to regain. Being reliable, making intentions clear, and following through on commitments are more important to reaching agreement than whether groups agree with one another's positions. This sense of trust become the foundation for the willingness to enter into a collaborative process.

The negotiation process is as important as the outcomes achieved. How an agreement was accomplished will be remembered by participants long after the agreement. Whether people feel good about the outcome will depend on their perceptions of how meetings were conducted, if trust was established, if interests were combined, and how individuals were made to feel respected, involved, and heard. Thus, attention to the process is critical to successful negotiation.

Negotiation facilitators and participants can do a number of things to enhance the process and make a solution more likely. They can:

- **be conscious** of the difference between a person's interest, or the general goals being sought, and a person's position, or their stated solution;
- **be creative** in seeking solutions, as one idea may stimulate others;
- **be fair** in conducting the process, conceding points or seeking external corroboration of information when needed;

- **be prepared** before committing to an agreement;
- **be an active listener**, focusing on the meaning of others' words;
- **be aware** of the relative priorities of relationships between participants; and
- **be clear** about the alternatives to a negotiated agreement as the option that might be improved through negotiation.

Know Your Negotiating Stance and When to Change

A negotiating stance is the approach or style to be taken in the negotiating process. Choice of the negotiating stance is frequently determined by the desired outcome, whether it is compromise, win-at-all-costs, or forging solutions to maximize all participants' benefits. Each stance has strengths. It may be appropriate to use different stances in different situations, or even to change as the negotiation proceeds. When stakeholders have vastly different stances, a mediator may be needed. Following are several common negotiating stances.

Collaboration: Everyone involved is an equal participant, and the focus is on maximizing everyone's benefit. This approach typically requires a good deal of time and effort, but the outcomes are usually durable, given that all participants had at least some of their interests incorporated into the outcome. Collaboration is used when participants have a mutual respect for one another, and the desire is to maintain amicable long-term relationships.

Compromise: Participants in a compromise situation remain equal, but it is expected that everyone will have to give up some aspects of their desired outcomes. Compromise usually achieves a temporary solution and avoids long-term damage to relationships. A compromise can be achieved without a prolonged process. Here, we make note of the important distinction between compromise of one's principles versus compromise on a choice or a course of action.

Competition: While everyone remains an equal participant in the process, the emphasis here is to maximize individual gain without concern for the collective whole. Some may come out winners and others losers. Competition is frequently used when basic rights are at stake or where precedents are to be set. The emphasis is on winning.

Accommodation: Participants in an accommodating situation are no longer equal. Some participants may have a greater stake in the issue, leading to some sort of concession. A concession can be viewed as goodwill or a sign of

weakness if used too frequently. It can also indicate a lack of interest or preparedness related to an issue.

Avoidance: When an issue is of little concern to some parties or other issues are more pressing, the situation may be avoided entirely. This usually leads to a “lose-lose” outcome or decisions by default. Conversely, avoidance can be used to gain time to obtain needed information or diffuse tensions at times when little constructive discussion is likely to occur. In this case, setting a time and date to resume discussions can be helpful.

Strategies of Successful Negotiators

A negotiation process usually follows this general format. All parties:

- share their interests and positions;
- brainstorm ideas for potential solutions;
- evaluate the ideas in the context of the broadest range of interests;
- discuss the ideas and trade aspects of the positions in order to make the idea work;
- state a solution;
- evaluate the solution for feasibility, legality, cost and practicality;
- use a decision-making process, such as voting or consensus, to come to agreement on the solution;
- return to the discussion if the solution is not accepted;
- put the solution in writing and sign it, once it is found; and
- prepare for implementation.

The process sounds straightforward enough, but getting to the solution can be a challenge. The objective of each participant is to get as much of their position accepted as possible. So how do good negotiators do it? Following are some of the ideas negotiators use when bargaining a position. Good facilitators of a negotiation also will be aware of these techniques and actually encourage them to get closer to agreement.

Be sincere, upbeat, enthusiastic.

Give the impression from the start that this is a welcome opportunity to work together as collaborators in resolving an important issue, not as adversaries. Exude confidence that a solution will be found.

Look for corollary advantages as the process progresses.

As the interests of various participants are more fully examined, unexpected advantages to your position

are likely to emerge. Be aware of this possibility and be prepared to reconsider a position, calling “time out” if necessary to more fully evaluate developments or to communicate with outside partners.

In discussion, push for certain interests that you may be willing to concede later.

Creating “expendables” provides more room for bargaining. This is not unethical or underhanded, only part of the bargaining process. Only you need to know it is something you may later give up or its relative importance to your overall position.

Be willing to engage in trading.

When asked for a concession, routinely ask for one in return. This can have multiple beneficial effects. It can improve your overall position in getting your interests met. The concession you are giving increases in importance. If it wasn’t important why would you ask for something in return? Finally, it shows that you take trading seriously.

Don’t diminish your interests by selling short.

Assert to the other participants that there are many advantages to accepting your perspective on the issue. All of the potential advantages you offer can be treated as bargaining chips to be asserted at the right time. The right time is that point when the chip can have greatest effect in turning the discussion back to the place you want it to be. Far from manipulative, it is smart negotiation.

Before an agreement is concluded, it is common to get concessions or add to your interests as the negotiations progress, even if these were items initially rejected.

Don’t be afraid to suggest that certain issues be revisited. Connect the suggestion to something more you can bring into the discussion. Be willing to relent, but don’t be afraid to push a bit. Seeking “add-backs” is common and frequently successful.

Be careful about agreeing to the first proposal on the table.

Experienced negotiators will often send up a “trial balloon” to get a sense of the other participants. It helps them to assess how others are likely to react to future proposals. A good negotiator will use this information to gauge what others are willing to buy into, where there was hesitation, or where others’ sticking points lie. This helps them to craft more serious proposals later and provides

crucial information about timing. By agreeing too quickly, others' suspicions will be aroused or they will assume they should have held out for more.

Be aware of, and use body language effectively.

Visual expression is one of the most powerful means of communication. When a proposal is made or a concession suggested, react visually to reinforce your stance. Without being theatrical or condescending, a raised eyebrow, a small gasp, or a slap of your cheek can communicate much more than words. Don't roll your eyes; that would be a condescending gesture. Shaking or a nodding your head, leaning forward to listen, or asking for clarification shows your interest and involvement. These types of gestures can convey an image of involvement, concern, and empathy, all of which will make others more favorably disposed to your views.

Be aware of your own vulnerabilities.

Don't make decisions when tired, preoccupied, hurried, or if you don't fully understand all implications. Having to come back later is better than committing to something out of haste or fatigue. Reneging on an agreement will be much worse than slowing the flow of the process.

Have a last-minute concession prepared in the event the process stalls as it nears completion because of the other party's need to save face.

Sometimes the discussion can reach an impasse because one party realizes their preferred outcome is not going to happen. Sometimes pride or embarrassment gets in the way when a person realizes he or she has to concede. These are natural emotions, and a good negotiator can overcome this by having a concession ready. Even a small concession can break the impasse and get the discussion moving forward. The timing of the concession is key. At the point of heightened tension or pending collapse, even a small concession will appear to be a major breakthrough.

Know your best and worst alternative solutions well enough to know when it is time to leave the negotiating table.

There may be a point where your interests are not being met. Participation in negotiation is voluntary, and nothing prevents a person from walking away. In fact, the gesture of leaving can cause others to rethink their positions. Do not do this as an empty gesture. Do so because

your interests are not being met, and let the others know. For greatest effect, this should be done matter-of-factly and not in a fit of anger.

Once an agreement is reached, get it in writing, making it a document that all involved will sign.

An agreement may be made in theory, but until it is in writing and signed by all parties it is not final. A signature indicates a commitment to implement a solution, or at least not stand in the way. Any required follow-up or other future discussions also should be part of the agreement.

Do not make a commitment to begin or implement a solution until the agreement has been signed.

Only a signed agreement, specifying the final solution and the responsibilities of all parties, is a mandate for action.

Decision-Making by Consensus

Many people talk about achieving consensus in decision-making, but few actually understand what it entails. Theoretically easy to understand, it is one of the more difficult decision-making processes. Yet, it is frequently held as the ideal decision-making process in negotiation. While a majority-rule vote may be simpler, consensus is intended to achieve a true win-win outcome.

Using consensus, decisions are made only when everyone in the group agrees to a particular solution. Nothing is considered resolved unless everyone agrees to abide by the solution. Unlike voting, there are no losers or splinter factions. While some will be more enthused by the outcome than others, everyone signs on to the outcome. This makes for the most durable of agreements and builds long-term relationships in the community. A consensus decision-making process involves a number of steps:

- Stakeholders agree to use consensus when it is time to select a solution.
- The problem and various solutions have already been discussed and analyzed.
- Each of the stakeholders needs to voice an individual view regarding a potential solution openly and thoroughly.
- The solutions are then presented to the group, and every member either affirms or denies each alternative by voice or ballot.
- The solution that wins unanimous approval is the choice of the group. To ensure it is the preferred

outcome, the solution is restated, and each member of the group again affirms or dissents.

- Finally, if there is a lack of consensus, discussion starts anew. Periodic restatements are helpful to clarify points of disagreement.

Before the group decides to use a consensus process, members should consider what will happen if there is no universal agreement to an outcome. When a group is not likely to achieve consensus, an alternative plan of action should be ready. Some options include:

- Dissenters will agree to sit out a round of voting. Determine at the start whether dissenters will be bound by the decision of the majority.
- Those dissenting may leave the negotiation entirely. This can throw the entire negotiation off-track and should be avoided, if possible.
- If most people voice disagreement, it is best to start over rather than continue with rounds of voting without reaching agreement.
- If, after several rounds of unsuccessful voting and no one is willing to sit out, it is time to table the discussion of a specific proposal and return to a general discussion of possible solutions.

Strategies to Break an Impasse

In the event an impasse develops in the negotiation process, a number of strategies may still be available.

- Make the solution temporary if it is agreed to by all but one or two dissenters. Implement the solution for a fixed period of time, and agree to reconvene for further assessment and negotiation.
- Divide the stakeholders into subcommittees to work on the issue and devise new solutions. Those disagreeing with the majority should be split among the work groups.
- Take time to have everyone articulate their views on the solution and express why they support or reject it. Everyone listens without comment or discussion. After everyone has had an opportunity to speak, another vote is taken.
- Anticipate the potential for an impasse at the start. Decide if, after all else has been tried, a vote of a two-thirds majority will be sufficient for implementation.

When is Outside Mediation Likely to be Needed?

Mediation is a confidential problem-solving process in which stakeholders meet with a neutral third party who helps guide the process to resolution. It is advised when groups reach an impasse. Mediation revisits the entire decision-making process while also trying to repair relationships that may have been damaged because of the impasse. The mediator is usually a trained professional who has expertise in using structured problem-solving techniques and the skill to communicate effectively with disputing parties. The role of the mediator is not to broker a solution, but to assist parties in achieving their own solution. While a mediator may suggest ideas, the decision is always in the hands of the parties to negotiation.

A number of situations may indicate the need for an outside mediator:

- when strategies for bargaining are conflict-based rather than collaborative;
- when there is a history of past conflict that remains unresolved;
- when mistrust between parties prevails;
- when the number of parties to the negotiation or the number of issues to be resolved makes the focus vague, the discussions circular, and no movement forward seems possible;
- when the parties need assistance in clarifying their positions, as might be the case when individuals are representing large constituent groups;
- when the need to maintain positive relationships is important for future work; and
- when the issues being discussed are sensitive, emotionally volatile, or politically charged.

Conclusions

A key element to the resolution of a public issue is the ability to find compromise between competing interests. In this publication, ideas about how to successfully negotiate a compromise between competing interests were presented.

In addition to the ability to resolve conflict, other elements to resolving public controversies include demonstrating leadership capacity and the ability to effectively communicate. These topics are included in the other editions of this series.

This is one in a series of publications dealing with the issue of managing controversial public policy. The entire series includes:

- Leadership in the Public Arena
- Informing the Public Debate: Public Education Strategies
- Meaningful Input to Public Policy: Citizen Participation Strategies
- The Public Relations of Public Policy
- Successful Negotiating Skills
- Resolving Multiparty Disputes

Individually or together, these resources are intended to help local officials and others develop greater leadership capacity.

John Leatherman

Assistant Professor

*Department of Agricultural Economics
Kansas State University*

Marlene Howell

Former Research Assistant

*Office of Local Government
Kansas State University*

The Office of Local Government is a unit of K-State Research and Extension, housed in the Department of Agricultural Economics at Kansas State University. The Office of Local Government provides educational outreach, technical assistance, and applied research services to Kansas local governments in areas related to community and economic development, local public finance and public service provision, and environmental and natural resources management. Dr. John Leatherman, director of the Office of Local Government, can be reached at 785-532-2643 or olg@agecon.ksu.edu

Publications from Kansas State University are available on the World Wide Web at: www.oznet.ksu.edu

Contents of this publication may be freely reproduced for educational purposes. All other rights reserved. In each case, credit John Leatherman and Marlene Howell, *Successful Negotiating Skills*, Kansas State University, November 2000.

Kansas State University Agricultural Experiment Station and Cooperative Extension Service

MF-2495

November 2000

It is the policy of Kansas State University Agricultural Experiment Station and Cooperative Extension Service that all persons shall have equal opportunity and access to its educational programs, services, activities, and materials without regard to race, color, religion, national origin, sex, age or disability. Kansas State University is an equal opportunity organization. Issued in furtherance of Cooperative Extension Work, Acts of May 8 and June 30, 1914, as amended. Kansas State University, County Extension Councils, Extension Districts, and United States Department of Agriculture Cooperating, Marc A. Johnson, Director.