

Effective Contract Negotiation through Persuasion

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1. Introduction

The objective of this paper is to present a topic on Effective Contract Negotiation. The research objective is to attempt to identify the way in successfully negotiate contracts, deals and disputes while maintaining good relationships with the other party and their advisers. Also a variety of effective negotiating skills and styles coupled with a detailed analysis of negotiating techniques.

1.1. Definitions

Contract: Effective contract negotiation is at the heart of commercial success. The art of Contract negotiation is just as important for the support team as it is for the up-front negotiator.

A contract is an agreement between two or more competent parties in which an offer is made and accepted, and each party benefits. The agreement can be formal, informal, written, oral or just plainly understood. Some contracts are required to be in writing in order to be enforced.

A contract is also an agreement between two or more parties which creates obligations to do or not do the specific things that are the subject of that agreement. Simple examples of a contract are a lease, a promissory note, or a rental agreement
Negotiation: Negotiation to confer with another or others in order to come to terms or reach an agreement, to arrange or settle by discussion and mutual agreement

2. Literature on Communication and Persuasion

Persuasion is approach started with ancient Greek Philosophers such as Aristotle (McGuire, 1969). Persuasion is a time consuming effort where symbols are used, and include the active involvement of the receiver of the message where people try to convince each other to change their behavior regarding an issue through the transmission of a message (Perloff, 2003). To practice persuasion, we must understand that other people have desires and beliefs, a mental state that is vulnerable to change, and has a different perspective than they do (Perloff, 2003). People's commitment to an idea develops with understanding (Calfee & Ringold, 1994).

2.1. Effects of Persuasion

Communications exert three different persuasive effects (Thompson, 1999):

- Shaping: Attitudes are shaped by correlating pleasurable environments with a person, or idea.
- Reinforcing: Persuasive communications are designed to reinforce a position they already hold.
- Changing: Communications change attitudes. (Thompson, 1999).

People may of the messages more when they are sad state rather than a happy because sadness signals a problem to be solved (Schwarz, Bless, & Bohner, 1991) or because it conveys a sense of uncertainty (Tiedens & Linton, 2001). When the effect of emotion is low, an experienced emotion can bias thoughts about an object (Petty et al., 1993) resulting in positive consequences when people are in a happy state (Desteno, Petty, Wegener & Rucker, 2000, Petty, Fabrigar, & Wegener, 2003). Many variables bias thinking such as own accessible attitudes (Fazio & Williams, 1986), emotions (Petty et al., 1993), the credibility of the source (Chaiken & Maheswaran, 1994), when people are interested and the message (Asch, 1948).

Tips for a message to be more effective:

- Is recognized as authority by others.
- Recommends that a benefit offered is uncommon.
- Submits that a benefit has a deadline.
- Is consistent with past behavior or expectations of the audience.
- Appeals to the receiver target group.
- Uses reciprocity by signifying that the sender facilitated in the past and now needs some help in return Chaiken & Maheswaran, 1994).

2.2. Memory and Retention of Information

In the decision making process Information retention and memory long enough is essential. The attempt is to persuade the receiver to activate long-term memory through association of new information with information already deposited in the long-term memory, and the store of the new information will be facilitated and repetition of the information by reference, to be relocated to long-term storage space. Reference memory is part of the long-term memory and is all of the unchanging images and facts learned and committed Eagly & Chaiken, 1975).

Subjects that follow ones pre-existing beliefs or experience can convert part of his long-term memory subjects that are new or conflict with a people's pre-existing experience.

2.3. Persuasion and Negotiator

The negotiator may have no predetermined ideas about the subject or may have dissimilar ideas or attitudes about it (Giffen & Ehrlich, 1963). The consequence of presentation of a new or different idea is for the negotiator to feel temporary pressure that produces disagreement, conflict or inappropriateness and have them motivated to attempt to eliminate the disagreement by (1) accepting the new idea willingly, (2) rejecting it, or (3) integrating it with previously held ideas and attitudes (Hogg et al., 1993).

Sometimes persuasion is a challenge to pass new ideas or attitudes are in antagonism or some modification is required to a people's previously beliefs (Cialdini, 1993). The best opportunity when faced with a pre-existing attitude is to find a way to resolve that attitude with the new idea that people wants the audience to accept. The main work is to have an audience research, specially designed to identify the pre-existing attitudes and discover ways to manage acceptance of the message (Byrne, 1971).

2.3.1. Fondness

People carelessly tend to agree those they are fond of (Burgoon et al., 2002). Being fond of others is the emotional link that an individual may feel toward another person (Smith et al., 2005). Liked senders are more effective stimulus mediators than others (Sampson & Insko, 1964).

Being fond of others is considered to be a persuasion tactic of self-presentation stressed (Kenrick et al., 2002). Heightened feeling of being fond of others for the sender is escorted by boosted conclusions of the communicator's fidelity (O' Keefe, 2002). Further to that, similarity to us increases the ability to e fond of someone (Carli et al., 1991).

2.4. The Negotiator Expertise, Credibility and Authority

The dimensions of credibility are comprised of the elements of trustworthiness and expertise (Fogg 2003; O'Keefe, 2002;). The expertise of the message sender can serve as a simple signal when the likelihood of thinking is low (Petty, Cacioppo, & Goldman, 1981), can bias the nature of the thoughts (Chaiken & Maheeswaran, 1994) when the likelihood of thinking is high, and can affect the extent of thinking when thinking is unconstrained (De Bono & Harnish, 1988).

People assume that others who exhibit symbols of authority should be listened to (Rhoads & Cialdini, 2002), since it is linked to credibility and persuasiveness (Fogg, 2003).

Aristotle developed the modes of audience persuasion as ethos (credibility), logos (logical appeals of the speaker), and pathos (emotional appeals) (Fogg, Lee and Marshall, 2002).

Aristotle said that ethos contained three assessments of the speaker by the audience.

- Competence: The speaker knows what they are talking about and has good sense?
- Character: The speaker is reliable, honest and did they have good character?
- Caring: The speaker has the audience's good in mind and has goodwill toward the audience?

It is of great significant to understand that the sender credibility attributed to the source not to the content is deteriorated as time passes, and the message is weakened as the message source is forgotten and distanced from the message (Rhoads & Cialdini, 2002).

People tend to like others who exhibit signs of similarity because it is reinforcing to their own self-concept and helps them to predict and understand similar others (Heider, 1958), and similarity is the determinants of liking (Michener et al., 2004).

People accept messages from credible and pleasant senders (O'Keefe, 2002) and a more credible sender is more preferred and persuasive (Kelman, 1961; Anderson & Clevenger, 1963). The sender credibility is positively correlated with message recipients' attitude and behavioral intentions and behaviors (Senecal & Nantel, 2004).

Only a credible sender can change when supporting an idea that is different from the pre-existing attitude held by the receiver. The more issue-relevant cognitive activity that goes into an attitude change, the more durable the new attitude is and the more impact it has on other judgments and behaviors (Petty, Haugtvedt, & Smith, 1995).

3. Preparation for Negotiations

Before the actual contract negotiations begin, make sure the following items are reviewed and confirmed:

- Determine If You Will Need Legal Counsel: Negotiating a contract for one year services in a small office is vastly different than negotiating a contract to outsource a fairly large call center. If you feel the least bit uncomfortable reviewing contract "legalese", do not hesitate to retain a lawyer specializing in contract negotiations.
- On-Site or Teleconference: Agree upon where the negotiation session(s) will take place. If you think you have the upper-hand by negotiating at the vendor's site, then propose up front that you will travel to them. If the distance is too far to travel cost effectively, set up a teleconference to accomplish the negotiation session. Make sure it is a video conference because body language speaks louder than words.
- Make Sure the Person Representing the Vendor Has Authority to Negotiate: Before your people travel to the vendor's site or the vendor travels to your site,

make sure the person/people representing the vendor have the authority to negotiate on behalf of the vendor's company. It would be a huge waste of time to hear at the end of a long negotiation session "Well, let me get back to you after I hear what my boss has to say about this."

3.1. Objectives of Contract Negotiations

The following contract negotiation objectives can be used to evaluate the contract on each of the following items:

1. Explain clearly all essential prerequisites, terms and conditions
2. Goods or services to be provided are unquestionably defined
3. Compensation is clearly stated: Total cost, payment schedule, financing terms
4. Acknowledgement of: Effective dates, completion/termination dates, renewal dates
5. Identify and address potential risks and liabilities
6. Define and set reasonable expectations for this relationship currently and into the future

3.2. Strategies for Planning Contract Negotiations

- **List Rank Your Priorities Along With Alternatives:** As you develop your contract negotiation strategy, you may keep returning to this area to add additional items. You will not be able to negotiate effectively all areas of the contract at once. You want to be sure that what is most important to you is discussed and agreed upon before you move to less important items. In addition, you may want to refer to the least important items if you have to give up something to get your top items.
- **Know the Difference between What You Need and What You Want:** Review your priorities frequently throughout the contract negotiations planning process and one final time at the end. Be sure to ask the hard questions: "Is this really a priority for our company, or is it a 'nice to have'?" "Was this priority a result of some internal political jockeying, or is it for real?"
- **Know Your Bottom Line So You Know When to Walk away** is there a cost or hourly fee that your company cannot exceed? Have you come to realize that one or two of the top priorities are truly non-negotiable and you will be better to walk-away from this contract if the vendor does not agree to it? List these along with the rationale so they are not forgotten.
- **Define Any Time Constraints and Benchmarks:** in any substantial project you will want to set performance measurement standards that you will expect from your vendor. If these are essential to your business, then you will want to negotiate a fair and equitable penalty when they are not met. For example: project completion dates, delivery date for first batch of parts, start date for the service, lead times, etc.

- **Assess Potential Liabilities and Risks:** what is the potential for something to go wrong? What if unforeseen costs are encountered? Who will be responsible if government regulations are violated? Whose insurance will cover contract workers? These are just a few of the more common questions that must be addressed in any contract.
- **Confidentiality, non-compete, dispute resolution, changes in requirements** these are other items that could be a potential negotiation stumbling block or deal closer. For example, if the vendor (or an employee) has the possibility of being exposed to confidential information, you will want to be sure a confidentiality clause is put into the contract with the liability assumed by the vendor.
- **Do the Same for Your Vendor:** Now that you have completed the contract negotiations planning process for your business, repeat the same process as if you were the vendor. What area do you think is most important for them? What risks or liabilities will they want you to assume? Your list won't be perfect, but it will succeed in putting you into a frame of mind to look at things from their perspective. This is how great partnerships between client and vendors are built.

3.3. Contract Negotiation Pitfalls

- **The smallest mistake can kill an otherwise productive contract negotiation process.** Avoid these contract negotiation mistakes so that you and your vendor will come to an agreement that will benefit both parties.
- **Thinking The Yard is Fenced In:** Don't assume that only a certain subset of resources or conditions can be negotiated. The sky is the limit and finding creative and original alternatives that can benefit both parties will result in a better negotiated contract. Do not propose ridiculous or insulting alternatives that will destroy your sincerity and integrity.
- **Failure to Study Your Opponent:** Too many people approach contract negotiation process with the "It's all about me!" mentality. They fail to research the vendor that they will be negotiating with. They don't understand the vendor's market and what other influences control their environment. The larger the contract, the more time you should spend on this.
- **It's All About Price:** Of course nobody wants to pay too much for their goods and services, but there is a lot more on the table than just money. Look for alternatives that are high on your priority list and low on the vendors. Then you both win.
- **Jumping Too Quick:** No matter how low the opening price is, offer lower or ask for something more. If you jump too quickly at the first offer, the vendor will feel like they made a stupid mistake. You want the vendor to leave the negotiation table feeling good.

- **Don't Gloat:** When you do end up striking a fantastic deal in your favor, don't embarrass the vendor by saying something that will give you an ego-trip at his/her expense. Not only is this unprofessional, but the vendor may then look for loop-holes in the contract to regain some money and pride.
- **Terminology Not Defined or Understood:** Don't assume that everyone who will read the contract will understand every technical term or complicated provision. Insist that every area of the contract that has the possibility of being misunderstood is clearly defined.
- **Inconsistencies within the Contract:** Look for inconsistencies within the contract that can come back to haunt you in some form of arbitration. If necessary, have a third party review the contract in order to uncover any inconsistencies.
- **Concern in One Area Will be overridden by Another Area:** Do not assume that a perceived weakness or apprehension in one area of the contract can be compensated by strength in another area. Be specific and direct in all areas. Once the contract is contested in a court of law, all control is removed from your hands.
- **Avoid Redundancies:** Stating the same thing twice in different section of the contract will not reinforce their value. In most instances lawyers and the courts will come up with a reason to differentiate and justify both areas; usually with an interpretation that neither party anticipated.

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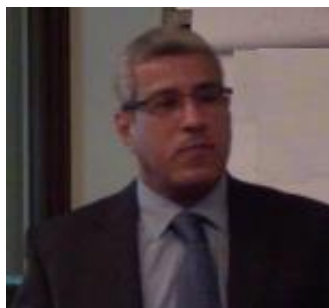
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