

## CHAPTER 11

### *Negotiations*

#### INTRODUCTION

No more than becoming skilled in any other activity, negotiation in an industrial relations context requires study and practice. A common myth is the assertion that negotiation cannot be learned. Even an introduction can provide substantial benefits for industrial relations practitioners engaged in negotiations. Students and practitioners who fail to acquaint themselves with the basic elements of negotiation theory risk placing themselves at a substantial disadvantage in the negotiation process. Naturally, exposure to one chapter in a single text is insufficient to make someone a skilled negotiator – but even a basic understanding can significantly improve performance. One of the difficulties of modern negotiations textbooks is the fact that it can be a challenge to assimilate and apply the exhaustive prescriptions contained in them. A short review has its own merits in that it can simplify and highlight key points.

#### NEGOTIATION: CONCEPTS AND THEORY

Kennedy (1998: 11) defines negotiation as ‘the process by which we search for the terms to obtain what we want from somebody who wants something from us’. The advantage of this definition is that it emphasises that negotiation is fundamentally an act of ‘exchange’, which is reached by a process of ‘searching’. Thus, it is not essentially about persuasion or communication (although these are part of the process). Emphasising the exchange aspect of negotiation also draws attention to the idea that it requires movement: a negotiator can only attain some or all of *their* needs by being prepared to take into account some or all of the *other* party’s needs. If this were not the case (i.e. if a negotiator could achieve their needs without taking account of the other party), there would be no need to negotiate. Since negotiation is a searching process, an ability to uncover the other party’s needs is an essential part of the skilled negotiator’s repertoire. Unskilled negotiators tend to focus excessively (and sometimes even exclusively) on their *own* needs and are less skilled at discovering the needs of the other party.

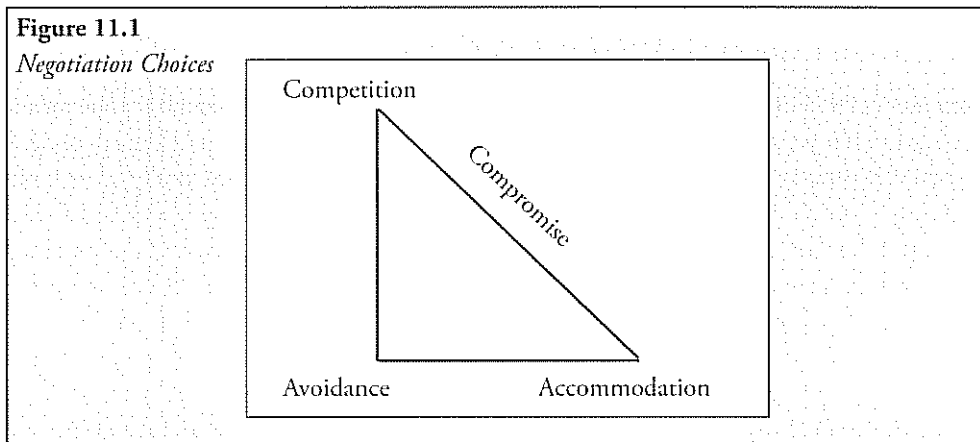
#### STRATEGIC CHOICE

Parties can pursue a number of strategic options in any negotiation. These options are often discussed under the heading of negotiation styles – but they can also be understood as choices that have to be made (Figure 11.1). Parties can choose to either negotiate or not negotiate (engage in *avoidance* behaviour). If they choose to negotiate, they can then choose a number of options. They can *accommodate*, which implies giving priority to the other party’s outcomes; they can *compete*, which means seeking to maximise their

own outcome; they can try to *collaborate*, which involves an attempt to simultaneously meet both parties' needs; or they can *compromise*. Compromise arises when each side is concerned about their own outcomes but neither side can achieve those ends without conceding to the other party some of what they would like to have. It should be noted that the above approaches represent extreme choices. Thus, negotiation can be approached with a greater or lesser degree of avoidance, accommodation, competition, collaboration or compromise.

### Negotiation Choices

It is not uncommon for parties to adopt an approach by default and without conscious thought. This has the potential to be a serious mistake. Using a compromise strategy in a potential win-win (mutual gains) situation will 'leave value on the table'. A party that uses an accommodation approach when the outcomes are important to them will end up dissatisfied. For instance, a company that is in financial difficulty and avoids addressing this issue by conceding a too-high wage increase may further damage the company and cause the loss of employment. A union official who concedes to a company without adequately attempting to meet members' needs runs the risk of the union losing the support of its members and seeing members transfer to another union.



### Avoidance

From a rational point of view, it is not always correct to negotiate. Entering into a negotiation process is justified when:

- we need something from someone or need someone's consent;
- the time and effort of negotiating are justified by the potential outcome; and
- the outcome is uncertain.

In certain industrial relations situations, the favoured option may be unilateral action. Ryanair has consistently refused to negotiate with trade unions and has been able to maintain that situation. Nowadays, this unitarist approach to management has been adopted by many other employers in Ireland. Equally for employees, refusal to undertake an order that has safety implications may be preferable to entering into negotiations.

The standard industrial relations prescription is to 'work under protest', but if this were to expose an employee to potential injury or loss of life, the risk may be considered too high. The existence of latent conflict is also indicative of an avoidance approach on the part of employees.

### Accommodation

Accommodation is indicated when a party is more concerned about the other party's outcomes than its own. An accommodation approach was widely used by employers during Ireland's appearance in the World Cup in 2002. Production stopped in many companies and widespread arrangements were made for employees to watch games. The employers placed the 'relationship' aspect ahead of their legal entitlements under contract law to insist on 'performance'. It could be said that all negotiations involve the balancing of a range of factors, with relationships being particularly important in those interactions that are not 'one-off', e.g. employment relations situations. Sebenius (2001) calls attention to the error of focusing solely on price in negotiations to the exclusion of intangibles such as relationships. He suggests that 'most deals are 50 per cent emotion and 50 per cent economics' (Sebenius 2001: 89). This does not mean that negotiators can neglect the *hard* elements of negotiation such as price; rather, focusing solely on price is seldom sufficient in any complex negotiation, as is typical in industrial relations.

**Table 11.1**

*Case Study*

*The 'Logic' of Accommodation*

One party is given €100 to divide with another party as he/she likes; the second party can agree or disagree to any proposed arrangement. If the second party agrees, the €100 is divided in line with the first party's proposal; if not accepted, neither party gets anything.

Price logic would suggest that the first party should propose something like '€99 for me and €1 for you'. Although this is an extreme allocation, it still represents a position in which the second party gets something rather than nothing. Pure price negotiators confidently predict the other side will agree to the split. In laboratory experiments, however, most players turn down proposals that don't let them share in at least 35–40 per cent of the €100. This also holds true in laboratory-based experiments even when much larger stakes are involved and the amount forfeited is significant. While these rejections are 'irrational' on a pure price basis, studies show that when people feel a split is too unequal, they reject the offer as unfair, are offended by the process and perhaps try to teach the 'greedy' person a lesson.

If the first party is to get anything, they have to 'accommodate' to the second party with an offer well above that suggested by pure price-based logic.

*Source:* Adapted from Sebenius (2001)

### Competition

Competitive bargaining is referred to as 'controlling' or 'power-centred' bargaining (Hiltrop and Udall 1995; Lewicki *et al.* 2010). Thus, the parties try to rely on their power position and to control the negotiation process and outcomes rather than solve problems.

A competing strategy may typically be encountered when a party has high concerns about their own outcomes and the other party has high concerns about theirs. This is often the case over items such as pay, hours of work, pensions and other such *substantive* aspects of industrial relations negotiations. Competition is characteristic of distributive bargaining, but an excessively competitive approach may prove counterproductive.

### Collaboration

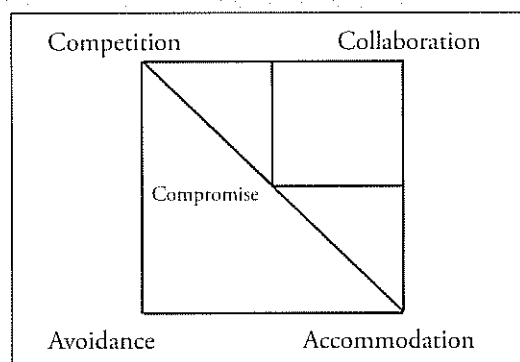
A collaboration strategy is indicated when mutual gains can potentially be generated. In this approach, both sides try to assist each other in gaining each other's desired outcome. A traditional aspect of collaborative bargaining can be seen in the productivity agreements of the 1960s and 1970s. A collaborative strategy is associated with a problem-solving approach. This is essential, since mutual gains are not always obvious and it may require considerable ingenuity to generate or discover them.

### Compromise

Compromise involves the division of a resource. It is a distributive approach and involves 'cutting up the pie'. Sometimes practitioners may comment after a negotiation that it was a 'win-win outcome: we both compromised'. This is a misunderstanding because compromise negotiations involve a win-lose outcome: what one party gains, the other loses. Indeed, negotiators may have a preference for using compromise when dealing with the substantive elements of the employment relationship, e.g. pay.

In summary, it is important to stress that no single approach to negotiation is correct. Students who are new to negotiation theory tend to suggest that collaboration is superior, but that is not necessarily the case. Paradoxically, while espousing their attachment to collaboration, new negotiators find collaboration very difficult to *implement* in practice. However, if resources are fixed, collaboration may involve a long and costly search for a non-existent solution. Avoidance may be a preferred approach if an item is unimportant or if one's power position is such that the involvement of the other party is unnecessary

**Figure 11.2**  
*Negotiation Choices Expanded*



to reach one's desired outcome. Compromise may also be used where mutual gains do not exist or in the division of gains that have been generated.

### NEGOTIATIONS AND TRUST

Commentators frequently ascribe difficulties in industrial relations negotiations to a breakdown of trust. However, the issue of trust is not clear cut. It is simply incorrect to suggest that it is not possible to negotiate with a party one does not trust. People often have to negotiate with people they do not trust. Police officers regularly negotiate with criminals who it would be difficult (if not impossible) to trust. The presence of a high level of trust may facilitate integrative negotiations. However, Fisher *et al.* (1997) suggest that it is a mistake to either trust or not trust another party in a negotiation. They offer negotiators a way out of the trust dilemma by suggesting that negotiators should 'proceed independent of trust'. Thus, a party can take account of the revealed behaviour of the other party or objective protection can be built into any proposed agreement. Such measures are common, e.g. a warranty on a second-hand car is a practical example of objective protection.

**Table 11.2**

*Case Study\**

*To Trust or Not to Trust?*

TEX Engineering employs 500 employees, but due to competition it is forced to lay off 250 employees. A negotiating meeting is arranged at which the HR director announces to the union representing the workers that she wants to handle this in a constructive way and get away from the adversarial highball/lowball approach. She says the company wishes to deal with its employees in a fair way but there is a limit to what they will pay. Instead of starting low, then haggling and eventually going to the Labour Court, she is prepared to tell the union what is on offer. Pointing to her briefcase she says there is one-and-a-half weeks' pay per year of service 'in the bag' in addition to statutory redundancy entitlements. She says that the union can take this or drag negotiations out and go to the Labour Court, but 'that is all there is'. The HR director has a reputation for being a tough but honest negotiator.

*Discussion Point*

1. What kinds of issues should the union consider in evaluating the offer on the table?

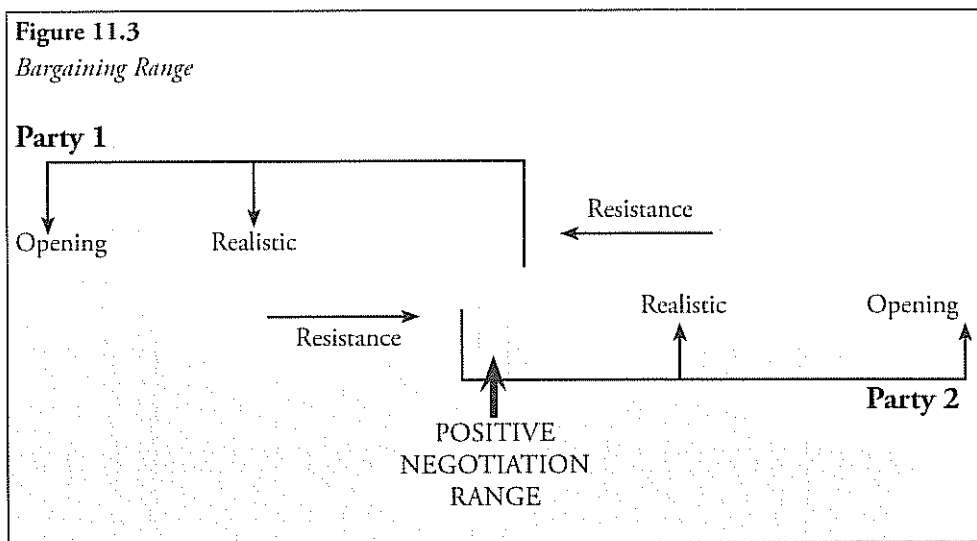
*\*This case study can be used for analysis, discussion or role-play negotiation. Guidelines for using the case study are available for lecturers on the Gill & Macmillan website ([www.gillmacmillan.ie](http://www.gillmacmillan.ie)).*

### TYPES OF BARGAINING

#### Distributive Bargaining

Distributive bargaining involves dividing up resources or issues and it is largely based on power. The difference between the opening positions of both parties sets the bargaining range. It is conventional for parties to have identified their opening position and intermediate position(s) – or realistic positions – to which they are prepared to move during a negotiation. If these positions prove insufficient to gain agreement, then they

will have a fallback. A fallback is the least favourable offer they will accept from the other side in order to avoid breakdown and referral to a third party (Figure 11.3). Skilled negotiation should ensure a settlement if, *at a minimum*, the fallback positions of the parties overlap. If they do not overlap, then non-agreement will be the outcome – even with skilled negotiation. Fallback positions are best set with reference to the alternative available to a negotiator. Of course, parties may be unrealistic in setting a fallback position. It may be set too high (on the employee side) or too low (on the management side). Fallback positions established at the commencement of negotiations need to be kept under review in light of new information discovered during negotiations.



The main objective of a negotiator in a distributive situation is to maximise the 'negotiator's surplus', i.e. the portion of the overlap between the two parties. The negotiator's surplus is the difference between the fallback position (sometimes called the resistance point) of parties 1 and 2 in Figure 11.3. The incentive to maximise the negotiator's surplus contains within it the potential to derail a negotiation. In attempting to maximise the negotiator's surplus, there is a strong temptation for negotiators to deploy hardball tactics. However, such tactics may make settlement more difficult, if the other party responds in kind and relationships are damaged.

**Table 11.3**

*Case Study*

*The Negotiator's Surplus in Action*

Due to the economic crisis, an employer organisation seeks a reduction in the pay of electricians. They are seeking 17 per cent but they will settle for 8 per cent. During its preparations for negotiation, the industry union that represents electricians decides it is willing to agree a 12 per cent reduction, but no more. Neither side is aware of the other's fallback. The eventual settlement is for an 11 per cent reduction. In this distributive example, the employer organisation has gained 75 per cent of the negotiator's surplus and the union 25 per cent.

Even where bargaining ranges overlap, there can be incentives for the parties not to reach agreement. In workplace negotiations, if management are of the view that any agreement reached with a union risks not being endorsed by the membership, they may keep offers in reserve to make an increased offer at conciliation at the LRC. They may even prefer not to move to a fallback position at conciliation, leaving room for a referral to the Labour Court. There is long-standing and repeated evidence of the existence of such an effect in Irish industrial relations, with a criticism of the parties' failure to engage in meaningful negotiations attracting comment from various Labour Court chairmen (Horgan 1989). Of course, if union negotiators suspect that management are keeping concessions in reserve, this creates an incentive for them to refer issues to the Labour Court in order to ensure they get the maximum that management are prepared to offer.

### **Integrative Bargaining**

Integrative bargaining is characterised by an effort to address interests rather than positions in negotiations. The aim is to simultaneously meet the interests or needs of both parties. Lewicki *et al.* (2001: 94) define interests as 'the underlying concerns, needs, desires or fears that motivate a negotiator to take a particular position'. The notion of interests can sometimes be difficult to grasp and it may be easier to think in terms of addressing both parties' 'needs'. The central proposition in interest-based bargaining is that focusing on interests allows superior outcomes to be achieved for both parties. By contrast, focusing on positions (bargaining demands) can make it more difficult to gain agreement.

The notion that a focus on interests will aid the negotiation process is something of a paradox, since industrial relations theorists have identified differing interests as being at the root of employment conflict. However, the following example demonstrates how a focus on interests can work in a common Irish industrial relations situation. In a negotiation over restructuring, the position of workers might be no redundancies and no worsening of terms and conditions of employment. Their interests, on the other hand, might be a need for job security for the majority of workers, but with older workers being open to early retirement. It may only be possible to achieve job security (the union need) by improving competitiveness (meeting the employer's need), which may necessitate agreement to new work methods and a reduction in employee numbers through redundancies. The *position* (no worsening of terms and conditions of employment and no redundancies) must then give way in order to meet the underlying primary *need* of job security.

A key feature of pure integrative negotiations is the free sharing of all relevant information and an open exchange of ideas. A free flow of information is essential along with concerted efforts by both sides to understand the needs of the other party and a concern for meeting those needs. One method for developing ideas is brainstorming, where ideas are generated and then evaluated with reference to pre-established and mutually agreed criteria. Such criteria are usually of a broad nature, e.g. acceptability to the parties, workability and fairness. In the brainstorming process, all ideas are noted down and only those that meet the criteria are retained for further discussion and negotiation.

True integrative bargaining does not involve the parties setting ideal, realistic or fallback positions – these are characteristics of distributive bargaining. Nor does it involve concealing information that is material to the negotiations. Some negotiators may claim to be negotiating on a win-win basis, but they are actually attempting to manipulate the other party. A test of a party's true intentions is to see if the party making the claim of engaging in a win-win negotiation is sharing all relevant information and if adequate concern is being shown for the other party's needs. A negative answer to either of these questions indicates that a distributive approach is really being adopted.

### *Approaches to Integrative Bargaining*

A particular form of integrative bargaining known as 'principled bargaining' or 'interest-based bargaining' has been popularised by Fisher and Ury (1986) in an influential book entitled *Getting to Yes*. The approach focuses on the following principles:

- separate the people from the problem;
- focus on interests, not positions;
- invent options for mutual gain; and
- insist on using objective criteria.

It should be noted that Fisher and Ury's approach only represents a partial theory of negotiation and that the principled approach has not displaced more traditional adversarial bargaining. Nonetheless, their approach is similar to other interest-based approaches. Integrative approaches, including those of Lewicki *et al.* (1999), identify a number of key steps in the integrative negotiation process:

- identify and define the problem in a mutually acceptable way;
- keep the statement of the problem to be addressed simple;
- state the problem as a goal and identify the obstacles to reaching that goal;
- depersonalise the problem; and
- identify the needs of the other party.

Fisher *et al.* (1997) insist that adopting a principled-based approach is not an easy option and requires 'real toughness' on the part of negotiators. A negotiator should not abandon their critical faculties. They are entitled to, and should, rigorously test the propositions advanced by the other party and they must justify their demands on objective grounds.

The implementation of a principled-based approach can be quite challenging. In particular, it can be difficult to implement if only one party is committed to the process. There is a danger that the party attempting to operate in an integrative way will merely end up accommodating the party using a distributive approach. Nonetheless, Fisher *et al.* (1997) claim that a principled-based approach can even be adopted with distributive or difficult bargainers. They suggest that this should be done with the aim of bringing difficult negotiators to their senses – not to their knees! However, this can be quite difficult in practice.

Let us now examine some integrative negotiation techniques.

**Table 11.4***Case Study**Partnership and Relationship Change – WILO Pumps*

WILO Pumps Ltd (WPL) is a Limerick-based Irish subsidiary of the German-based WILOSALMSON Group, which specialises in the manufacture and marketing of central heating pumps primarily for the European market. Since 1996 WPL endured intense competition from sister plants to produce and supply its motors at very competitive prices, thereby forcing it to adopt a highly focused approach of cost reduction within an environment demanding high-quality standards. WPL's management expended much effort in focusing on many improvement initiatives over a five-year period. While definite progress was made, management perceived that the results did not give the return for the effort expended. Consequently, it was agreed that relationships between the maintenance team and management, which were extremely adversarial, would need to be drastically developed to ensure the long-term future of the plant. Discussions took place with the assistant general secretary of the Technical Electrical Engineering Union (TEEU) in Limerick. Critical outcomes of these discussions were the acceptance of each other's bona fides and the mutual acceptance of the principle of achieving a win-win outcome for all parties. With the assistance of an independent facilitator, it was agreed that the extended management team and the entire maintenance department would meet off-site to explore the possibility of a way forward. This joint session became the major turning point for the plant, since both parties realised they had far more common interests than the differences that divided them.

The group agreed to meet on a monthly basis over an eight-month period in order to develop their relationships, improve communication channels and work on partnership initiatives. As a result, management became much more attuned to the underlying needs of its employees in bringing about change. These needs included respect, involvement and trust – the real drivers of sustainable change. On the union side, a keen appreciation of the business needs of the company developed. This ultimately led to negotiated reductions in labour headcount (reductions of approximately 25 per cent), increased employee efficiencies of 60 per cent and 110 per cent in its two key departments, and a dramatically changed working environment where much greater levels of mutual respect and trust prevailed. The key to achieving these solutions was the systematic use of problem solving and mutual gains bargaining, with employees being an integral part of defining and producing mutually agreed solutions.

Within twelve months of these successful changes, the core motor manufacturing business of WPL was closed, resulting in a reduction of 85 per cent of the workforce. This was done for group strategic reasons that were outside the Limerick facility's control. Despite the trauma of the closure, the development of relationships within the plant had dramatically changed attitudes on both sides; these relationships survived the closure decision and created a supportive environment for everyone in dealing with the closure. Subsequently, members of management, union officials and shop stewards have made presentations to the partnership network on their experiences in effecting a change in relationships.

*Source:* Contributed by Brendan Lyons, former managing director, WILO Pumps (see [www.partnershiplearningnetwork.com](http://www.partnershiplearningnetwork.com) for further discussion points on partnership).

**MIXED MOTIVE NEGOTIATIONS**

In the 1980s it became common among writers to categorise distributive bargaining in somewhat garish terms and compare it unfavourably with integrative bargaining. For

instance, Fisher and Ury (1986) claim that it is the process of distributive bargaining that impedes effective conflict resolution – and that a principled bargaining approach is superior. If this were the case, it would be expected that principled negotiations would have displaced distributive approaches over time. There is, however, no evidence that this has happened: distributive bargaining remains a commonly used approach to negotiations. There has been a reaction to the somewhat evangelical promotion of integrative approaches. Thompson (2009: 41) points out that ‘even in win-win negotiations the pie of resources created by negotiators eventually has to be sliced’ and this involves distributive bargaining. Lewicki (2010: 103) concurs and suggests that ‘purely integrative or purely distributive negotiation situations are rare’. Lewicki *et al.* (2010) refer to combinations of integrative and distributive bargaining as ‘mixed motive’ bargaining and this type of negotiation is characteristic of most industrial relations situations. The capacity to manage the complexities involved in mixed motive bargaining is a key negotiation skill. Negotiators need to be able to handle both distributive and integrative elements of the bargaining process.

A useful way to approach mixed motive negotiations is to separate the two phases. The integrative element can be dealt with first by using problem-solving techniques and sharing information and the distributive element (agreeing on the distribution of the gains) can then be dealt with. Even within the distributive phase, the use of creative and integrative techniques has the capacity to ensure a greater prospect of success and to solidify the relationship between the parties. Conversely, the extensive use of hardball tactics may have the opposite effect. Thus, some of the key techniques that are described as integrative are also used during distributive bargaining by skilled negotiators. It must be emphasised that this does not include disclosing one’s fallback position. A party that does this is unlikely to achieve any more than their fallback as a result, thereby foregoing any *negotiator’s surplus* that is available. Let us now discuss the negotiation process in typical distributive and mixed motive bargaining.

#### THE NEGOTIATION PROCESS

Industrial relations negotiations tend to be highly ritualistic processes in which both parties engage in an elaborate game. Normally, the formal initiation of industrial relations negotiations begins with one party presenting a claim to the other. It is a convention of normal industrial relations that a claim, once served, will be the subject of negotiation. The Industrial Relations Act 1990 has encouraged the resolution of issues at local level; the conciliation service of the LRC may wish to see that real efforts have been made at local negotiations before they agree to intervene in a dispute.

The negotiating process can be divided into stages. These may be categorised as (1) preparation for negotiations, (2) bargaining and (3) post-negotiation follow-up action. It is useful to think of the bargaining process itself as being divided into three phases – a beginning, middle and end. Table 11.5 contains a checklist of items needing attention in the negotiation process.

**Table 11.5***Checklist for Industrial Relations Negotiations***1 Preparation**

- Make appropriate administrative arrangements
- Conduct relevant research
- Agree negotiating objectives
- Prioritise
- Check mandate
- Assess relative bargaining power
- Organise team

**2 Bargaining**

- Opening phase
  - Parties outline their case (expectation structuring)
  - Explore the other side's case
- Middle phase
  - Movement and solution-building
  - Exchange
- Closing phase
  - Final movements
  - Ensure clarity on agreement
  - Record agreement

or

- Note areas of disagreement
- Note subsequent action
- Referral to appropriate third party
- Option for industrial action

**3 Post-negotiation**

- Document agreement/disagreement
- Agree action plans
- Communicate
- Implement action plans
- Review

**Stage 1: Preparation for Negotiations***Administrative Arrangements*

Advance attention to the 'boring' administrative details is essential. An agenda should be agreed. The physical facilities should be appropriate. The venue should be spacious, free from interruptions and convenient. It should have appropriate seating and adjournment arrangements (non-intimidating break-out rooms) and back-up facilities (phone, fax, mobile phones, internet access, etc.). Many of these administrative details will be undertaken as a matter of course, but conscious and careful consideration should be given to them. While these issues may on occasion be non-contentious, it may be

necessary to negotiate and agree on them in advance – this is known as ‘negotiating the negotiation’. A willingness to do this shows concern for the other party and ensures they will be comfortable with any proposed arrangements. If a party is unhappy about an arrangement, the issue should be raised in advance. If a party becomes uncomfortable during the negotiations, it is best to address the issue as soon as possible. For example, if an off-site venue proves unsatisfactory because of noise, a change of venue can be sought. One should not continue in an environment in which one is uncomfortable.

### *Research*

Many authors have stressed the importance of preparation for negotiations (Hawkins 1979; Hiltrop and Udall 1995; Lewicki *et al.* 2010; Thompson 2009). Adequate research is the key to good preparation: it helps to focus negotiations on facts rather than opinions or value judgements. All negotiators will at some time be faced with situations where they have not been able to prepare. Hiltrop and Udall (1995) strongly advise that when faced with this, negotiators should listen, ask questions for information and adjourn at an early opportunity. Such an approach is particularly recommended in grievance interviews because it prevents possible ill-considered responses by management to employee grievances.

Employer organisations and trade unions may have research departments. The LRC maintains an informative website and the Labour Court website enables parties to search previous cases. The EAT also publishes a summary of unfair dismissal cases and decisions. Preparatory research may require being aware of terms and conditions in comparable employment – the comparability criteria – and precedents. An evaluation of the knock-on effects of different potential outcomes of negotiations may also need to be conducted. While preparation is important, the evidence is that skilled negotiators do not spend more time in preparation than average negotiators, but they do spend more time considering how to use the information they have ([www.huthwaite.co.uk](http://www.huthwaite.co.uk)).

### *Negotiating Objectives*

The most important decision in preparing for a negotiation is for each party to identify *what* it wants to achieve; this can often be quite difficult. Not all elements within an organisation will have the same objectives and this can be particularly true of a trade union, where the aggregation of interests is essential. Any disagreements or differences should be aired and resolved in advance, otherwise they risk raising their head during negotiations with the other party. This resolution can only take place through intra-organisational negotiations in advance of meeting the other party and the difficulties of this should not be ignored. However, the same principles apply here as apply to general negotiation theory, with an even stronger emphasis on the benefits of an open, integrative approach.

Establishing bargaining objectives relative to one’s interests is preferable to deciding on emotional or other grounds. This requires a critical examination of a case’s strengths and weaknesses. Research shows that negotiators tend to be better able to evaluate

weaknesses in the other party's case than weaknesses in their own. A technique to address this is to engage in perspective-taking – namely looking at things through the eyes of the other party. While this can be difficult to do honestly, role reversal exercises (where some members of one's negotiating team take on the role of the other party) can be helpful in achieving a realistic perspective of the other side's concerns and options. It is important to bear in mind that a party is more likely to achieve its objectives if it can make exchanges that enable the other party to meet its interests. Ignoring the other party's interests and thinking (cognition) is a serious mistake (Lewicki *et al.* 2010).

### *The Bargaining Mix and Prioritising*

The bargaining mix refers to the items for discussion. It is essential to prioritise objectives in the bargaining mix in order to identify those items that can be traded. Negotiation conventions require that parties be prepared to move during negotiations and that trading is a superior form of movement to compromise. There are two conventional ways of prioritising. Parties can attach labels to items to classify them in decreasing order of importance, as follows:

- items they must get;
- items they intend to get; and
- items they would like to get.

Alternatively items can be labelled 1, 2, 3 and so on in decreasing order of priority. Using the first method, there is a great temptation to allot a large number of items to the 'must get' category. However, Kennedy (1998) points out that the more items one has to achieve from a bargaining mix, the lower one's power position is in a negotiation. This arises because one has fewer items to trade in return for concessions from the other party. However, many negotiators think the opposite is the case: that the more they define as 'must get', the higher their power position. This is a serious mistake that can impede agreement being reached even where the real interests of the parties lie in reaching a settlement (Kennedy 1998).

Objectives can be tangible (e.g. a reduction in wage costs) or intangible. The intangibles can be vitally important. For managers, they might include issues such as ensuring good relations with employees and their representatives. Bargaining objectives will vary according to the issue at hand. While parties should be clear on their walk-away position, flexible objectives are generally preferable to rigid ones because information uncovered during negotiations can alter the perception of one's interests.

### *Mandate*

It is important that each party's objectives are clearly articulated and approved by constituents, particularly top management on the employer's side and trade union members/representatives on the union side. This helps to ensure that each negotiating team has a clear mandate. Failure to check and agree a mandate in advance runs the risk

of something being agreed at the bargaining table only to be rejected when one or both parties return to their principals.

### *Bargaining Power*

Bargaining power may be interpreted as the degree to which one party can achieve its negotiating goals despite the opposition of the other side. Relative bargaining power significantly influences the outcome of negotiations, with agreements likely to favour the party with the greatest bargaining power. The bargaining power of a party depends on a range of factors that are both external and internal to the negotiation process. Much power will be determined outside the bargaining process: by economic factors, the level of demand for a product, the skill possessed by workers and levels of unemployment. There is also a subjective element to bargaining power and there are measures that negotiators can influence.

In terms of preparation, two measures are essential in assessing one's power position. The first is to evaluate the relative strengths and weaknesses of one's own case. The second and most important measure is to pay attention to and to strengthen one's BATNA. A BATNA is a best alternative to a negotiated agreement, i.e. the best choice a negotiator has in preference to reaching an unfavourable agreement. A BATNA should not be confused with a fallback position (see example below). Disclosing one's fallback position, or reservation price, is never a good idea, but disclosing one's BATNA may be helpful if it is both strong and credible. The better a party's BATNA, the more negotiating power and leverage they have. Sebenius (2001) notes that even experienced negotiators frequently fail to pay attention to strengthening their BATNA.

**Table 11.6**

#### *Distinguishing Between a Fallback and a BATNA*

For someone negotiating to buy a house, a fallback position is the highest price the person is prepared to pay – say, €150,000. A BATNA, however, is the best alternative to not buying the house! It could be any one of the following: buying another house, renting, sharing accommodation, waiting for prices to fall or continuing to live at home.

### *Team Organisation*

Conscious consideration should be given in advance to the selection of a negotiating team. The size and composition of the negotiating team may depend on the issues up for negotiation. In industrial relations it is inadvisable to enter negotiations with fewer than two people. Having at least two people provides a witness to what is said and can allow for greater objectivity. With more than two people, the question arises as to the optimum size. Increased numbers can give solidarity, ensure greater technical knowledge and aid planning. A greater number also allows the allocation of responsibilities in presenting the case, analysis of verbal and non-verbal responses, recordkeeping and consideration of the consequences of various settlement options and management responses (Nierenberg 1968). However, greater numbers increase the possibility of internal disagreement and the inclusion of less skilled/unskilled negotiators who may be more prone to making

errors or who may be picked off by the other party. The size and composition of a team may be outside the control of the parties. For trade unions, large numbers of shop stewards may attend negotiations to ensure that the various constituents are fairly represented by the lead negotiator(s). In such situations, strict rules for making contributions can be laid out in advance to prevent someone making a point that would undermine a case.

**Table 11.7**

*Case Study\**

*The Blinding Flash in Negotiations*

A union has tabled a claim for pay parity with local authority employees for members employed by a private sector company with links to the local authority. The company is resisting the claim and produces figures to support its case. The union represents only 40 per cent of the employees. During negotiations, a shop steward notices that based on figures presented by the company, it could afford the pay increase if it was paid to unionised employees only.

*Discussion Point*

1. Should the shop steward make this point during negotiations? If so, why? If not, why not?

*\*This case study can be used for analysis, discussion or role-play negotiation. Guidelines for using the case study are available for lecturers on the Gill & Macmillan website ([www.gillmacmillan.ie](http://www.gillmacmillan.ie)).*

Irrespective of its size, a team needs to provide for three functions. These are:

- **Lead spokesperson:** The role of the chief representative is to present arguments, control strategy and tactics and make major on-the-spot decisions.
- **Observer/analyst:** Their role is to evaluate progress relative to objectives, spot key reactions, identify changes in approach and advise the chief negotiator.
- **Recorder:** This involves recording key points in negotiations and documenting the final agreement.

More vital than any allocation of roles is the way in which a team gels. During the negotiation process, team members should support the lead spokesperson without supplanting her/him. Team members should display empathy and be mutually supportive. A clarification or digression can be of enormous benefit to a team member under pressure or who has made an error. There are few situations in a negotiation that cannot be retrieved with an appropriate and *prompt* 'clarification' or 'amplification'.

## Stage 2: Bargaining

### *Opening Phase*

The opening phase involves each side setting out its case and seeking clarification from the other side. It is vitally important to be clear on all the items in the bargaining mix. The subsequent introduction of new demands is generally considered to be outside accepted negotiation conventions, but highly integrative negotiations may allow for a

focus on identifying and exploring previously unidentified options. A key skill in the opening phase is the use of open questions that focus on what, how and why. However, Thompson (2009) notes that the most effective questioning is around exploring the other side's interests and articulating one's own interests. Interests are the reason for pursuing a negotiating objective. This involves exploring *why* the other side wishes something and explaining *why* something is being demanded. Following an initial outline of the issues, parties are likely to wish to adjourn to consider any new information and to consult with their principals and to check on their mandate. In particular, unions need to keep in touch with their members. In complex negotiations, the opening phase of a negotiation can be spread over many meetings.

A key activity identified by Walton and McKersie (1965) in the opening phase is that of *attitudinal structuring*. This involves attempts by either party to define the negotiation in terms favourable to them. This is done through the deployment of so-called *key commitments*, which are underlying arguments that aim to concentrate negotiations on one party's side of the case. Key commitments are not bargaining objectives. Bargaining objectives are concrete and can be traded, whereas key commitments are merely underlying arguments and can only be argued. In a situation where management want to introduce a pay pause, the bargaining objective is the pay pause and management's key commitments are to remain competitive and contain costs. Where a union is seeking a 5 per cent pay increase, this is their bargaining objective and its key commitments are to compensate for inflation and to reward employees for increased productivity. Viewed in this way, key commitments involve the exploration of interests – not the articulation of bargaining positions.

Research by the Huthwaite group has found that skilled negotiators deploy fewer arguments (key commitments) than less skilled negotiators ([www.huthwaite.co.uk](http://www.huthwaite.co.uk)). The use of more and more arguments leads to the problem of *argument dilution*. Ever more arguments affect credibility and are easier to counter because they tend to be weaker. However, new negotiators tend to be drawn into this process when they find their initial arguments do not seem to be gaining acceptance. It is vital in the opening phase of distributive negotiations not to be fazed by an apparent rejection of one's concerns/key commitments.

### *Middle Phase*

The middle phase involves further testing of the arguments advanced and exploration of the possible solutions. Identifying areas for movement and solution-building is a critical aspect of this process. Trading is a crucial part of the middle phase and is an inherently integrative technique that produces potentially superior outcomes to compromise. We now discuss some key processes involved in movement and solution-building.

#### Movement and Solution Building

Movement is a vital point in a negotiation and it is best approached as a trading process – not as the making of unreciprocated offers. Remember: once an offer is put on the table, negotiation conventions dictate that it cannot be removed unless the other party

rejects it. Less skilled negotiators tend to blurt out offers without adequate preparation and without linking them to any requirement for concession by the other party. They do so in the expectation that having made a concession, the other side is then under an obligation to respond. This expectation is frequently disappointed. In fact, the other party may immediately indicate the offer is inadequate and demand further concessions. This happens because the person making the concession has made a fundamental mistake. They have inadvertently sent a signal that their negotiation style is one of accommodation and that they are likely to move again without the other party having to reciprocate.

#### Indicating Movement

When making movement, skilled negotiators tend to talk in terms of 'proposals', not offers. They talk about their proposal and show how it is designed to respond to the needs of the other party. For example: 'The reason we are making this proposal is because we have listened carefully to a number of points you've made. We feel a number of them have merit and we want to try to meet them within the limits of our mandate. In order to do this, we are proposing the following...' It is not a good idea to describe one's own proposals as 'fair', 'good', 'generous', etc., since such descriptions have been found to act as irritants to the other side (i.e. if they do not accept an offer described as fair, the implication is that *they* are not being fair). Offers can and should be justified by comparison to objective standards, such as the going rate in the industry, provisions in national agreements, previous Labour Court recommendations, etc.

#### Size of Offers

It is common for the initial movements to be large and for later movements to decrease in size. This is contrary to a hardball tactic of making small concessions initially. The benefit of a larger initial movement followed by subsequent smaller ones is that it signals decreasing room for movement to the other party without having to disclose one's fallback position in any way. More importantly, one can require greater concessions in return for a larger movement: a small concession may very well be reciprocated in kind, making progress difficult.

#### Trading

The essence of negotiation is trading. When making a proposal, it is best presented so as to incorporate something you want from the other party. This should be linked *directly* to any concession you intend making to the other party. A standard technique used by skilled negotiators is to make a concession *tentative* in the first instance and *conditional* on the other party agreeing to their demands. Consider phrases such as: 'If you were prepared to consider movement on X and Y, that would enable us to reconsider our position on A and B.' Phrasing an offer like this allows possible trades to be explored without committing oneself in advance. It is designed to see if the linkages you have made between issues are valued by the other side. If they are not, then they need not be pursued further and other options can be explored. If they are, then they can be 'firmed up'. Making proposals conditional has the dual advantage of identifying what a party

wants in exchange and allowing a withdrawal of an offer if that exchange is not agreed. This is why making proposals conditional is so important.

**Table 11.8**

*Exploring Trades – a Practical Example*

'If the union can agree to a 10 per cent increase in productivity and to work reserve hours as required, then that *would* be sufficient for us to consider a significant move on the pension scheme and to make improvements to the sick pay scheme.'

Note that management have put their requirement *first* and their proposal is less specific than the demand from the other party. If the union is interested, they can ask: 'By how much do you propose to increase the pension and the sick pay scheme?' If the union does not agree to increased productivity, there is no obligation on management to leave the *conditional* offer on the sick pay scheme or pension on the table.

#### Responding to Proposals/Offers

In responding to offers, it is generally not a good idea to talk down or make little of an offer even if that offer is inadequate. A better response is to welcome the fact that an offer has been made and then to indicate how it would need to be improved in order to enable progress to be made. Put simply, effective negotiation involves opening doors rather than closing them. If a proposal is unacceptable, it may be possible to incorporate some element of the other party's offer in a counterproposal. However, care should be taken in making counterproposals – the research notes that skilled negotiators use much fewer counterproposals than average negotiators ([www.huthwaite.co.uk](http://www.huthwaite.co.uk)). Immediate counterproposals are often weak because they tend to arrive at a time when the other party is concerned with *its* proposals and can be perceived as designed to block the other party's proposals. They can also signal an anxiety to concede, i.e. that one's negotiating style is one of accommodation.

#### Adjournments

Adjournments are useful for considering new information and reviewing progress. A good idea before adjourning is to ask the other party to consider/reflect on key issues you have raised. This should be immediately followed up after the adjournment by asking the other party if they have come up with any proposals to respond to the issues you raised. Using adjournments in this way can prevent negotiations getting 'stuck in a rut' or going around in circles. It is best not to use adjournments to release pressure and 'blow off steam'. Proper preparation can ensure that this is not necessary. Remember, the other party will be alert for non-verbal behaviour and inappropriate adjournments can inadvertently reveal a lot about one's position.

#### *Closing Phase*

This phase carries many traps for the unwary and can lead to major difficulties in implementation. Three tasks normally have to be undertaken in the closing phase: (1)

finalising the agreement, (2) noting issues for further negotiation and (3) recording details of any area of failure to agree. Offers and counteroffers may come rapidly in this phase after little has happened in the earlier phases. This is especially the case where parties have *unwisely* used a 'chicken tactic' – waiting until the last minute to make movement. In this situation, it is all too easy to lose sight of the cost or value of proposals – careful costing of proposals in advance will limit the prospect of errors and of a 'winner's curse' effect (see below). A further danger is that both parties will have different beliefs as to what *has* been agreed. Not infrequently this leads to subsequent accusations of bad faith on the part of one or both parties.

It is essential to slow down and proceed in a deliberate, considered manner in the closing phase. Each party should be clear on the substance and interpretation of any agreement. Active listening that involves paraphrasing and asking direct and leading questions to ensure mutual understanding is essential. Here is an example: 'So we are agreed on twenty-five redundancies to be on a voluntary basis. If insufficient employees opt for redundancy in order to make up these numbers, compulsory redundancies will take place on a LIFO (last in first out) basis.' Any review of an agreement should be clearly specified and agreed before the parties leave the negotiating table.

If agreement is not reached, it is normal in Irish industrial relations for the dispute to be referred to an appropriate third party – the LRC, Labour Court, etc. Dispute procedures normally specify that industrial action cannot be used by either party until these procedures have been exhausted.

### Stage 3: Post-negotiation

Once the negotiations have been concluded, the parties involved will normally report back on the outcome. The way in which the agreement is communicated to employees should also be agreed on, as should decisions on any administrative obligations. Problems can arise not only in delivering to the other party what has been agreed, but in implementing all of the concessions made by the other party. Thus, details of implementation should be worked out and responsibilities clearly allocated within organisations.

Implementation of an agreement is the key post-negotiation consideration. Non-implementation can arise from bad faith negotiation but also from the 'winner's curse' effect. This is where one side leaves the table having reached an agreement but subsequently feel they could have got a better deal. This can lead to non-implementation or implementation in a way other than understood and can sour relations and permanently damage a negotiator's credibility. While it is desirable to review and assess the lessons learned from the negotiation experience, research by the Huthwaite group found this to be done infrequently.

### NEGOTIATION TECHNIQUES

We conclude this chapter with an examination of integrative and hardball negotiation techniques.

### **Integrative Techniques**

As noted above, Fisher *et al.* (1997) suggest that interest-based negotiations involve real toughness. While the interpersonal interaction may be easier in integrative negotiations, such negotiations place considerable demands on the skill of the negotiator. The use of integrative techniques is not confined to pure integrative negotiations. They are also useful in mixed motive negotiations and can move the negotiations towards the integrative end of the spectrum. The deployment of such approaches has been demonstrated to increase the prospects of a successful outcome and to leave both parties feeling more satisfied with the process.

#### *Enlarge the Pie*

The most obvious integrative technique is to enlarge the 'pie'. This may be easier said than done. However, ingenuity can lead to one identifying ways in which this can be achieved. The use of productivity deals in the 1960s and 1970s involved increased productivity in return for higher wage increases. As with all integrative techniques, the technique of enlarging the pie needs to be evaluated against rigorous criteria. For example, by the early 1980s, management had become disenchanted with aspects of productivity bargaining, some of which failed to deliver any real productivity gains.

#### *Negotiate on a Package Basis*

Less effective negotiators negotiate on an item-by-item basis, especially when they are making 'offers'. They treat each item in a bargaining mix separately, moving through an agenda one item at a time. This is a mistake because it reduces negotiation on each item to a win-lose situation. While it may be somewhat more difficult to deal with a number of issues at a time, the prospects of a superior outcome are greatly increased by negotiating on a package basis. Lewicki *et al.* (2010) refer to this technique as 'log-rolling' because it increases the possibility of exchanges and reduces the need for compromise.

#### *Prioritise and Then Trade*

If a team has prioritised in advance, appropriate trade-offs are easier to identify and agree on. This tactic is typically an iterative process of trial and error and may require the parties to redefine problems by separating or unbundling issues – referred to as fractionating – in order to come up with a mutually acceptable package. The best possible situation is where each party can exchange their low-priority items for their high-priority items. Thompson (2009) points out that trade-offs work not because they build common ground, but because they exploit differences. It is somewhat counterintuitive to think that differences can promote agreement but this *is* the case.

#### *Non-specific Compensation*

Non-specific compensation can be used where a mandate is excessively restrictive. An example is where management is attempting to attract a job applicant but cannot

meet their salary demand due to a wage cap. An offer to pay for educational courses or provide an enhanced job title or a company car does not affect the wage cap and may be considered. Of course, issues such as these may themselves have knock-on consequences and their use needs to be carefully considered. The issue of bankers' bonuses, which has been the subject of major controversy internationally since 2008, is an example of non-specific compensation designed to get around wage caps.

### *Cutting the Cost of Compliance*

This involves reducing the cost to the other party of agreeing to your proposals. Cutting the costs for one party is a staple of industrial relations. For example, paying relocation expenses is standard when recruiting employees from abroad where the move would impose a cost on the individual.

### *'Finding a Bridge' Solution*

When using this technique, both sides attempt to invent novel options that satisfy their interests. A classic example of this occurred during negotiations on the Partnership 2000 agreement. The employers' maximum offer was a 7 per cent basic pay increase (excluding the local bargaining clause) while ICTU said it would not accept less than 8 per cent – an apparent impasse. Agreement was reached on an overall 8 per cent increase through the novel use of phasing. The increase was structured so that the employees achieved an 8 per cent increase by the close of the agreement but the cost to the employers was 7 per cent over the period of the agreement – the circle was squared! The following industrial relations case study enables students to identify options to break an apparent deadlock in negotiations over redundancies. By developing such options, it should be possible to make a proposal that meets the needs of the employees while remaining within the mandate established by head office.

**Table 11.9**

*Case Study*

*Redundancies in MSC Engineering PLC – Developing Options*

You are a manager in MSC Engineering PLC. Due to a fall in orders, the company decides to make twenty-five of their sixty clerical, administrative and sales staff redundant. They consult their employees, as required under EU legislation. The employees take the news very badly and threaten strike action. Previous to this the union was not active, with only 20 per cent of the employees being union members. All except five employees now join and the union agrees to represent them. Faced with this difficulty, the company agrees to negotiate on the terms of the redundancy subject to the withdrawal of the threat of strike action. The union agrees to suspend any consideration of strike action pending the outcome of negotiations.

There is a good atmosphere to the negotiations at first and a series of issues are resolved, including workloads following the restructuring, outplacement assistance and pension arrangements that will maximise the value of any settlement by minimising tax liability. The issue of whether redundancies should be voluntary or on a LIFO (last in first out) or FIFO (first in first out) basis is not addressed prior to moving on to the major issue of enhanced redundancy payments. As a result of the positive progress, you and the other local managers are anxious that the

union committee will accept and endorse any package in order to maintain a good working relationship following the restructuring and to ensure that there are limited negative 'survivor effects'.

Following this positive phase, the negotiations on the terms of the redundancy compensation become difficult and face breakdown. The company offers one week's pay per year of service (plus the statutory entitlement of two weeks per year of service plus one bonus week) with a cap on payments of €15,000. The union looks for five weeks per year of service (plus statutory) and rejects the company cap as 'derisory', suggesting a cap of €60,000. They point out that when three people left in 1996, the company paid four weeks per year of service (plus statutory) without any union involvement.

The union demand is reduced to four weeks (plus the statutory entitlement) during negotiations but the union negotiator indicates to you in an 'off the record' briefing that a settlement of three weeks (plus statutory) would be acceptable. However, she adds that the employees have indicated nothing less will be acceptable, although it is unimportant how this figure is arrived at. She also indicates that special provision will have to be made for employees with less than two years' service who would not be legally entitled to statutory redundancy payment.

Management in your French headquarters have given you an absolute instruction that you may not pay more than two weeks per year of service plus statutory. However, they add that if local management can find other ways of 'squaring the circle', they will not object. They leave it to you to finalise the negotiations with this in mind. The company pays employees' health insurance on an annual subscription basis starting in January of each year. All employees are entitled to a minimum of a month's notice on termination of employment; those with 10 years' service and over have higher entitlements in line with legislation. There are no company cars.

#### Service of Staff

<i>Number of Years of Service</i>	<i>Number of Staff</i>	<i>Average Salary for Group (€)</i>
15	2	40,000
12	4	37,000
10	6	35,000
8	6	33,000
5	4	32,000
3	4	30,000
2	5	27,000
Less than 2	12	25,000
Less than 1	17	22,000

#### Task

Break into groups of four or five, appoint a rapporteur, spend twenty minutes discussing the case and come up with options to break the deadlock. Record your options and report back.

#### Discussion Point

1 Are there any integrative options available?

*\* Guidelines for using this case study are available for lecturers on the Gill & Macmillan website ([www.gillmacmillan.ie](http://www.gillmacmillan.ie)). The issue of selecting on the basis of suitability has been excluded from the case for reasons of simplicity.*

### Hardball Tactics

Research indicates that some negotiation hardball tactics are outside the accepted norm while others are regarded as 'part of the game'. Generally unacceptable hardball tactics include deliberate lying, refusing to accept reality and failure to implement agreements. These are examples of 'bad faith' tactics and are commonly viewed as unethical (Lewicki *et al.* 1999). A party that employs bad faith tactics risks losing its credibility as a negotiator and damaging the long-term relationship. This can be the worst possible outcome where there is an ongoing relationship and can be much more costly than any temporary gain.

Between the acceptable and unacceptable, some hardball tactics can be viewed as ethically 'questionable'. Numerous writers have noted the acceptability of hardball tactics is blurred and negotiators have to be prepared to deal with them (Lewicki *et al.* 1999; Ury 1992). Lewicki *et al.* (2010: 62) note that hardball tactics 'can do more harm than good in negotiations'. They point out 'each tactic involves risk for the person using it, including harm to reputation, lost deals, negative publicity and consequences of the other party's revenge' (Lewicki *et al.* 2010: 62). Risky hardball tactics include the use of chicken (waiting until the very end to make movement), intimidation, fait accompli (introducing unilateral change) and dead leg (asserting there is no room for movement). Such tactics may be encountered. In fact, questions on how to deal with difficult negotiators employing such tactics tend to be the most-asked questions at negotiation courses.

The most common acceptable hardball tactic is probably the highball/lowball example. This involves making either exaggerated high demands or low offers. There are some advantages to this technique. A high/low opening position provides room for movement and concessions. In addition, research indicates that where an exaggerated opening position is taken seriously by the other party, it exercises a strong influence on the outcome to the advantage of the side using it. Thompson (2009: 49) notes that the common perception that an extremely high or low opening offer may insult the other party 'is more apparent than real'. He goes on to note opening offers have a strong anchoring effect and they have an 'at least 0.85 correlation with final outcomes' – that is, an 85 per cent correlation! This indicates that dealing with a highball/lowball opening position is very difficult. One option is to respond in kind but probably the best response is to refuse to table a counter highball/lowball offer, explain why and indicate it will be necessary for the other party to substantially revise their offer/demand in order for the negotiations to make progress. There are also disadvantages to a highball/lowball tactic, since it can backfire on those who use it. The main disadvantage is that the other party may decide there is no point in negotiating and may move directly to their BATNA – this is the lost deal outcome!

### CONCLUDING COMMENTS

The process of negotiation has been the subject of considerable theoretical development in recent years. This has provided valuable insights into the process of collective bargaining and individual interactions in employment relations. These insights have

promoted a more sophisticated and informed approach to the process of negotiation, the main thrust of which has been the advantages of focusing on an interest-based approach. This approach promotes integrative strategies and techniques at the expense of distributive ones. However, there is no evidence of integrative bargaining replacing distributive approaches, and most negotiations tend to be a mixture of both integrative and distributive approaches. As a result, those involved in industrial relations negotiations, whether of a collective or individual type, need to have an understanding of both integrative and distributive techniques and be able to handle both.