

Impasse in Negotiations

Copyright 2005 Tara Fass, LMFT-Mediator
Peace Talks Mediation Services
8055 W. Manchester Ave., Suite 201
Playa del Rey, CA 90293
(301) 301-2100
tarafass@aol.com
www.peace-talks.com

As a therapist and a mediator, I often see things in negotiations a little differently than the attorneys I know. Using a little of your intuition and some of the psychology behind deal-making, you can improve your negotiation skills in the room and in selling your clients on what you know is a good deal.

Here are my top 10 tips for breaking impasse in negotiations:

1. Determine how the pecking order in the relationship is maintained.

You should determine this regardless of who technically has more or less power in the hierarchy of the relationship. Then shift the one-up/one-down zero-sum competition to one of power-sharing in the spirit of enlightened self-interest.

Like it or not, there's usually an underlying psychodynamic basis to every conflict. Some old unresolved familial drama is being played out in the workplace, in a marriage, or wherever the conflict exists. Top negotiators can quickly spot personality types that are particularly likely to engage in conflict and the pecking order in relationships even if it's unspoken as to who is "the boss."

For example, a boss might be domineering and controlling and the subordinate may be indecisive and dependent. This pairing of personalities creates perfect conditions for conflict when the latter starts to feel more powerful

as a result of having been mentored by the former. Not any longer the worshipped mentor, trouble starts when the dominant one will not promote a more equitable relationship with the subordinate one or adequately acknowledge the contribution of the subordinate one. Without using jargon, speak to the dynamics that lead to this 'deadly dance' in which there is a request, usually not for a complete role reversal, but usually a renegotiation of roles that is perceived as threatening to the one normally in power and a scenario for sabotage for the one seemingly less powerful. The request may be a case of role-sharing or to reframe the conflict, a renegotiation of the division of labor, or even a change of title or labeling of work responsibilities that can be accommodated within the relationship.

One way you might handle this dynamic would be to first acknowledge the two-way street nature of relationships. Ultimately one party is only as content as the other, because if one party has a complaint, the other will hear about it. The conflict will be ongoing until the underlying complaint is resolved. Being heard and having your concerns taken seriously is another reframe of the win/lose conflict in that there are never clear-cut winners and losers when you look at the long-term perspective if the relationship is overall a productive one.

Another more basic reason people get into conflict because they care about the other person or about the situation. The opposite of love is not hate—it's "I don't care". The fact that these people are in conflict tells you that they care about something in this relationship. If you can figure out their connection, or

what it is that they care about, then you've got an important clue to the solution. When you can point out common interests, you can begin to develop some common ground for settlement. Often, the parties' interests are intertwined and ongoing, e.g., a manufacturer and a supplier of raw goods, professional colleagues in the same community, business partners or relatives. It's in their best interests to satisfy the other person almost as much as it is to satisfy their own needs. Here's the rationale: if the other party is happy (or at least happier), then he or she will be less likely to cause trouble in the future. So by definition, in any ongoing relationship, if one party has a complaint the other will have a problem. If both parties are satisfied with the result of the negotiations, it will be easier to work together, or at least be cordial, in the future.

2. Explore the payoffs and secondary gains from being in conflict.

No one gets into conflict by himself and it takes two people (at least) to fight. Knowingly or not, each party contributes to the cause and/or maintenance of the problem. One or both parties may even be protective about maintaining a 'perfected' complaint. Although one party may point a finger decisively at the other for having started the conflict, the finger-pointer is also a participant. He could, after all, simply choose to stop fighting.

Despite their protestations to the contrary, many people become embroiled in conflict as a way of avoiding something else. For example, if they can focus on the problem at work, they can ignore their failing marriage. If the conflict at work ends, they might have to face the bigger conflict at home. So the

conflict is maintained and continues needlessly, even if it could be easily solved. If litigants understand that one way of staying in touch, or avoiding something else, is through conflict they might understand the real issue and be ready to deal with the conflict on its own merit. Once they see their own role in the conflict, and the secondary gains for continuing the conflict, they can begin to see their role in negotiating the solution.

3. Take turns putting the parties on the 'hot seat.'

Becoming an agent of reality for each party in turn can be very effective. It works best when you can cite a prior case, anecdotal example, statistic or study and therefore frame the information as neutral and objective even though it is likely to be more acceptable to one party than the other. Pre-empt the score-keeping by acknowledging to the party who won't like what you're saying that they might not want to hear this, and then be prepared to warn the gloating party not to use this as ammunition as their turn is next. Make sure that you use this technique equally with both parties, or do it in private caucus. Follow through on your promise to make the process equal no matter how difficult it is to find a neutral angle on the dispute. Remember that one party's best case scenario is the other party's worst-case scenario, after all.

4. Distinguish between stylistic differences that are negotiable and personality differences that are not.

Sometimes something as simple as a personal style or use of language can exacerbate a complaint to the point of conflict that never actually represented

a disagreement in the first place. In a recent case I mediated, one party was a New Yorker and one party was a Southerner. The New Yorker called the Southerner an “SOB”, which was acceptable everyday parlance for the New Yorker. The Southerner took great offense, and couldn’t hear what the New Yorker was saying after hearing himself being referred to as an SOB.

If the New Yorker had a point to make, the Southerner was not going to hear it until he got past the language. Were the parties hearing each other? Is their disagreement as deep as they believe, or has an intervening event, such as the abuse of language, either irritated a problem or caused one where none existed?

5. Express needs in language that the other can hear and accept.

There are certain phrases used over and over when people are in conflict that rub the other party the wrong way. Take time to note what those ‘fighting words’ are and request that each side refrain from using them in the spirit of resolving the conflict. Help them to create a new phrase to describe their concerns, and avoid these triggers that the other party has heard over and over again. Remind them that they’ve probably had this same argument before, and since it’s not working, it’s time to try a different approach.

Like the New Yorker and Southerner described above, until Mr. New York could stop cursing and use more business-like language, the Southerner was unable to hear him. Every time Mr. Southerner heard “SOB” or a similar curse, he tuned out of the conversation because he was angry over what he considered

to be disrespectful and belittling remarks. Clearly, if Mr. New York wanted to be taken seriously it was in his enlightened self-interest to use language that would not make Mr. Southerner less open to his concerns. Once this was brought to his attention, Mr. New York was able to adopt a more conventional tone, and Mr. Southerner was much more open to Mr. New York's ideas.

6. Frame the disagreement as something they have in common and point out the irony of the situation.

This is particularly helpful in having otherwise competent and rational people who have gotten out of control with their conflict realize this and be embarrassed enough to reach resolution. If people develop an 'observing mind' and can see themselves being seen, this might also help. All too often people in conflict forget that they are not the first people with a similar conflict and that with variation their story has been told before and lived through by others. The various professionals who work in the law and courts have seen hundreds of similar cases. It helps for clients to know this and to begin to see their case from the outside perspective when thinking about how to present themselves to others to assess the rationality of their arguments and complaints.

7. Address the physical and mental toll paid from the stress of being in conflict.

Sometimes after being involved in conflict for an extended period of time, people forget that they might have better things to do than continue fighting. The sheer exhaustion conflict creates and the resulting inability to be truly productive in other areas of life may need to be pointed out. A simple question like, "what

will you do when this lawsuit is resolved?” may do the trick, reminding people of vacation plans, family responsibilities, and new business ventures may bring them back to reasonableness.

8. Discuss the basics of compromise and the difference between listening and obeying.

No one gets everything that they want in conflict resolution, but each should at least have their concerns and goals heard. Sometimes people confuse listening with having to obey. Hearing and acknowledging another’s position is not the same as agreeing with it. Everyone has the right to be heard and listened to, without the commitment to agreement or to being obeyed. If you can stop this part of the dynamic, you can start to make real progress on the resolution of the case.

9. Distinguish between perception and reality as a method for beginning to take responsibility for the consequences of one’s actions without admitting one is wrong.

This technique is lifted from Alcoholics Anonymous. Though it can be particularly effective when one party makes allegations that the other denies it must also be used judiciously. There is the valid point of view that establishing guilt does matter as much or more than the perception of guilt and no one wants the reputation of being insensitive to such issues.

Nevertheless, in this impasse-busting scenario validity of the allegation is not the problem; rather it’s the consequence, or appearance or claim that the

allegation is true that is cause for concern. For instance, in the case of domestic violence, whether or not the alleged perpetrator committed the act of violence is separate from the idea that the person making the allegations is afraid or of the alleged perpetrator. In addressing the alleging person's fears, the 'crime' takes a back seat. In negotiation, you can point out that the truth matters as much as the perception of truth to the other party, and you can begin to structure ways in which the settlement, including reparations, might be reached without having to determine whether one party is "wrong" or not.

10. Determine how to give the parties what they need and not only what they ask for.

Quite frequently I have clients who come in and are adamant about only wanting to work on an agreement and not use their precious billable hour to address problems in the relationship that has lead to the conflict. I naively proceed as requested, oftentimes getting to a pretty sound agreement, or at least a first proposal is made. Then I get the feedback that one, less often both, parties feel we moved too quickly into a settled agreement. Clinically, I know it is because we did not address the dynamics of the relationship. I grapple with how to 'slow down' the negotiation just enough that clients do not feel they are wasting their time in the room but enough so that the agreements stick or at least are not sabotaged for other reasons.

Taking a semi-psychological approach to negotiations can help your client—and the other litigants—get past what seem to be impossible sticking points.



8055 W. Manchester Ave., Suite 201
Playa del Rey, California 90293
310-301-2100 Fax:310-301-2102
Email: diana1159@aol.com
www.peace-talks.com

Diana Mercer, Esq
Attorney Mediator

Tara Fass, LMFT
Therapist-Mediator
Lic. #MFT 35078

When you're stumped, try and look at the situation a different way and perhaps you can help the litigants see past the basic dollars and cents of the situation.