

Strategy and Tactics of Distributive Bargaining

LEARNING OBJECTIVES

The main purpose of this chapter is to provide an overview of distributive situations and the strategies you can use to negotiate your way through them. After reading the chapter you should be able to:

1. Recognize distributive bargaining situations,
2. Understand the importance of goals and targets, reservation points, and alternatives,
3. Understand the varied tactical approaches used in distributive situations, and
4. Recognize and defend yourself from hardball tactics used by others.

What comes to mind when most people think about negotiation? Images probably include arguments over points of view and competitive behaviour intended to beat the other side. While many people are attracted to this type of negotiation and look forward to learning and sharpening an array of hard-bargaining skills, others are repelled by it and would rather walk away than negotiate this way. They argue that competitive bargaining is old-fashioned, needlessly confrontational, and destructive. In many cases this is true, especially when relationships matter a great deal and the potential exists to create value for both sides. Nevertheless, there are many situations negotiators face where resources are limited, one party's gain is the other party's loss, and the best approach is to focus on claiming the majority of those limited resources.

Distributive bargaining is sometimes called competitive, or win-lose, bargaining. In a distributive bargaining situation, the goals of one party are usually in fundamental and direct conflict with the goals of the other party. Resources are fixed and limited, and both parties want to maximize their share. One important strategy is to guard information carefully—one party tries to give information to the other party only when it provides a strategic advantage. Meanwhile, it is highly desirable to get information from the other party to improve negotiation power. Distributive bargaining is basically a competition over who is going to get the most of a limited resource, which is often money. Whether or not one or both parties achieve their objectives will depend on the strategies and tactics they employ.¹

There are three reasons why every negotiator should be familiar with distributive bargaining. First, negotiators face some interdependent situations that are distributive, and to do well in them they need to understand how they work.

Second, because many people use distributive bargaining strategies and tactics almost exclusively, all negotiators need to understand how to counter their effects. Third, every negotiation situation has the potential to require distributive bargaining skills when at the “claiming value” stage.² Understanding distributive strategies and tactics is important and useful, but negotiators need to recognize that these tactics can also be counterproductive and costly. Often they cause the negotiating parties to focus so much on their differences that they ignore what they have in common.³ These negative effects notwithstanding, *distributive bargaining strategies and tactics are quite useful when a negotiator wants to maximize the value obtained in a single deal, when the relationship with the other party is not overly important, and when they are at the claiming value stage of negotiations.*

The Distributive Bargaining Situation

To describe how the distributive bargaining process works, we will walk through an actual negotiation between the owner of a growing business and a property developer. The central facts of the case are real; however, certain details have been changed for illustrative purposes.

A few years ago, Alexandra (who prefers to be called Alex) started a small fashion design company out of her basement in a suburb of Montreal. The business had grown substantially and she could no longer continue operating from her home—she needed to find a new location. Her search for a suitable unit was going nowhere when, as luck would have it, she noticed a new business development only a few blocks from her home. She excitedly called the number on the sign and was put in touch with John, the developer of the property. Their initial conversation revealed several things. First, the unit was big enough for Alex’s needs, even leaving a bit of room for growth. Second, the unit would be ready for occupancy in about four weeks—just enough time to get organized for the move. And third, the developer was looking to sell the unit, not lease it, which was exactly what Alex had in mind. With these issues cleared up over the phone, Alex and John agreed to meet in person the next day to discuss the possible sale of the unit.

Notice the distributive nature of the upcoming meeting between Alex and John. Alex wishes to pay as little as possible for the property while John hopes she will pay a large sum. Thus, it appears to be a classic fixed-sum situation with competing goals between the two parties. To do well in situations like this, negotiators are advised to pay close attention to several important concepts. We will introduce these concepts gradually as we continue to progress through Alex’s negotiation with John.

They met the next day at the construction site to take a tour and begin talking numbers. As they walked around John casually made the first offer, suggesting that the selling price was \$300,000. This was \$20,000 more than Alex hoped to pay, but \$10,000 less than the amount she considered her maximum affordable price. These numbers represent key points in the analysis of any distributive bargaining situation. Alex’s preferred price is the **target point**, the point at which a negotiator would like to conclude negotiations. The target is also sometimes referred to as a

target point

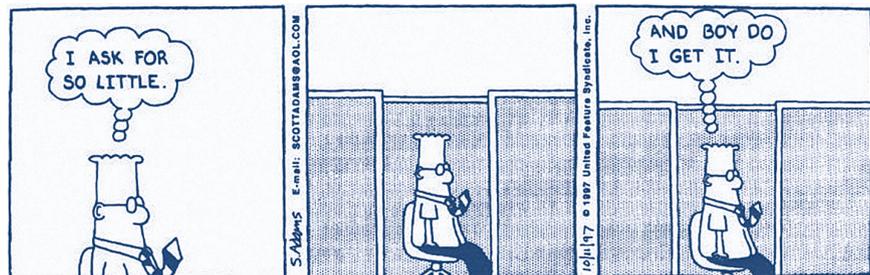
the point at which a negotiator would like to conclude negotiations

resistance point
a negotiator's bottom
line, or the point
at which they are
indifferent to a deal

negotiator's *aspiration*. The price beyond which Alex will not go is the **resistance point**, a negotiator's bottom line—the most he or she will pay as a buyer (for a seller, it's the smallest amount they will settle for). It is also sometimes referred to as a *reservation price*. Finally, the asking price is the initial price set by the seller; Alex might decide to counter John's asking price with her initial offer—the first number she will quote to the seller.

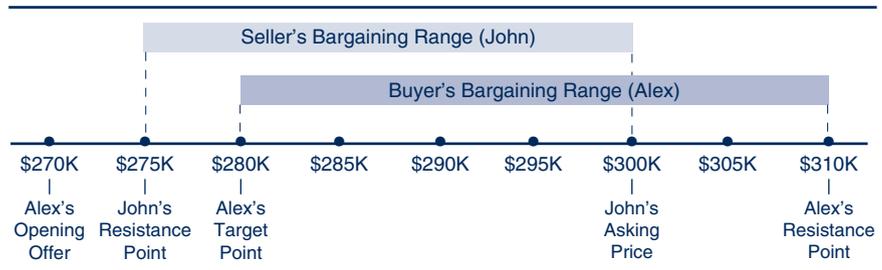
How does Alex decide on her initial offer? There are many ways to answer this question. Fundamentally, however, to make a good initial offer Alex must understand something about the process of negotiation. In Chapter 1, we discussed how people expect give-and-take when they negotiate, and Alex needs to factor this into her initial offer. If Alex opened the negotiation at her target point (\$280,000) and then had to make a concession, this first concession would have her moving away from her target point to a price closer to her resistance point. If she really wants to achieve her target, she should make an initial offer that is lower than her target point to create some room for making concessions. At the same time, the starting point cannot be too far from the target point. If Alex made the first offer too low (e.g., \$200,000), John might break off negotiations, believing her to be unreasonable or foolish. Although judgments about how to determine first offers can often be quite complex and can have a dramatic influence on the course of negotiation, let us stay with the simple case for the moment and assume that Alex decided to offer \$270,000 as a reasonable first offer; this price is less than her target point and well below her resistance point. In the meantime, remember that although this illustration concerns only price, all other issues or agenda items for the negotiation have starting, target, and resistance points.

Both parties to a negotiation should establish their starting, target, and resistance points before beginning a negotiation. Starting points are often in the opening statements each party makes (i.e., the seller's listing price and the buyer's first offer). The target point is usually learned or inferred as negotiations get under way. People typically give up the margin between their starting points and target points as they make concessions. The resistance point, the point beyond which a person will not go and would rather break off negotiations, is not known to the other party and should be kept secret.⁴ One party may not learn the other's resistance point even after the end of a successful negotiation. After an unsuccessful negotiation, one party may infer that the other's resistance point was near the last offer the other was willing to consider before the negotiation ended.



The parties' starting and resistance points are usually arranged in reverse order, with the resistance point being a high price for the buyer and a low price for the seller. Thus, continuing the illustration, Alex would have been willing to pay up to \$310,000 for the unit John asked \$300,000 for. Alex can speculate that John may be willing to accept something less than \$300,000 and might well regard \$290,000 as a desirable figure. What Alex does not know (but would dearly like to) is the lowest figure that John would accept. Is it \$290,000? \$285,000? Alex assumes it is \$275,000 (and for now we will assume this is accurate). John, for his part, initially knows nothing about Alex's position but soon learns her starting point when she offers \$270,000. John may suspect that Alex's target point is not too far away (in fact it is \$280,000, but John doesn't know this) and has no idea of her resistance point (\$310,000). This information—what Alex knows or infers about John's positions—is represented in Figure 2.1.

FIGURE 2.1 | The Situation between Alex and John



The figure also illustrates another important concept, the spread between the resistance points, called the **bargaining zone**, or *zone of potential agreement*. In this area the actual bargaining takes place, for anything outside these points will be summarily rejected by one of the two negotiators. When the buyer's resistance point is above the seller's—she is minimally willing to pay more than he is minimally willing to sell for, as is true in this example—there is a *positive bargaining zone*. When the reverse is true—the seller's resistance point is above the buyer's, and the buyer won't pay more than the seller will minimally accept—there is a *negative bargaining zone*. If, in the example, John would minimally accept \$300,000 and Alex would maximally pay \$280,000, then a negative bargaining range would exist. Negotiations that begin with a negative bargaining range are likely to stalemate. They can be resolved only if one or both parties are persuaded to change their resistance points or if someone else forces a solution upon them that one or both parties dislike. However, because negotiators don't begin their deliberations by talking about their resistance points (they're discussing initial offers and demands instead), it is often difficult to know whether a positive zone exists until the negotiators get deep into the process. Both parties may realize that there is no overlap in their resistance points only after protracted negotiations have been exhausted; at that point, they will have to decide whether to end negotiations or re-evaluate their resistance points, a process described in more detail later on.

Target points, resistance points, and initial offers all play an important role in distributive bargaining. Target points influence both negotiator outcomes and negotiator satisfaction with their outcomes, opening offers play an important role in influencing negotiation outcomes (see below), and resistance points play a very important role as a warning for the possible presence of hardball tactics (see below).⁵

bargaining zone
the space between the
resistance points of each
negotiator

The Role of Alternatives to a Negotiated Agreement

In addition to opening bids, target points, and resistance points, a fourth factor may enter the negotiations: an alternative outcome that can be obtained by completing a deal with someone else. In some negotiations, the parties have only two fundamental choices: (1) reach a deal with the other party, or (2) reach no settlement at all. In other negotiations, however, one or both parties may have the possibility of an alternative deal with another party. Thus, in the case of Alex and John, Alex may continue searching for a unit and find another she is willing buy. Similarly, if John waits long enough he will presumably find another interested buyer. If Alex picks a different unit to buy, speaks to the owner of that unit, and negotiates the best price that she can, that price represents her alternative.

Recall from Chapter 1 that negotiators need to ensure they have a clear understanding of their *best alternative to a negotiated agreement*, or BATNA.⁶ Having a number of alternatives can be useful, but it is really one's *best* alternative that will influence the decision to close a deal or walk away. Understanding the BATNA and making it as strong as possible provide a negotiator with more power in the current negotiation because the BATNA clarifies what he or she will do if an agreement cannot be reached. Classic advice to home purchasers is to "fall in love with three houses, not just one." This is solid advice—when good alternatives are available, negotiators are less likely to take unnecessary risks. In addition, negotiators who have stronger BATNAs will have more power throughout the negotiation and accordingly should be able to achieve more of their goals.

Alternatives are also important because they give negotiators the power to walk away from any negotiation when the emerging deal is not very good. The number of realistic alternatives that negotiators have will vary considerably from one situation to another. In negotiations where they have many attractive alternatives, they can set their goals higher and make fewer concessions. In negotiations where they have no attractive alternative, such as when dealing with a sole supplier, they have much less bargaining power. Good distributive bargainers identify their realistic alternatives before starting discussions with the other party so they can properly gauge how firm to be in the negotiation.⁷ Good bargainers also try to improve their alternatives while the negotiation is underway. If Alex's negotiations with John extend over a period of time, she should keep her eye on the market for other, possibly better, alternatives. She may also continue to negotiate with the owner of the existing alternative unit for a better deal. Both courses of action involve efforts by Alex to maintain and expand her bargaining power by improving the quality of her alternatives.⁸

Settlement Point

The fundamental process of distributive bargaining is to reach a settlement within a positive bargaining zone. The objective of both parties is to obtain as much of the bargaining zone as possible—that is, to reach an agreement as close to the other party's resistance point as possible.

Both parties in distributive bargaining know that they might have to settle for less than what they would prefer (their target point), but they hope that the agreement will be better than their own resistance point. For agreement to occur, both parties must believe that the settlement, although perhaps less desirable than they would prefer, is the best that they can get. This belief is important, both for

reaching agreement and for ensuring support for the agreement after the negotiation concludes. Negotiators who do not think they got the best agreement possible, or who believe that they lost something in the deal, may try to get out of the agreement later or find other ways to recoup their losses. If Alex thinks she got the short end of the deal, she could make life miserable and expensive for John by making extraneous claims later—claiming that the unit had hidden damages, and so on. Another factor that will affect satisfaction with the agreement is whether the parties will see or deal with each other again. If John is selling all the units and moving on to other developments, then Alex may be unable to contact him later for any adjustments and should therefore ensure that she evaluates the current deal very carefully (good advice in any situation, but especially the case here).

Fundamental Strategies

The primary objective in distributive bargaining is to maximize the value of the current deal. In the current example, the buyer has four fundamental strategies available:

1. To push for a settlement close to the seller's (unknown) resistance point, thereby yielding the largest part of the settlement range for the buyer. The buyer may attempt to influence the seller's view of what settlements are possible by making extreme offers and small concessions.
2. To convince the seller to change his resistance point by influencing the seller's beliefs about the value of the unit (e.g., by telling him that the unit is overpriced), and thereby increase the bargaining range.
3. If a negative settlement range exists, to convince the seller to reduce his resistance point to create a positive settlement zone or to change her own resistance point to create an overlap. Thus, John could be persuaded to accept a lower price, or Alex could decide she has to pay more than she wanted to.
4. To convince the seller to believe that this settlement is the best that is possible—not that it is all he can get, or that he is incapable of getting more, or that the buyer is winning by getting more. The distinction between a party believing that an agreement is the best possible (and not the other interpretations) may appear subtle and semantic. However, in getting people to agree it is important that they feel as though they got the best possible deal. Ego satisfaction is often as important as achieving tangible objectives (recall the discussion of tangibles and intangibles in Chapter 1).

In all these strategies, the buyer is attempting to influence the seller's perceptions of what is possible through the exchange of information and persuasion. Regardless of the general strategy taken, two tasks are important in all distributive bargaining situations: (1) discovering the other party's resistance point, and (2) influencing the other party's resistance point.

Discovering the Other Party's Resistance Point

Information is the life force of negotiation. The more you can learn about the other party's target, resistance point, motives, feelings of confidence, and so on, the more able you will be to strike a favourable agreement (see Negotiation Point 2.1). At the same time, you do not want the other party to have certain information about you. Your resistance point, some of your targets, and confidential information about a weak strategic position or an emotional vulnerability are best concealed.⁹

Negotiation Point

2.1

The Piano

When shopping for a used piano, Orvel Ray answered a newspaper ad. The piano was a beautiful upright in a massive walnut cabinet. The seller was asking \$1,000, and it would have been a bargain at that price, but Orvel had received a \$700 tax refund and had set this windfall as the limit that he could afford to invest. He searched for a negotiating advantage.

He was able to deduce several facts from the surroundings. The piano was in a furnished basement, which also contained a set of drums and an upright acoustic bass. Obviously the seller was a serious musician, who probably played jazz. There had to be a compelling reason for selling such a beautiful instrument.

Orvel asked the first, obvious question, "Are you buying a new piano?"

The seller hesitated. "Well, I don't know yet. See, we're moving out of the province, and it would be very expensive to ship this piano clear across the country."

"Did they say how much extra it would cost?" Orvel queried.

"They said an extra \$300 or so."

"When do you have to decide?"

"The packers are coming this afternoon."

Now Orvel knew where the seller was vulnerable. He could ship the piano cross-country, or sell it for \$700 and still break even. Or he could hold out for his asking price and take his chances. "Here's what I can do: I can give you \$700 in cash, right now," Orvel said as he took seven \$100 bills out of his pocket and spread them on the keyboard. "And I can have a truck and three of my friends here to move it out of your way by noon today."

The seller hesitated, then picked up the money. "Well, I suppose that would work. I can always buy a new piano when we get settled."

Orvel left before the seller could reconsider. By the time the group returned with the truck, the seller had received three other offers at his asking price, but because he had accepted the cash, he had to tell them that the piano had already been sold.

If the seller had not volunteered the information about the packers coming that afternoon, Orvel might not have been able to negotiate the price.

*Source: From J. C. Levinson, M. S. A. Smith, and O. R. Wilson, *Guerrilla Negotiating* (New York: John Wiley, 1999), pp. 15–16.*

Alternatively, you may want the other party to have certain information—some of it factual and correct, some of it contrived to lead the other party to believe things that are favourable to you. Because each side wants to obtain some information and to conceal other information, and because each side knows that the other also wants to obtain and conceal information, communication can become complex. Information is often conveyed in a code that evolves during negotiation. People answer questions with other questions or with incomplete statements; to influence the other's perceptions, however, they must establish some points effectively and convincingly.

Influencing the Other Party's Resistance Point

Central to planning the strategy and tactics for distributive bargaining is locating the other party's resistance point and the relationship of that resistance point to your own. Keep in mind that by definition, a resistance point is the point at which the person is indifferent to a deal; beyond that point they prefer no deal. The resistance

point is established by the value expected from a particular outcome, which in turn is the product of the worth and costs of an outcome. Alex sets her resistance point based on the amount of money she can afford to pay (in total or in monthly mortgage payments), the estimated market value or worth of the unit, and other factors in the bargaining mix (e.g., closing date). A resistance point will also be influenced by the cost an individual attaches to delay or difficulty in negotiation (an intangible) or in having the negotiations aborted. If Alex, who had set her resistance point at \$310,000, were faced with the choice of paying \$315,000 or continuing to operate the business from home, she might well re-evaluate her resistance point. The following factors are important in attempting to influence the other person's resistance point: (1) the value the other attaches to a particular outcome, (2) the costs the other attaches to delay or difficulty in negotiations, and (3) the cost the other attaches to having the negotiations aborted.

A significant factor in shaping the other person's understanding of what is possible—and therefore the value he or she places on particular outcomes—is the other's understanding of your own situation. Therefore, when influencing the other's viewpoint, you must also deal with the other party's understanding of your value for a particular outcome, the costs you attach to delay or difficulty in negotiation, and your cost of having the negotiations aborted.

To explain how these factors can affect the process of distributive bargaining, we will make four major propositions.¹⁰

1. *The higher the other party's estimate of your cost of delay or impasse, the stronger the other party's resistance point will be.* If the other party sees that you need a settlement quickly and cannot defer it, he or she can seize this advantage and press for a better outcome. Expectations will rise and the other party will set a more demanding resistance point. The more you can convince the other that your costs of delay or aborting negotiations are low (that you are in no hurry and can wait forever), the more modest the other's resistance point will be.
2. *The higher the other party's estimate of his or her own cost of delay or impasse, the weaker the other party's resistance point will be.* The more a person needs a settlement, the more modest he or she will be in setting a resistance point. Therefore, the more you can do to convince the other party that delay or aborting negotiations will be costly, the more likely he or she will be to establish a modest resistance point. In contrast, the more attractive the other party's alternatives, the more likely he or she will be to set a high resistance point. If negotiations are unsuccessful, the other party can move to an attractive alternative. In the earlier example, we mentioned that both Alex and John have satisfactory alternatives.
3. *The less the other party values an issue, the lower their resistance point will be.* The resistance point may soften as the person reduces how valuable he or she considers that issue. If you can convince the other party that a current negotiating position will not have the desired outcome or that the present position is not as attractive as the other believes, then he or she will adjust their resistance point.
4. *The more the other party believes that you value an issue, the lower their resistance point may be.* The more you can convince the other that you value a particular issue the more pressure you put on the other party to set a more

modest resistance point with regard to that issue. Similarly, if you know that a position is important to the other party you can expect the other to resist giving up on that issue, and there may be less possibility of a favourable settlement in that area. As a result, you may need to lower your expectations to a more modest resistance point.

Tactical Tasks

Within the fundamental strategies of distributive bargaining there are four important tactical tasks concerned with targets, resistance points, and the costs of terminating negotiations for a negotiator to consider: (1) assess the other party's target, resistance point, and cost of terminating negotiations; (2) manage the other party's impression of the negotiator's target, resistance point, and cost of terminating negotiation; (3) modify the other party's perception of his or her own target, resistance point, and cost of terminating negotiation; and (4) manipulate the actual costs of delaying or terminating negotiations. Each of these tasks is discussed in more detail below.

Assessing the Other Party's Target, Resistance Point, and Costs of Terminating Negotiations

An important first step for a negotiator is to obtain information about the other party's target and resistance points. The negotiator can pursue two general routes to achieve this task: obtain information indirectly about the background factors behind an issue (indirect assessment) or obtain information directly from the other party about their target and resistance points (direct assessment).

Indirect Assessment An individual sets a resistance point based on many potential factors. For example, how do you decide how much rent or mortgage payment you can afford each month? How do you decide what a condo or used car is really worth? There are lots of ways to go about doing this. Indirect assessment means determining what information an individual likely used to set target and resistance points and how he or she interpreted this information. For example, in labour negotiations, management may infer whether or not a union is willing to strike by how hard the union bargains or by the size of its strike fund. The union decides whether or not the company can afford a strike based on the size of inventories, market conditions for the company's product, and the percentage of workers who are members of the union. In a real-estate negotiation, how long a piece of property has been on the market, how many other potential buyers actually exist, how soon a buyer needs the property for business or living, and the financial health of the seller will be important factors. An automobile buyer might view the number of new cars in inventory on the dealer's lot, refer to newspaper articles about automobile sales, read about a particular car's popularity in consumer buying guides (i.e., the more popular the car, the less willing she may be to bargain on the price), or consult reference guides to find out what a dealer pays wholesale for different cars. See Negotiation Point 2.2 for more detail on the power of information in automobile purchases.

Negotiation Point

2.2

Buying a New Car

Not so long ago, Canadian automobile dealerships were able to keep their wholesale costs hidden. People buying new cars could see the sticker price, or manufacturer's suggested retail price (MSRP), posted clearly in car windshields. The basic strategy for most buyers was to try and negotiate a discount off of this price. In contrast, today information is much more freely available. Organizations such as Car Cost Canada (<http://carcostcanada.com>) and the Automobile Protection Association (<http://www.apa.ca>) can provide information on dealer wholesale prices and hidden rebates for a small fee.

To illustrate, an imported mid-sized sedan was recently listed with a MSRP of \$42,550

(including the base price, freight charge, A/C tax, and an optional package). Years ago, a consumer might try to haggle for hours to knock \$1000 off this price, and leave the dealership convinced they received a good deal. Armed with better information, today's consumer would feel differently. The wholesale price on the car is actually \$39,000, which means there is a markup of more than \$3500. In addition, the information purchased by the consumer would reveal a hidden factory-to-dealer rebate of \$2500 on the car. This rebate costs the dealer nothing, and in many cases they are not obligated to reveal these rebates to consumers. When the rebate is factored in, the actual cost to the dealer is \$36,500. With this knowledge, paying approximately \$41,500 for the car doesn't sound like such a good deal.

Direct Assessment In bargaining, the other party does not usually reveal accurate and precise information about his or her targets, resistance points, and expectations. Sometimes, however, the other party will provide accurate information. When pushed to the absolute limit and in need of a quick settlement, the other party may explain the facts quite clearly. If company executives believe that a wage settlement above a certain point will drive the company out of business, they may choose to state that absolute limit very clearly and go to considerable lengths to explain how it was determined. Similarly, a condo buyer may tell the seller his absolute maximum price and support it with an explanation of income and other expenses. In these instances, the party revealing the information believes that the proposed agreement is within the settlement range—and that the other party will accept the offered information as true rather than see it as a bargaining ploy. An industrial salesperson may tell the purchaser about product quality and service, alternative customers who want to buy the product, and the time required to manufacture special orders.

Most of the time, however, the other party is not so forthcoming, and the methods of getting direct information are more complex. In international diplomacy, various means are used to gather information. Sources are cultivated, messages are intercepted, and codes broken. In labour negotiations, companies have been known to recruit informers or bug union meeting rooms, and unions have had their members collect papers from executives' wastebaskets. In real estate negotiations, sellers have entertained prospective buyers with abundant alcoholic beverages in the hope that tongues will be loosened and information revealed.¹¹ Additional approaches include provoking the other party into an angry outburst or putting the

other party under pressure designed to cause him or her to make a slip and reveal valuable information. Negotiators will also simulate exasperation and angrily stalk out of negotiations in the hope that the other, in an effort to avoid a deadlock, will reveal what they really want.

Manage the Other Party's Impressions

An important tactical task for negotiators is to control the information sent to the other party about your target and resistance points, while simultaneously guiding him or her to form a preferred impression of them. Negotiators need to screen information about their positions and to represent them as they would like the other to believe them. Generally speaking, screening activities are more important at the beginning of negotiation, and direct action is more useful later on. This sequence also allows time to concentrate on gathering information from the other party, which will be useful in evaluating resistance points, and on determining the best way to provide information to the other party about one's own position.

Screening Activities The simplest way to screen a position is to say and do as little as possible. "Silence is golden" when answering questions; words should be invested in asking the other negotiator questions instead. Reticence reduces the likelihood of making verbal slips or presenting any clues that the other party could use to draw conclusions. A look of disappointment or boredom, fidgeting and restlessness, or probing with interest all can give clues about the importance of the points under discussion. Concealment is the most general screening activity.

Another approach, available when group negotiations are conducted through a representative, is calculated incompetence. With this approach, constituents do not give the negotiating agent all the necessary information, making it impossible for him or her to leak information. Instead, the negotiator is sent with the task of simply gathering facts and bringing them back to the group. This strategy can make negotiations complex and tedious, and it often causes the other party to protest vigorously at the negotiator's inability to divulge important data or to make agreements. Lawyers, real estate agents, and investigators frequently perform this role. Representatives may also be limited, or limit themselves, in their authority to make decisions. For example, a man buying a car may claim that he must consult his wife before making a final decision.

When negotiation is carried out by a team—as is common in diplomacy, labour-management relations, and many business negotiations—channelling all communication through a team spokesperson reduces the inadvertent revelation of information (team negotiations are discussed more extensively in Chapter 10). In addition to reducing the number of people who can actively reveal information, this allows members of the negotiating team to observe and listen carefully to what the other party is saying so they can detect clues and pieces of information about their position. Still another screening activity is to present a great many items for negotiation, only a few of which are truly important to the presenter. In this way, the other party has to gather information about so many different items that it becomes difficult to detect which items are really important. This tactic, called the "snow job" or "kitchen sink," may be considered a hardball tactic (discussed later in this chapter) if carried to an extreme.¹²

Direct Action to Alter Impressions Negotiators can take many actions to present facts that will directly enhance their position or make it appear stronger to the other party. One of the most obvious methods is *selective presentation*, in which negotiators reveal only the facts necessary to support their case. Negotiators can also use selective presentation to lead the other party to form the desired impression of their resistance point or to create new possibilities for agreement that are more favourable than those that currently exist. Another approach is to explain or interpret known facts to present a logical argument that shows the costs or risks to oneself if the other party's proposals are implemented. An alternative is to say, "If you were in my shoes, here is the way these facts would look in light of the proposal you have presented."

Displaying *emotional reaction* to facts, proposals, and possible outcomes is another form of direct action negotiators can take to provide information about what is important to them. When Buzz Hargrove was president of the Canadian Autoworkers Union, he responded to a contract offer from an employer as follows: "Quite frankly, this is a ****ing insult to our union. We have not signed an agreement anywhere with any major employer anywhere close to this, not even in the same ballpark." Researchers Neil Fassina at the University of Manitoba and Glen Whyte of the University of Toronto examined the effect of these types of responses to opening offers. They found that negotiators who respond to a counterpart's offer with an obvious verbal and nonverbal display of displeasure do tend to claim more value. However, counterparts on the other end of "the flinch," as the technique is sometimes called, are more likely to view the relationship in a negative light. To temper this effect, Fassina and Whyte conducted a second study and found that negotiators who used a less intense negative reaction claimed just as much value as those who used the intense reaction. They also found that the negative relationship costs were suppressed.¹³ Thus, it appears that letting a negotiation counterpart see your negative reaction to an offer, as long as it isn't too intense, increases the likelihood that you will claim more value.

Modify the Other Party's Perceptions

A negotiator can alter the other party's impressions of his or her own objectives by making outcomes appear less attractive or by making the cost of obtaining them appear higher. The negotiator may also try to make demands and positions appear more attractive or less unattractive to the other party.

There are several approaches to modifying the other party's perceptions. One approach is to interpret for the other party what the outcomes of his or her proposal will really be. A negotiator can explain logically how an undesirable outcome would result if the other party really did get what he or she requested. This may mean highlighting something that has been overlooked. Another approach to modifying the other's perceptions is to conceal information. An industrial seller may not reveal to a purchaser that certain technological changes are going to reduce the cost of producing the products significantly. A seller of real estate may not tell a prospective buyer that in three years a proposed highway will isolate the property being sold from attractive portions of the city. Concealment strategies may carry with them the ethical hazards mentioned earlier.

Manipulate the Actual Costs of Delay or Termination

Negotiators have deadlines. A contract will expire. Agreement has to be reached before an important meeting occurs. Someone has to catch a plane. Extending negotiations beyond a deadline can be costly, particularly to the person who has the deadline, because that person has to either extend the deadline or go home empty-handed. At the same time, research and practical experience suggest that a large majority of agreements in distributive bargaining are reached when the deadline is near.¹⁴ In addition, time pressure in negotiation appears to reduce the demands of the other party,¹⁵ and when a negotiator represents a constituency, time pressure appears to reduce the likelihood of reaching an agreement.¹⁶ Manipulating a deadline or failing to agree by a particular deadline can be a powerful tool in the hands of the person who does not face deadline pressure. In some ways, the ultimate weapon in negotiation is to threaten to terminate negotiations, denying both parties the possibility of a settlement. One side then will usually feel this pressure more acutely than the other, and so the threat is a potent weapon. There are three ways to manipulate the costs of delay in negotiation: (1) plan disruptive action, (2) form an alliance with outsiders, and (3) manipulate the scheduling of negotiations.

Disruptive Action One way to encourage settlement is to increase the costs of not reaching a negotiated agreement. In one instance, a group of unionized food-service workers negotiating with a restaurant rounded up supporters, had them enter the restaurant just prior to lunch, and had each person order a cup of coffee and drink it leisurely. When regular customers came to lunch, they found every seat occupied.¹⁷ In another case, people dissatisfied with automobiles they purchased from a certain dealer had their cars painted with large, bright yellow lemons and signs bearing the dealer's name, then drove them around town in an effort to embarrass the dealer into making a settlement. Public picketing of a business, boycotting a product or company, and locking negotiators in a room until they reach agreement are all forms of disruptive action that increase the costs to negotiators for not settling and thereby bring them back to the bargaining table. Such tactics can work, but they may also produce anger and escalation of the conflict.

Alliance with Outsiders Another way to increase the costs of delay or terminating negotiations is to involve other parties in the process who can somehow influence the outcome. Individuals who are dissatisfied with the practices and policies of businesses or government agencies form task forces, political action groups, and protest organizations to bring greater collective pressure on the target. For example, professional schools within universities often enhance their negotiation with higher management on budget matters by citing required compliance with external accreditation standards to substantiate their budget requests.

Schedule Manipulation The negotiation scheduling process can often put one party at a considerable disadvantage. Businesspeople going overseas to negotiate with customers or suppliers often find that negotiations are scheduled to begin immediately after their arrival, when they are still suffering from the fatigue of travel and jet lag. Alternatively, a host party can use delay tactics to squeeze negotiations into the last remaining minutes of a session to extract concessions from the

visiting party.¹⁸ Automobile dealers likely negotiate differently with a customer half an hour before quitting time on Saturday than at the beginning of the workday on Monday. Industrial buyers have a much more difficult negotiation when they have a short lead time because their plants may have to sit idle if they cannot secure a new contract for raw materials in time.

The opportunities to increase or alter the timing of negotiation vary widely across negotiation domains. In some industries it is possible to stockpile raw materials at relatively low cost or to buy in large bulk lots; in other industries, however, it is essential that materials arrive at regular intervals because they have a short shelf life (as many manufacturing firms move to just-in-time inventory procedures, this becomes increasingly true).

Positions Taken during Negotiation

Effective distributive bargainers need to understand the process of taking positions during bargaining, including the importance of the opening offer and the opening stance, and the role of making concessions throughout the negotiation process.¹⁹ At the beginning of negotiations, each party takes a position, and then one party will typically change his or her position in response to information from the other party or in response to the other party's behaviour. Below we will return to the negotiation between Alex and John to illustrate the power of opening offers and the concession-making process that usually follows.

Opening Offers

When negotiations begin, the negotiator is faced with a perplexing problem. What should the opening offer be? Will the offer be seen as too low or too high by the other negotiator and be contemptuously rejected? Recall that John casually made an opening offer of \$300,000 and Alex did not call off the discussion. Imagine how different things might look if Alex had pre-empted John's opening offer and made an offer herself of \$270,000. What effect would this have on John? When a classroom of negotiation students is asked whether they prefer to make the opening offer or wait to hear what their counterpart proposes, a wide majority tend to favour waiting and making a counteroffer. Many are surprised to hear that the best advice is usually to make the first offer. Why would we suggest this?

The power of first offers comes from the **anchoring effect**, which is based on the observation that people making decisions under uncertain conditions are influenced by initial starting numbers. Research by Adam Galinsky and Thomas Mussweiler suggests that making the first offer in a negotiation is advantageous because it can anchor a negotiation, especially when information about alternative negotiation outcomes is not considered. Negotiators can dampen the "first offer effect" by the other negotiator, however, by concentrating on their own target and focusing on the other negotiator's resistance point.

So, Alex's attempt to anchor John on \$270,000 is likely to lead to a lower selling price than if she had waited for John to make the first offer. As long as opening offers are not too outrageous, research indicates that negotiators who make exaggerated opening offers get higher settlements than do those who make low or modest opening offers.²⁰ There are at least two reasons that an ambitious opening offer

anchoring effect
the observation that
people who make
decisions under
uncertain conditions
are influenced by initial
starting numbers

is advantageous.²¹ First, it gives the negotiator room for movement and therefore allows him or her time to learn about the other party's priorities. Second, an ambitious opening offer acts as a metamessage and may create, in the other party's mind, the impression that (1) there is a long way to go before a reasonable settlement will be achieved, (2) more concessions than originally intended may have to be made to bridge the difference between the two opening positions, and (3) the other may have incorrectly estimated his or her own resistance point.²² Two disadvantages of an ambitious opening offer are that (1) it may be summarily rejected by the other party, and (2) it communicates an attitude of toughness that may be harmful to long-term relationships. The more exaggerated the offer, the greater is the likelihood that it will be summarily rejected by the other side. Therefore, negotiators who make exaggerated opening offers should also have viable alternatives they can employ if the opposing negotiator refuses to deal with them.

Opening Stance

A second decision to be made at the outset of distributive bargaining concerns the stance or attitude to adopt during the negotiation. Will you be competitive (fighting to get the best on every point) or moderate (willing to make concessions and compromises)? Some negotiators take a belligerent stance, attacking the positions, offers, and even the character of the other party. In response, the other party may mirror the initial stance, meeting belligerence with belligerence. Even if the other party does not directly mimic a belligerent stance, he or she is unlikely to respond in a warm and open manner. Some negotiators adopt a position of moderation and understanding, seeming to say, "Let's be reasonable people who can solve this problem to our mutual satisfaction." Even if the attitude is not mirrored, the other's response is likely to be constrained by such a moderate opening stance.

It is important for negotiators to think carefully about the message that they wish to signal with their opening stance and subsequent concessions because there is a tendency for negotiators to respond "in kind" to distributive tactics in negotiation.²³ That is, negotiators tend to match distributive tactics from the other party with their own distributive tactics, so negotiators should make a conscious decision about what they are signalling to the other party with their opening stance and subsequent concessions.

To communicate effectively, a negotiator should try to send a consistent message through both the opening offer and stance.²⁴ A reasonable bargaining position is usually coupled with a friendly stance, and an exaggerated bargaining position is usually coupled with a tougher, more competitive stance. When the messages sent by the opening offer and stance are in conflict, the other party will find them confusing to interpret and answer.

Initial Concessions

An opening offer is usually met with a counteroffer, and these two offers define the initial bargaining range. Sometimes the other party will not counteroffer but will simply state that the first offer (or set of demands) is unacceptable and ask the opener to come back with a more reasonable set of proposals. For example, John might have responded to Alex's \$270,000 offer by saying, "That's quite a bit lower than I had in mind. Maybe we need to keep looking at the unit before we begin

talking numbers.” In any event, after the first round of offers, the next question is, what movement or concessions are to be made? Negotiators can choose to make none, to hold firm and insist on the original position, or they can make some concessions. Note that it is not an option to escalate one’s opening offer, that is, to set an offer further away from the other party’s target point than one’s first offer. This would be uniformly met with disapproval from the other negotiator. If concessions are to be made, the next question is, how large should they be? Note that the first concession conveys a message, frequently a symbolic one, to the other party about how you will proceed.

Opening offers, opening stances, and initial concessions are elements at the beginning of a negotiation that parties can use to communicate how they intend to negotiate. An exaggerated opening offer, a determined opening stance, and a very small opening concession signal a position of firmness; a moderate opening offer, a co-operative opening stance, and a reasonable initial concession communicate a basic stance of flexibility. By taking a firm position, negotiators attempt to capture most of the bargaining range for themselves so that they maximize their final outcome or preserve maximum manoeuvring room for later in the negotiation. Firmness can also create a climate in which the other party may decide that concessions are so meagre that he or she might as well capitulate and settle quickly rather than drag things out. Paradoxically, firmness may actually shorten negotiations.²⁵ There is also the very real possibility, however, that firmness will be reciprocated by the other. One or both parties may become either intransigent or disgusted and withdraw completely.

There are several good reasons for adopting a flexible position.²⁶ First, when taking different stances throughout a negotiation, one can learn about the other party’s targets and perceived possibilities by observing how he or she responds to different proposals. Negotiators may want to establish a co-operative rather than a combative relationship, hoping to get a better agreement. In addition, flexibility keeps the negotiations proceeding; the more flexible one seems, the more the other party will believe that a settlement is possible.

Role of Concessions

Concessions are central to negotiation. Without them, negotiations would not exist. If one side is not prepared to make concessions, the other side must capitulate or the negotiations will deadlock. People enter negotiations expecting concessions. Negotiators are less satisfied when negotiations conclude with the acceptance of their first offer, likely because they feel they could have done better.²⁷ Good distributive bargainers will not begin negotiations with an opening offer too close to their own resistance point, but rather will ensure that there is enough room in the bargaining range to make some concessions. Research suggests that people will generally accept the first or second offer that is better than their target point,²⁸ so negotiators should try to identify the other party’s target point accurately and avoid conceding too quickly to that point (see Negotiation Point 2.3. for guidelines on how to make concessions).

Negotiators also generally resent a take-it-or-leave-it approach; an offer that may have been accepted had it emerged as a result of concession making may be rejected when it is thrown on the table and presented as a *fait accompli*. This latter approach, called Boulwarism,²⁹ has been illustrated many times in labour relations.

2.3

Twelve Guidelines for Making Concessions

Donald Hendon, Matthew Roy, and Zafar Ahmed (2003) provide the following 12 guidelines for making concessions in negotiation:

1. Give yourself enough room to make concessions.
2. Try to get the other party to start revealing their needs and objectives first.
3. Be the first to concede on a minor issue but not the first to concede on a major issue.
4. Make unimportant concessions and portray them as more valuable than they are.
5. Make the other party work hard for every concession you make.
6. Use trade-offs to obtain something for every concession you make.
7. Generally, concede slowly and give a little with each concession.
8. Do not reveal your deadline to the other party.
9. Occasionally say “no” to the other negotiator.
10. Be careful trying to take back concessions even in “tentative” negotiations.
11. Keep a record of concessions made in the negotiation to try to identify a pattern.
12. Do not concede “too often, too soon, or too much.”

Source: D. W. Hendon, M. H. Roy, and Z. U. Ahmed, “Negotiation Concession Patterns: A Multicountry, Multiperiod Study,” *American Business Review* 21 (2003), pp. 75–83.

In the past, some management leaders objectively analyzed what they could afford to give in their upcoming contract talks and made their initial offer at the point they intended for the agreement (i.e., they set the same opening offer, target point, and resistance point). They then insisted there were no concessions to be made because the initial offer was fair and reasonable based on their own analysis. Unions bitterly fought these positions and continued to resent them years after the companies abandoned this bargaining strategy.

There is ample data to show that parties feel better about a settlement when the negotiation involved a progression of concessions than when it didn't.³⁰ Rubin and Brown suggest that bargainers want to believe they are capable of shaping the other's behaviour, of causing the other to choose as he or she does.³¹ Because concession making indicates an acknowledgment of the other party and a movement toward the other's position, it implies recognition of that position and its legitimacy. The intangible factors of status and recognition may be as important as the tangible issues themselves. Concession making also exposes the concession maker to some risk. If the other party does not reciprocate, the concession maker may appear to be weak. Thus, not reciprocating a concession may send a powerful message about firmness and leaves the concession maker open to feeling that his or her esteem has been damaged or reputation diminished.

A reciprocal concession cannot be haphazard. If one party has made a major concession on a significant point, it is expected that the return offer will be on the same item or one of similar weight and somewhat comparable magnitude. To make

an additional concession when none has been received (or when the other party's concession was inadequate) can imply weakness and can squander valuable manoeuvring room. After receiving an inadequate concession, negotiators may explicitly state what they expect before offering further concessions: "That is not sufficient; you will have to concede X before I consider offering any further concessions."

To encourage further concessions from the other side, negotiators sometimes link their concessions to a prior concession made by the other. They may say, "Since you have reduced your demand on X, I am willing to concede on Y." A powerful form of concession making involves wrapping a concession in a package, sometimes described as "logrolling."³² For example, "If you will move on A and B, I will move on C and D." Packaging concessions also leads to better outcomes for negotiators than making concessions singly on individual issues.³³

Pattern of Concession Making

The pattern of concessions a negotiator makes contains valuable information, but it is not always easy to interpret. When successive concessions get smaller, the obvious message is that the concession maker's position is getting firmer and that the resistance point is being approached. This generalization needs to be tempered, however, by noting that a concession late in negotiations may also indicate that there is little room left to move. When the opening offer is exaggerated, the negotiator has considerable room available for packaging new offers, making it relatively easy to give fairly substantial concessions. When the offer or counteroffer has moved closer to a negotiator's target point, giving a concession the same size as the initial one may take a negotiator past the resistance point. The pattern of concession making is also important. Consider a pattern of concessions Alex and John might have gone through. Assume that they started from opening positions of \$270,000 for Alex and \$300,000 for John. Alex makes three concessions, each worth \$4,000, to leave her at a current position of \$282,000. In contrast, John makes four concessions, worth \$4,000, \$3,000, \$2,000, and \$1,000, to leave him at \$290,000. They both then tell their counterparts they have conceded about all that they can. John is more likely to be believed when he makes this assertion because he has signalled through the pattern of his concession making that there is not much left to concede. When Alex claims to have little left to concede, her counterpart is less likely to believe her because the pattern of concessions (three concessions worth the same amount) suggests that there is plenty left to concede, even though Alex has actually conceded more than John.³⁴ Note that we have not considered the words spoken by Alex and John as these concessions were made. Behaviours and words are interpreted by the other party when we negotiate; it is important to signal to the other party with both our actions and our words that the concessions are almost over.

Final Offers

Eventually a negotiator wants to convey the message that there is no further room for movement—that the present offer is the final one. A good negotiator will say, "This is all I can do" or "This is as far as I can go." Sometimes, however, it is clear that a simple statement will not suffice; an alternative is to use concessions to convey the point. A negotiator might simply let the absence of any further concessions convey the message in spite of urging from the other party. The other party may not recognize at first that the last offer was the final one and might volunteer a further concession to get the

other to respond. Finding that no further concession occurs, the other party may feel betrayed and perceive that the pattern of concession–counter concession was violated. The resulting bitterness may further complicate negotiations.

One way negotiators may convey the message that an offer is the last one is to make the last concession more substantial. This implies that the negotiator is throwing in the remainder of the negotiating range. The final offer has to be large enough to be dramatic yet not so large that it creates the suspicion that the negotiator has been holding back and that there is more available on other issues in the bargaining mix.³⁵ A concession may also be personalized to the other party (“I went to my boss and got a special deal just for you”), which signals that this is the last concession the negotiator will make.

Closing the Deal

After negotiating for a period of time, and learning about the other party’s needs, positions, and perhaps resistance point, the next challenge for a negotiator is to close the agreement. Several tactics are available to negotiators for closing a deal,³⁶ choosing the best tactic for a given negotiation is as much a matter of art as science.

Provide Alternatives Rather than making a single final offer, negotiators can provide two or three alternative packages for the other party that are more or less equivalent in value. People like to have choices, and providing a counterpart with alternative packages can be a very effective technique for closing a negotiation. This technique can also be used when a task force cannot decide on which recommendation to make to upper management. If in fact there are two distinct, defensible possible solutions, then the task force can forward both with a description of the costs and benefits of each.

Assume the Close Salespeople use an assume-the-close technique frequently. After having a general discussion about the needs and positions of the buyer, often the seller will take out a large order form and start to complete it. The seller usually begins by asking for the buyer’s name and address before moving on to more serious points (e.g., price, model). When using this technique, negotiators do not ask the other party if he or she would like to make a purchase. Rather, they act as if the decision to purchase something has already been made so they might as well start to get the paperwork out of the way.³⁷

Split the Difference Splitting the difference is perhaps the most popular closing tactic. The negotiator using this tactic will typically give a brief summary of the negotiation (“We’ve both spent a lot of time, made many concessions, etc.”) and then suggest that, because things are so close, “why don’t we just split the difference?” While this can be an effective closing tactic, it does presume that the parties started with fair opening offers. A negotiator who uses an exaggerated opening offer and then suggests a split-the-difference close is using a hardball tactic (see below).

Exploding Offers An exploding offer contains an extremely tight deadline to pressure the other party to agree quickly. For example, a person who has interviewed for a job may be offered a very attractive salary and benefits package, but also be told that the offer will expire in 24 hours. The purpose of the exploding offer is

to convince the other party to accept the settlement and to stop considering alternatives. This is particularly effective in situations where the party receiving the exploding offer is still in the process of developing alternatives that may or may not turn out to be viable (such as the job candidate who is still interviewing with other firms). People can feel quite uncomfortable about receiving exploding offers, however, because they feel as if they're under unfair pressure. Exploding offers appear to work best for organizations that have the resources to make an exceptionally attractive offer early in a negotiation to prevent the other party from continuing to search for a potentially superior offer.

Sweeteners Another closing tactic is to save a special concession for the close. The other negotiator is told, "I'll give you X if you agree to the deal." For instance, when selling a condo the owner could agree to include the previously excluded curtains, appliances, or light fixtures to close the deal. To use this tactic effectively negotiators need to include the sweetener in their negotiation plans or they may concede too much during the close.

Hardball Tactics

We now turn to a discussion of hardball tactics in negotiation. Many popular books of negotiation discuss using hardball negotiation tactics to beat the other party.³⁸ Such tactics are designed to pressure negotiators to do things they would not otherwise do, and their presence usually disguises the user's adherence to a decidedly distributive bargaining approach. It is not clear exactly how often or how well these tactics work, but they work best against poorly prepared negotiators. They also can backfire, and there is evidence that very adversarial negotiators are not effective negotiators.³⁹ Many people find hardball tactics offensive and are motivated for revenge when such tactics are used against them. Many negotiators consider these tactics out-of-bounds for any negotiation situation.⁴⁰ We do not recommend the use of any of the following techniques. In fact, it has been our experience that these tactics do more harm than good in negotiations. They are much more difficult to enact than they are to read, and 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. It is important that negotiators understand hardball tactics and how they work so they can recognize and understand them if hardball tactics are used against them.

Dealing with Typical Hardball Tactics

The negotiator dealing with a party who uses hardball tactics has several choices about how to respond. A good strategic response to these tactics requires that the negotiator identify the tactic quickly and understand what it is and how it works. Most of the tactics are designed either to enhance the appearance of the bargaining position of the person using the tactic or to detract from the appearance of the options available to the other party. How best to respond to a tactic depends on your goals and the broader context of the negotiation (With whom are you negotiating? What are your alternatives?). No one response will work in all situations. We now discuss four main options that negotiators have for responding to typical hardball tactics.⁴¹

Ignore Them Although ignoring a hardball tactic may appear to be a weak response, it can in fact be very powerful. It takes a lot of energy to use some of the hardball tactics described below, and while the other side is using energy to play these games, you can be using your energy to work on satisfying your needs. Not responding to a threat is often the best way of dealing with it. Pretend you didn't hear it. Change the subject and get the other party involved in a new topic. Call a break and, upon returning, switch topics. All these options can deflate the effects of a threat and allow you to press on with your agenda while the other party is trying to decide what trick to use next.

Discuss Them Fisher, Ury, and Patton suggest that a good way to deal with hardball tactics is to discuss them—that is, label the tactic and indicate to the other party that you know what she is doing.⁴² Then offer to negotiate the negotiation process itself, such as behavioural expectations of the parties, before continuing on to the substance of the talks. Propose a shift to less aggressive methods of negotiating. Explicitly acknowledge that the other party is a tough negotiator but that you can be tough too. Then suggest that you both change to more productive methods that can allow you both to gain. Fisher, Ury, and Patton suggest that negotiators separate the people from the problem and then be hard on the problem, soft on the people. It doesn't hurt to remind the other negotiator of this from time to time during the negotiation.

Respond in Kind It is always possible to respond to a hardball tactic with one of your own. Although this response can result in chaos, produce hard feelings, and be counterproductive, it is not an option that should be dismissed out of hand. Once the smoke clears, both parties will realize that they are skilled in the use of hardball tactics and may recognize that it is time to try something different. Responding in kind may be most useful when dealing with another party who is testing your resolve or as a response to exaggerated positions taken in negotiations.

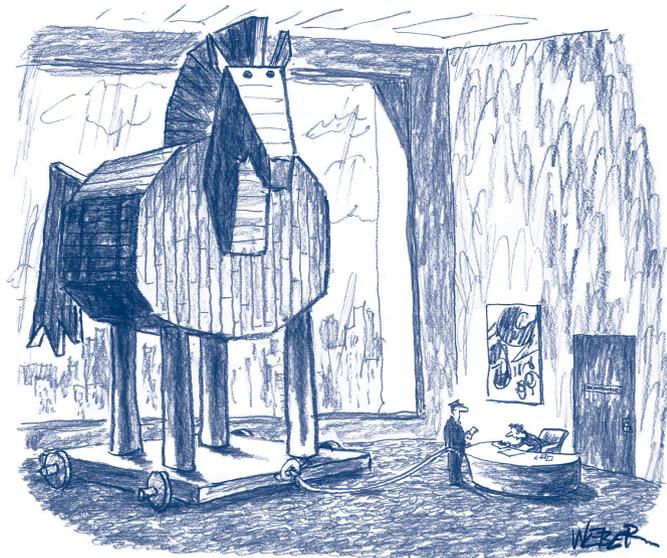
Co-Opt the Other Party Another way to deal with negotiators who are known to use aggressive hardball tactics is to try to befriend them before they use the tactics on you. This approach is built on the theory that it is much more difficult to attack a friend than an enemy. If you can stress what you have in common with the other party and find another element upon which to place the blame (the system, foreign competition), you may then be able to sidetrack the other party and thereby prevent the use of any hardball tactics.

Typical Hardball Tactics

We will now discuss some of the more frequently described hardball tactics and their weaknesses.

Good Cop/Bad Cop The good cop/bad cop tactic is named after a police interrogation technique in which two officers (one kind, the other tough) take turns questioning a suspect. The use of this tactic in negotiations typically goes as follows: The first interrogator (bad cop) presents a tough opening position, punctuated with threats, obnoxious behaviour, and intransigence. The interrogator then leaves the room to make an important telephone call or to cool off—frequently at the partner's suggestion.

While out of the room, the other interrogator (good cop) tries to reach a quick agreement before the bad cop returns and makes life difficult for everyone. A more subtle form of this tactic is to assign the bad cop the role of speaking only when the negotiations are headed in a direction that the team does not want; as long as things are going well, the good cop does the talking. Although the good cop/bad cop tactic can be somewhat transparent, it often leads to concessions and negotiated agreements.⁴³



"Mr. Mosbacher, are you expecting anything via U.P.S.?"

© 2002 The New Yorker Collection from cartoonbank.com. All Rights Reserved.

This tactic has many weaknesses. As mentioned above, it is relatively transparent, especially with repeated use. It can be countered by openly stating what the negotiators are doing. A humorously delivered statement like "You two aren't playing the old good cop/bad cop game with me, are you?" will go a long way to deflating this tactic even if both of the other parties deny it self-righteously. The good cop/bad cop tactic is also much more difficult to enact than it is to read; it typically alienates the targeted party and frequently requires negotiators to direct much more energy toward making the tactic work smoothly than toward accomplishing the negotiation goals. Negotiators using this tactic can become so involved with their game playing and acting that they fail to concentrate on obtaining their negotiation goals.

Lowball/Highball Negotiators using the lowball (highball) tactic start with a ridiculously low (or high) opening offer that they know they will never achieve. The theory is that the extreme offer will cause the other party to re-evaluate his or her own opening offer and move closer to or beyond their resistance point. The risk of using this tactic is that the other party will think negotiating is a waste of time and will stop negotiating. Even if the other party continues to negotiate after receiving a lowball (highball) offer, it takes a very skilled negotiator to be able to justify the extreme opening offer and to finesse the negotiation back to a point where the other side will be willing to make a major concession toward the outrageous bid.

The best way to deal with a lowball (highball) tactic is not to make a counter-offer, but to ask for a more reasonable opening offer from the other party. The reason that requesting a reasonable opening offer is important is because this tactic works in the split second between hearing the other party's opening offer and the delivery of your first offer. If you give in to the natural tendency to change your opening offer because it would be embarrassing to start negotiations so far apart, or because the other party's extreme opening makes you rethink where the bargaining zone may lie, then you have fallen victim to this tactic. When this happens, you have been "anchored" by the other party's extreme first offer.

Good preparation for the negotiation is a critical defence against this tactic, which is something to keep in mind as you read Chapter 4 on planning for negotiation. Proper planning will help you know the general range for the value of the item under discussion and allow you to respond verbally with one of several different strategies: (1) insisting that the other party start with a reasonable opening offer and refusing to negotiate further until he or she does; (2) stating your understanding of the general market value of the item being discussed, supporting it with facts and figures, and by doing so, demonstrating to the other party that you won't be tricked; (3) threatening to leave the negotiation, either briefly or for good, to demonstrate dissatisfaction with the other party for using this tactic; and (4) responding with an extreme counteroffer to send a clear message you won't be anchored by an extreme offer from the other party.

Bogey Negotiators using the bogey tactic pretend that an issue of little or no importance to them is quite important. Later in the negotiation, this issue can then be traded for major concessions on issues that are actually important to them. This tactic is most effective when negotiators identify an issue that is quite important to the other side but of little value to themselves. For example, a seller may have a product in the warehouse ready for delivery. When negotiating with a purchasing agent, the seller may ask for large concessions to process a rush order for the client. The seller can reduce the size of the concession demanded for the rush order in exchange for concessions on other issues, such as the price or the size of the order. Another example of a bogey is to argue as if you want a particular work assignment or project (when in fact you don't prefer it) and then, in exchange for large concessions from the other party, accept the assignment you actually prefer (but had pretended not to).

This tactic is fundamentally deceptive, and as such it can be a difficult tactic to enact. Typically, the other party will negotiate in good faith and take you seriously when you are trying to make a case for the issue that you want to bogey. This can lead to the very unusual situation of both negotiators arguing against their true wishes (the other party is asking for large concessions on other issues to give you the bogey issue you really don't want, and you are spending time evaluating offers and making arguments for an issue you know you do not want). It can also be very difficult to change gracefully and accept an offer in completely the opposite direction. If this manoeuvre cannot be done, however, then you may end up accepting a suboptimal deal—the bogey may be something you do not really want, and perhaps the other party doesn't either.

Although the bogey is a difficult tactic to defend against, being well prepared for the negotiation will make you less susceptible to it. When the other party takes a position completely counter to what you expected, you may suspect that a bogey

tactic is being used. Probing with questions about why the other party wants a particular outcome may help you reduce the effectiveness of a bogey. Finally, you should be very cautious about sudden reversals in positions taken by the other party, especially late in a negotiation. This may be a sign that the bogey tactic has been in use. Again, questioning the other party carefully about why the reverse position is suddenly acceptable and not conceding too much after the other party completely reverses a position may significantly reduce the effectiveness of the bogey.

The Nibble Negotiators using the nibble tactic ask for a proportionally small concession (for instance, 1 to 2 percent of the total profit of the deal) on an item that hasn't been discussed previously to close the deal. Herb Cohen describes the nibble as follows: After trying many different suits in a clothing store, tell the clerk that you will take a given suit if a tie is included for free.⁴⁴ The tie is the nibble. Cohen claims that he usually gets the tie. In a business context, the tactic occurs like this: After a considerable amount of time has been spent in negotiation, when an agreement is close, one party asks to include a clause that hasn't been discussed previously and that will cost the other party a proportionally small amount. This amount is too small to lose the deal over, but large enough to upset the other party. This is the major weakness with the nibble tactic—many people feel that the party using the nibble did not bargain in good faith (as part of a fair negotiation process, all items to be discussed during the negotiation should be placed on the agenda early). Even if the party claims to be very embarrassed about forgetting this item until now, the party who has been nibbled will not feel good about the process and will be motivated to seek revenge in future negotiations.

According to Landon, there are two good ways to combat the nibble.⁴⁵ First, respond to each nibble with the question "What else do you want?" This should continue until the other party indicates that all issues are in the open; then both parties can discuss all the issues simultaneously. Second, have your own nibbles prepared to offer in exchange. When the other party suggests a nibble on one issue, you can respond with your own nibble on another.

Intimidation Many tactics can be gathered under the general label of intimidation. What they have in common is that they all attempt to force the other party to agree by means of an emotional ploy, usually anger or fear. For example, the other party may deliberately use *anger* to indicate the seriousness of a position.

Another form of intimidation includes increasing the appearance of *legitimacy*. When legitimacy is high, set policies or procedures are in place for resolving disputes. Negotiators who do not have such policies or procedures available may try to invent them and then impose them on the other negotiator while making the process appear legitimate. For example, policies that are written in manuals or pre-printed official forms and agreements are less likely to be questioned than those that are delivered verbally;⁴⁶ long and detailed loan contracts that banks use for consumer loans are seldom read completely.⁴⁷ The greater the appearance of legitimacy, the less likely the other party will be to question the process being followed or the contract terms being proposed.

Finally, *guilt* can also be used as a form of intimidation. Negotiators can question the other party's integrity or the other's lack of trust in them. The purpose of this tactic is to place the other party on the defensive so that they are dealing with the issues of guilt or trust rather than discussing the substance of the negotiation.

To deal with intimidation tactics, negotiators have several options. Intimidation tactics are designed to make the intimidator feel more powerful than the other party and to lead people to make concessions for emotional rather than objective reasons (e.g., a new fact). When making any concession, it is important for negotiators to understand why they are doing so. If one starts to feel threatened, assumes that the other party is more powerful (when objectively he or she is not), or simply accepts the legitimacy of the other negotiator's "company policy," then it is likely that intimidation is having an effect on the negotiations.

If the other negotiator is intimidating, then discussing the negotiation process with him or her is a good option. You can explain that your policy is to bargain in a fair and respectful manner, and that you expect to be treated the same way in return. Another good option is to ignore the other party's attempts to intimidate you, because intimidation can only influence you if you let it. While this may sound too simplistic, think for a moment about why some people you know are intimidated by authority figures and others are not—the reason often lies in the perceiver, not the authority figure.

Another effective strategy for dealing with intimidation is to use a team to negotiate with the other party. Teams have at least two advantages over individuals in acting against intimidation. First, people are not always intimidated by the same things; while you may be intimidated by one particular negotiator, it is quite possible that other members on your team won't be. The second advantage of using a team is that the team members can discuss the tactics of the other negotiators and provide mutual support if the intimidation starts to become increasingly uncomfortable.

Aggressive Behaviour A group of tactics similar to those described under intimidation includes various ways of being aggressive in pushing your position or attacking the other person's position. Aggressive tactics include a relentless push for further concessions ("You can do better than that"), asking for the best offer early in negotiations ("Let's not waste any time. What is the most that you will pay?"), and asking the other party to explain and justify his or her proposals item by item or line by line ("What is your cost breakdown for each item?"). The negotiator using these techniques is signalling a hard-nosed, intransigent position and trying to force the other side to make many concessions to reach an agreement.

When faced with another party's aggressive behaviour tactics an excellent response is to halt the negotiations to discuss the negotiation process itself. Negotiators can explain that they will reach a decision based on needs and interests, not aggressive behaviour. Again, having a team to counter aggressive tactics from the other party can be helpful for the same reasons discussed above under intimidation tactics. Good preparation and understanding of both one's own and the other party's needs and interests together make responding to aggressive tactics easier because the merits to both parties of reaching an agreement can be highlighted.

Snow Job The snow job tactic occurs when negotiators overwhelm the other party with so much information that he or she has trouble determining which facts are real or important, and which are included merely as distractions. Governments use this tactic frequently when releasing information publicly. Rather than answering a question briefly, they release thousands of pages of documents from hearings and transcripts that may or may not contain the information that the other party is seeking. Another example of the snow job is the use of highly technical language to hide

a simple answer to a question asked by a non-expert. Any group of professionals—such as engineers, lawyers, or computer network administrators—can use this tactic to overwhelm (“snow”) the other party with so much information and technical language that the non-experts cannot make sense of the answer. Frequently, in order not to be embarrassed by asking “obvious” questions, the recipient of the snow job will simply nod his or her head and passively agree with the other party’s analysis or statements.

Negotiators trying to counter a snow job tactic can choose one of several alternative responses. First, they should not be afraid to ask questions until they receive an answer they understand. Second, if the matter under discussion is in fact highly technical, then negotiators may suggest that technical experts get together to discuss the technical issues. Finally, negotiators should listen carefully to the other party and identify consistent and inconsistent information. Probing for further information after identifying a piece of inconsistent information can work to undermine the effectiveness of the snow job. For example, if one piece of incorrect or inconsistent information is discovered in the complete snow job package, the negotiator can question the accuracy of the whole presentation (e.g., “Since point X was incorrect, how can I be sure that the rest is accurate?”). Again, strong preparation is very important for defending effectively against the snow job tactic.

Chapter Summary and Key Learning Points

In this chapter we examined the basic structure of competitive or distributive bargaining situations and some of the strategies and tactics used in distributive bargaining. We worked through the example of Alex and John negotiating the sale of John's business unit. Recall that Alex's reservation point was \$310,000 and John's was \$275,000. Although they don't know it because reservation points are confidential, they are negotiating to see who claims most of the \$35,000 value. If they agreed to a selling price of \$281,000, would you consider that a good deal? You would probably say it is a better deal for Alex, and you would probably be right. However, it is also important to remember that both sides are better off because the sale price is superior to each party's reservation points. Alex claimed more value than John, but to John's credit, he didn't agree to a deal that made him worse off.

As you prepare for, and navigate through, distributive situations, there are a number of things you should keep in mind. We conclude the chapter by summarizing some of the most important.

1. Preparation is key. This advice is so important that we devote a whole chapter (Chapter 4) to it.
2. Analyze your target, reservation point, and BATNA before you negotiate.
3. Focus on trying to determine your counterpart's target, reservation point, and BATNA.
4. If you are prepared, and it is possible, make the opening offer. Even if it is not possible to make the opening offer, remember that anchoring is a powerful tool that influences final outcomes.
5. Use concessions symbolically. Decreases in concession size indicate that you are approaching your limits. You should also remember not to make unilateral concessions; if you concede, make sure your counterpart knows they are expected to concede as well.
6. Watch for hardball tactics and don't be swayed by them. Remember, for most tactics the best defence is preparation. Keeping your cool and signalling that you know what you are doing go a long way towards minimizing the effect of hardball tactics.

Key Terms

Anchoring effect, p. 30

Bargaining zone, p. 20

Resistance point, p. 19

Target point, p. 18