

TEN LESSONS FROM THE WORLD OF NEGOTIATION AND CONFLICT DISPUTE RESOLUTION

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Those of us who have walked the business path for decades, have increasingly come to appreciate the relevance of the *Pareto Principle*; a simple principle that has in many instances served to guide us towards achieving stunning results. This principle has not only helped us judiciously invest our time and energy in areas where the greatest return is possible, but has also enlightened us to the fact that we all too often devote the majority of our time to activities that are extremely unlikely to deliver commensurate returns.

Although managers generally acknowledge that formal and/or informal negotiations are important determinants of successful business endeavours, they frequently fail to follow through on this insight, consequently not availing themselves and their employees of training that will deliver well-proven negotiation knowledge and skills. Despite being aware of many organizations that have meaningfully benefitted from negotiation training, they remain reluctant to devote time and resources to such training, allocating only an extremely limited percentage of their training budget towards improving and refining the negotiation knowledge, insights and skills of their employees.

Even though many senior managers acknowledging the importance of negotiation as a critical success factor, they seldom avail themselves of negotiation training, citing time and budgetary constraints as reasons. Whereas senior managers may concede that reputable negotiation training meaningfully enhances the performance of their employees, they continue relying on mere gut feel when they negotiating. Negotiation is simply not a priority on their training list.

This paper, by virtue of the 10 lessons, paper aspires to underscore the importance of comprehensive negotiation training. It provides a set of first level tools that managers can immediately use when preparing for and conducting formal and/or informal negotiations. By emphasising the key determinants of successful negotiation, the intention is to create a stronger appreciation for the importance of investing time and money in negotiation training as the best means of leveraging the *“art of the possible”*.

Lesson 1 - Know your Aspiration Base

Unfortunately, many managers enter a negotiation not having beforehand clearly defining the optimal goal to which they aspire, as they do not appreciate that their aspiration base is a critical determinant of the outcome of a negotiation. Consequently, they start out by aspiring too low, leaving themselves insufficient room to make the concessions they will inevitably be required if they are to move the other party in their direction. By starting out too low, they place themselves in a situation where they either need to adopt an inflexible positional stance, or make concessions that eat away at the minimum outcome they need to achieve.

In a job interview, it is highly unlikely that a job seeker would be able to convince an employer that he or she is deserving of a salary of R20 000 - *this being the minimum salary needed to meet basic living expenses* – if he or she were to start out by requesting a salary of R20 000. Bearing in mind that negotiation is a process of *‘give-and-take’*, the employer is extremely unlikely to accept the opening request for a salary of R20 000. The prospective employer will in all likelihood respond by immediately requesting a concession, which will then move the requested salary below R20 000. To

achieve a salary of R20 000, the job seeker would need to start out by requesting a salary that is meaningfully above R20 000, e.g. €26 000, as this would leave sufficient concessionary room to negotiate a salary that is equal to or above the required salary of R20 000.

Negotiators that fail to set a high aspiration base at the outset of a negotiation, invariably achieve sub-optimal negotiation outcomes, as the negotiation then becomes a mere bargaining exercise in which the parties very often end up by agreeing to *split the difference*, thus leaving both dissatisfied with the outcome.

It is of utmost importance that negotiators start out by setting a high aspiration base that is at or very close to the *'upper'* limit of the range the market is willing to tolerate. Unfortunately, many start out too low due to their natural tendency to be *risk averse*, fearing that an aspiration base that is at the *'upper'* limit may lead to the other party walking away from the negotiation. Instead of aspiring to *'gain'*, they aspire *'not to lose'*. Consequently, negotiators very often become their *own worst enemies*, literally setting themselves up to *'fail'*. Not having left themselves sufficient concessionary room, their only way of motivating the other party to move in their direction is by compromising on what they need to achieve. Invariably this results in either a failed negotiation, or acceptance of a negotiation outcome that is below their predetermined walk away point.

In addition to setting a market related high aspiration base, negotiators also need to *anticipate* the most likely aspiration base of the other party, as this prevents them from scuppering the negotiation by setting an aspiration base that is way outside the range the other party is likely to entertain.

Although there is strong evidence that points to *first offers* being powerful *anchors*, such offers should only be made when a party possess reliable market knowledge. In the absence of such information, *risk aversion* will cause negotiators to aspire too low. The author experienced this danger when planning to realise his lifelong dream of residing in a picturesque seaside village. Confronted by his wife's reluctance to relocate to a small waterside apartment they owned in this village, together with her insistence on a *'full size'* freestanding home as a prerequisite for relocation, he responded in a highly emotional way. Without undertaking any market research, he approached an estate agent to sell their waterside apartment, setting a price of R500 000 without any market research. To his great surprise, the estate agent responded by stating, *"I'll call you back in a minute"*. When his phone rang nearly immediately after this call, he was blown away by the estate agent informing him that the apartment had been sold at the asking price to a buyer some 1 300 km distant. Despite a rear guard attempt to rectify his stupidity by questioning the wisdom of the buyer to summarily decide on the purchase of a property he had not seen, this merely served to exacerbate the damage he had inflicted on himself, with the estate agent responding: *"The buyer says he does not care in what state the apartment is, as the land is worth three to four times the asking price. In fact, the buyer has indicated that he will immediately buy any other such properties you may have."* After the shock had abated, he realised the enormity of the loss he had inflicted upon himself by virtue of making an opening offer without having beforehand acquired good market knowledge.

Experienced negotiators appreciate the importance of setting a high aspiration base, as they know that this is the precursor to achieving value maximising negotiation outcomes.

Always bear in mind that:

- Negotiators that set high aspiration bases, which are close to the upper end of the range that the market will tolerate, consistently outperform negotiators that aspire lower. The point of departure for any negotiation should therefore be at the upper end of the range that the *'market'* is willing to tolerate, but should not be outside this range, as this would not only scupper the negotiation, damage the credibility of the negotiator, and harm the relationship.
- By aspiring high, negotiators leave themselves sufficient concessionary room, thereby affording creating the leeway they may need to make concessions that serve to move the other party towards a *win more-win more*, mutually beneficial outcome.
- High aspirations unleash positive psychological energy, which ensures that negotiators do not need to resort to rigid, defensive negotiation.
- High aspirations demonstrate a sense of confidence to the other party, thus dissuading the other party from resorting to irrational, self-serving behaviour.
- Negotiators that start out from a high aspiration, compel the other party to expend time and energy in 'pulling down' their high aspiration, thus decreasing the time they have available to promote and secure their own aspiration.
- First offers set a high aspiration, as they drop a heavy *'anchor'* at the outset of a negotiation, thus compelling the other party to drag this anchor in the direction of their aspiration base.

Lesson 2 - Know your Real Base

It is equally important that negotiators know their real base or bottom line before entering a negotiation, as this is the point where they should exit the negotiation. Moving below that point would be self-damaging.

In the event that negotiators fail to determine their real base or walk away point prior to the commencement of a negotiation, they are in danger of continuing to negotiating beyond the point where a value enhancing mutually beneficial deal is achievable. Motivated by their desire to achieve a deal, they then are prone to accepting self-damaging outcomes. They gradually slide down a slippery slope. Having invested time and energy in a negotiation, they are driven by the need to at least harvest *'something'* for their investment, repeatedly deciding to hand in for *just a little longer*.

As important it is for negotiators to set high aspirations prior to a negotiation, so too is it for them to clearly define their real base. Negotiators who set their real base *'on the fly'* during a negotiation, invariably *'self-destruct'*. Once they are caught up in the flow of a negotiation, it is exceedingly difficult to break out of this flow to walk away from a negotiation.

When negotiators enter a negotiation without determining their real base, they run the risk of becoming so deal fixated, that they fail to appreciate the damage they are inflicting upon themselves by continuing to negotiate beyond the point where there is no value in the negotiation for them.

Always bear in mind that:

- Negotiators that enter a negotiation without a clearly defined real bases – *the point beyond which they will not continue to negotiate* - invariably continue negotiating beyond the point where their interests are no longer served.
- Negotiators, even those with relatively limited experience, are often able to sense when a party is unsure as to its real base, the exploiting this uncertainty to their advantage.
- The contracting zone - *the area within which a deal is possible* - lies between the real bases of the parties involved in a negotiation.

Lesson 3 - Know your Best Alternative to a Negotiated Agreement (BATNA)

Before entering a negotiation, it is of utmost importance that negotiators are clear on their BATNA (S) should a mutually beneficial outcome prove to be unattainable. In addition to knowing when they would walk away, they should also know where they would walk away to if this became necessary. Unless negotiators have clear answers to both questions, they should **NOT** enter a negotiation, as this would then face the risk of staying in the negotiation beyond the point where there is value to be derived.

Negotiators that enter a negotiation without a clear BATNA(S), court disaster, as would not be motivated to 'walk away to nothing', thus continuing to negotiate despite this being to their detriment.

When negotiators enter a negotiation with the knowledge that they have a strong BATNA, they feel empowered and confident to stand their ground, and to walk away at the point where a mutually beneficial deal is no longer possible.

Fisher and Ury (1981: 104, 111) define a BATNA as "*the standard against which any proposed agreement should be measured*", adding that a BATNA "*determines what a minimally acceptable agreement is*".

A job seeker that has for example lined up a number of employment interviews, clearly possess strong BATNAS, which could subtly be leveraged to focus the attention of the potential employer on the fact that he or she is exploring various alternatives before deciding upon the most preferred position.

Negotiators without a BATNA, or with a very weak BATNA, should preferably not enter a negotiation, or delay negotiating until they have a reasonably secure BATNA. In the event that they decide to negotiate despite not having a strong BATNA, they should proceed very cautiously, as their natural tendency to be risk averse, could cause them to not be willing to walk away to 'nothing', therefore ending up in agreeing to a very weak or disadvantageous outcome.

When negotiators have not ascertained their BATNAS, and/or have not anticipated the BATNA of the other party, they would be best advised to politely declining an opportunity to negotiate, or find a way of delaying the negotiation.

Always bear in mind that:

- The willingness of negotiators to walk away from a negotiation - *should this become necessary* – greatly increases their ability to influence a negotiation outcome.
- Negotiators that are clear on the alternatives available to them and to the other party, are well positioned to motivate the other party to join them in exploring and developing negotiation strategies and plans that could deliver mutually beneficial outcomes.
- The decision whether to disclose or not disclose a BATNA depend on the strength of the BATNA, and on whether disclosure would weaken or strengthen the negotiating power of the other party.
- The stronger a BATNA, the greater the power of a negotiator.
- A BATNA is the standard against which proposed agreements should be measured.
- A BATNA provides insurance against a negotiator accepting unfavourable agreements, or rejecting beneficial agreements.

Lesson 4 - Focus on Interests not Positions

Negotiators generally enter a negotiation with predetermined *positions* that are underpinned by a set of *interests* - *basic needs, fears, desires, hopes, expectations, wishes, dreams etc.* These interests representing the silent motivators that determine the initial positions that negotiators adopt.

In the event that negotiators rigidly cling to their positions, this invariably leads to a protracted **I vs. I** tug of war in which the '*opposing*' parties squander time in their attempts to drag each other into their positions. Such an approach inevitably leads to either an impasse, or to a *win-lose* or *lose-lose* outcome.

One of the biggest challenges negotiators face is not being ensnared in a positional frame. Their focus should be on exploring and identifying the underlying interests that motivate the positions parties to adopt at the outset of a negotiation. By moving from a positional approach to exploring the underlying interests that underpin the positions that parties adopt, negotiators discover that what seems impossible from a positional perspective, is achievable. Competing for and claiming value then gives way to cooperating to maximising value for each other. As the common interests that tie them together become increasingly clear, an ever stronger realization that cooperation trumps competition dawns. They then discover that that this is the most beneficial way of creating negotiation outcomes that not only meet, but very often exceed the expectation they have at the outset of a negotiation.

In moving the negotiation frame from *I vs. I* to *WE*, there is no longer the need for drawn-out and counterproductive tests of strength. They then no longer waste time and energy on competitive battles, but choose to rather spend their time and energy on engaging in *joint opportunity finding* to create value maximising outcomes that are mutually beneficial.

Negotiations that are interest focused deliver implementable *Win More – Win More* agreements, with the parties accepting co-responsibility for the successful implementation of these agreements.

Always bear in mind that:

- Even when positions are so far removed from each other that it seems highly unlikely that this divide could be bridged, this is often not true, as these positions may be underpinned by common interests that could serve as the motivation for the parties to work together to develop a mutually beneficial agreement.
- Positions relate to *past grievances*, whereas interests represent *concerns about the future*.
- Negotiations approached from a positional stance create a *competitive mind-set*, whereas negotiations that are approached from an interest-based stance, inspires a *cooperative mind-set*.
- Negotiators that are willing to *stand in the shoes of the other party*, are better able to understand why another party adopts a particular position, as they then discover the interests that drive that party.
- Negotiators that focus on interests and not on positions, are less inclined to be *person-focused*, as they concentrate on the *real problem* at hand.
- For a negotiation to succeed, negotiators need to share their interests and the reasoning for these interests in the spirit of reciprocity. By making themselves '*vulnerable*' prior to promoting a particular solution, they establish the trust that is needed to motivate them the other party to move outside the security that its position provides.
- The interests of a negotiator may not always mirror the interests of the constituency he or she represents.

Lesson 5 - Check your Assumptions, as they are often wrong

Despite the assumptions that negotiators make about other parties often being wrong, assumptions remain an inherent part of negotiation planning. Negotiators therefore need to be aware that their assumptions could result in framing the other party in a manner that leads them to adopt inappropriate attitudes and behaviours toward that party, thereby preventing the possibility of the parties working together to develop a mutually beneficial *win more win more* agreement.

Where two parties, a developer and an environmentalist, engage in a negotiation about the possibility of situating an industrial development in the proximity of a very sensitive wetland, assumptions could damage the possibility of a mutually beneficial outcome. Should the developer depart from the assumption that all environmentalists are part of a lunatic fringe that is hell-bent on preventing any form of development, this assumption could have a very negative impact on the attitude and behaviour of the industrialist. Whereas this assumption may be entirely unfounded, this unfortunately does not prevent it from becoming a *self-fulfilling prophecy*, which 'compels' the the industrialist to behave accordingly.

Always bear in mind that:

- Although assumptions are inevitable when preparing for a negotiation, they often are incorrect.
- Despite assumptions being an essential part of negotiation planning, they often lead to *premature thought closure*, thus preventing the parties from engaging in joint opportunity-finding to explore the creative options that could contribute to a mutually beneficial agreement.
- Assumptions can become self-fulfilling prophecies.
- Assumptions could prevent an empathic relationship from developing between the parties.

Lesson 6 - Always aspire to joint opportunity finding

Negotiation is more than mere *joint problem solving*. Although it undoubtedly assists in removing problems from the negotiation table, it involves more than joint problem solving. Defining negotiation as joint problem solving creates an inward focus, which results negotiators merely aspiring to remove the problem from the table by resolving *past or present grievances*.

When negotiation is defined as a *joint opportunity finding*, negotiators focus outward, exploring possible solutions that extend beyond the problem at hand. Instead of merely fixating on the problem, they then adopt a focus that is oriented towards engaging the other party in joint opportunity-finding to identify and explore a range of possible future orientated solutions that are not only intended to fix the problem, but to simultaneously also explored opportunities for achieving a *win more win more* outcome that will be mutually beneficial. This elevates the negotiation to a cooperative, value maximizing endeavour.

Always bear in mind that:

- Labelling negotiation as problem solving could cause the parties to merely fixate on the problem at hand, negating the possibility of working together to jointly explore and develop a future orientated value maximizing agreement.
- By defining negotiation as an opportunity-finding tool, this not only prevents *premature thought closure*, but also inspires the parties to apply the divergent thinking skills that are necessary to create and develop solutions beyond their established paradigms.
- *Problem solving* tends to be orientated to what has been (the past), or to what is (the present), whereas *opportunity finding* focuses on what has yet to happen (the future).
- The primary purpose of negotiation is not to merely fix the past or the present, but to focus on where and how the parties will be living together *tomorrow*.

Lesson 7 - Negotiation is primarily a process, not an event

With the possible exception of purchasing or selling a home, negotiation is not a *one-off event*, but a process. In most business dealings, parties very seldom only negotiate once, often negotiating again and again, e.g. in the case of performance appraisals, concluding and renewing contracts, annual wage and salary negotiations etc. All negotiations should therefore be conducted in such a manner that future negotiations are not encumbered.

Although there may be times when it would seem justified to resort to *victimization*, such behaviour has a distinct downside. Parties that feel that they have been treated unfairly will in all likelihood strike back in anger at the next negotiation, as *victims invariably become aggressors*. Gains obtained by way of victimization and manipulation, generally are short-lived one-off gains.

Genuine *Win More – Win More* negotiation require negotiators to at all times remain aware of the impact their negotiation strategies and tactics have on their relationship with the other party, as a trusting relationship is an essential prerequisite for the successful implementation of any agreement.

Always bear in mind that:

- No negotiations, with the exception of the purchase or the sale of a home, are one-off events, but are processes in which the parties repeatedly negotiate, and therefore should be dealt with accordingly.
- *Victims become aggressors!* A party that is stripped '*naked*' will in future do everything possible to regain what it deems have been unjustly taken from it.
- Negotiators can prevent parties from resorting to victimization, by regularly posing the following question during the course of a negotiation: "*What can **WE** become **TOGETHER?***"
- The successful implementation of negotiated agreement is heavily dependent on the degree of trust between the parties.

Lesson 8 – In negotiation information is power

The more information negotiators have about the other party, and the issue(s) at hand, the greater their negotiating power. Entering a negotiation without sufficient information is self-defeating!

Seventy-five percent of the utterances of good negotiators are in the form of questions, as questions are the primary elicitors of information. Furthermore, questions invite participation, communicate respect for the opinions of other party, and involve the other party in the negotiation. Apart from generating information, questions also demonstrate a willingness to listen to and to take account of the views of the other party.

Negotiators that are heavily reliant on statements, cause the other party to feel truly that they are not truly involved in the negotiation, as they are being subjected to mere lecturing. Where the emphasis is on questions, this is far less threatening than a barrage of statements. Because the other party then experiences the degree of security it needs to feel free to share its interests, it listens to and responds to the interests of its counterpart in an open minded way.

Always bear in mind that:

- In any negotiation, information is power!
- The success of negotiation strategies and tactics depend on the quality of the information gathered prior to a negotiation.
- Negotiators who are willing to do their '*homework*' well, invariably approach a negotiation with greater degree of confidence than when they attempt to gather information on the fly during a negotiation.
- Questions are not only the keys to obtaining crucial information, but also demonstrate the willingness to work together with the other party towards achieving a mutually beneficial outcome.
- When negotiators primarily focus on questions, not statements, this not only limits the possibility that they will engage in premature thought closure, but also assists them in verifying their assumptions.
- Questions assist in identifying and strengthening the *common ground* between parties.
- Questions ensure forward traction in a negotiation.
- When questions are not readily available, it is unwise to resort to a succession of statements. Negotiators should then rather remain silent, affording the other party the opportunity to fill the vacuum.
- Questions enable all observations and assumptions to be reality tested during a negotiation.

Lesson 9 - Framing is a strong determinant of negotiation outcomes

Negotiators should always bear in mind that decision-makers treat the prospect of *gains* differently from the prospect of *losses*. When they are asked to consider a potential gain, they tend to become *risk-averse*, opting for a guaranteed outcome, but when they are confronted with the possibility of *losing* the very same thing, they become *risk seeking*. When negotiators therefore formulate questions and proposals, they should take this phenomenon into account, as *prospect theory* holds that *potential losses always loom larger than potential gains*.

Despite this advantage, negotiators should always remain mindful of the possibility that negative frames (potential losses) could encourage risky or destructive behaviour, whereas positive frames (potential gains) could serve to encourage *joint opportunity finding* en route to a mutually beneficial outcome. Notwithstanding the possible downside, research evidence supports the fact that most negotiators are more strongly influenced by the loss of something than by gaining that very same thing. Negotiators would therefore be foolhardy if they merely emphasise what a party stands to gain by adopting a cooperative value enhancing negotiation approach.

Always bear in mind that:

- Framing a negotiation in terms of possible gain could minimize the possibility of the other party embarking on risky and potentially destructive behaviour (e.g. during wage negotiations).
- Motivating a party to '*stand in the shoes*' of the other party could ensure that they see the negotiation through the frame (*lens*) of the other party, potentially resulting in meaningful attitudinal and behavioural change.
- Questions are an excellent tool for creating a common negotiation frame.
- Negative frames can be countered by providing as many options as possible for the other party to consider, thereby motivating the other party to move from decision-making to choosing between the proposed alternatives.
- Over-reacting to negatively framed objectives early in a negotiation is counter-productive. , Recognising and rewarding positive behaviour is a far better approach.

Lesson 10 - Trust and credibility are the cornerstones of win more – win more agreements

In what is an increasingly chaotic business environment negotiators often disregard the importance of establishing their credibility, and thereby laying the groundwork for trusting relationships. Due to excessive time pressure, they often become primarily *content* orientated, consequently paying scant attention to the *contextual* aspects of a negotiation. By immediately cutting to the chase to sink their teeth into the meat of the negotiation, they lose sight of the fact that principled value-creating negotiation is only possible within a climate that inspires the parties to cooperate by working together to achieve a mutually beneficial outcome.

As the acid test for a successful negotiation is whether an agreement will hold, it is essential that negotiators, before delving into the *nuts and bolts* of an agreement, establish their credibility, and build a trusting relationship. By adopting such an approach, a framework is established within which their counterparts feel sufficiently secure to move beyond their positions to an interest-based level where they engage in joint opportunity finding.

Where parties doubt the credibility of their counterparts, trust is usually absent. They are then not prepared to accept the degree of vulnerability that is needed to ensure a sufficiently '*open*' negotiation in which they are able to jointly unlock optimal value for each other. When credibility and trust are absent, thought closure is often present, as they are then risk averse.

Reciprocity, the most powerful law of human behaviour, decrees that negotiators wishing to move their counterparts from their preconceived positions, need to start out by demonstrating their willingness to move from their positions, as this establishes the trust that is needed to inspire their counterparts to move from their positions.

Always bear in mind that:

- Trust is *saying what you mean, and meaning what you say*.
- Trust removes the fear of victimisation.
- Visibility enhances trust.
- Credibility is the foundation of effective persuasion.
- Employing an up-front hard sell approach very often provides the other party with a target to '*shoot at*'.

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