
Workplace disputes: Interests, rights and power

Anne L Lytle

Resolving workplace disputes in a timely, cost-effective way that mutually benefits all parties and sees them getting back to work quickly is the ideal. Here, Anne Lytle considers three approaches to negotiating disputes – interests, rights and power – and provides recommendations, based on research, to averting drawn out and difficult disputes.

INTRODUCTION

From a management perspective, workplace disputes are a complex area of study and practice. Regardless of whether we take the perspective of employer or employee, such disputes take up significant amounts of time, effort, emotional energy and resources from all sides. One of the unique aspects of many workplace disputes is that the main goal of one or both parties is simply “to get back to work” which requires the maintenance of the relationship post-dispute. While there is no question it is often helpful and appropriate, seeking legal representation can be an escalatory strategy which at worst devolves into long and arduous legal proceedings. If our clients’ interests are at heart, we would do well to understand how to assist them in resolving the underlying issues or problems at stake outside of the courtroom. The purpose of this article is to provide a strategic framework and set of recommendations, backed by empirical research, to consider different approaches to negotiating workplace disputes.

APPROACHES TO WORKPLACE DISPUTES

According to Ury, Brett and Goldberg,¹ disputants can choose to focus on three different primary approaches when negotiating: interests, rights or power. Interests, which are at the core of every dispute, are the concerns, needs and desires that each party brings to the table. For example, an employee may feel that she was unfairly passed over for promotion because of her gender and desires to continue working for that employer at the higher level of responsibility. A pilots’ union may feel that the new contractual terms being put forth by management are unacceptable to its members and may desire an extension and betterment of the current terms to frame its members’ future work. In both cases, part of the main objective is continued employment. A focus on interests means that information from both sides is shared about underlying interests, priorities and preferences that ultimately can be used to fashion an agreement that creates joint value and maintains the relationship enough to foster effective continued employment post-dispute.

A rights approach reflects a focus on some standard of fairness, contract or law to support a party’s position or desired outcome. Continuing with the examples above, our employee’s situation is supported by laws around gender discrimination to which the employer is accountable. The pilots’ union may call upon a variety of standards of fairness to argue why its members deserve better terms. A rights focus takes the dispute to some degree out of the hands of the actual disputant and to those of the disputant’s legal representative and ultimately the courts if a negotiated settlement is not achieved beforehand. Often in rights-based disputes that finish in the courts, there is a winner and a loser, or a compromise agreement that does not create value through joint gains. It is often difficult to imagine either party being able to participate in a productive working relationship afterward.

A power approach describes a focus of each party on their ability to influence or force their position or desired outcome on the other party. Our employee, for example, might threaten to go to the press and make salient an otherwise reputable employer as one who discriminates. Our pilots might

¹ Ury WL, Brett JM and Goldberg SB, *Getting Disputes Resolved* (2nd ed, Jossey-Bass, 1993).

threaten work stoppages or a strike. As expected, the use of power is often reciprocated (the airline management in response might ground the airline) and can lead to revenge or can increase the incidence of future disputes. The post-dispute working relationships after the use of power are often strained at best.

PSYCHOLOGY BEHIND THE APPROACHES SELECTED AND USED

There is no set order or hierarchy in the use of interests, rights and power approaches. Our research analysing a large sample of dispute processes found that parties moved frequently among interests, rights and power approaches in the same negotiation.² Across disputes, however, there was a stronger focus on rights and power at particular times: (1) initial positioning and posturing about rights and power, followed by (2) a decrease in contentious communications and an increase in the delivery of proposals, before a (3) reassertion of rights and power in response, and (4) closing with more interests-based communications and ultimately settlements.

We use rights and power approaches in the hope that we can demonstrate some level of influence over the other party to encourage or force them to meet our interests and deliver on our desired outcome. In a number of the disputes we studied, however, the process became “stuck” in rights or power and never transitioned to a discussion of interests or a subsequent agreement outside of the court. We describe these processes as “conflict spirals”.

One of the reasons it is so difficult to refocus disputants away from rights and power is because of the psychological dynamics underpinning the process. Reciprocity of emotions and communications is a well-supported finding in negotiation research, showing that negotiators tend to reciprocate cooperative, procedural and affective types of communications.³ Furthermore, research on emotions shows the phenomenon of “emotional contagion”, where the emotions felt and communicated by one person in a space, especially strong emotions like anger or fear, will be “caught” and taken on by others in that social environment.⁴ Emotional contagion is automatic and unconscious, relying on non-verbals and facial expressions, in addition to the emotion and content of the message.

In our research, we too found that interests, rights and power approaches and their associated strong emotions were reciprocated with a significantly greater than chance probability. In other words, when we make a “threat” or use a more adversarial or contentious approach, the most likely response is that we get counter-threats in return. With each reciprocated exchange, positions and attitudes become more deeply entrenched, emotions escalate to increasingly higher levels and it becomes more and more difficult to refocus the process towards underlying interests.

RECOMMENDATIONS FOR AVERTING CONFLICT SPIRALS

Our research asserts several strategic recommendations to assist in averting conflict spirals in workplace disputes, refocusing the other party towards interests and ultimately increasing the chance of parties sustaining a productive employment relationship post-dispute. These recommendations are:

- *Start with an interests-based approach* – If you can advise or facilitate negotiations for your client with a focus on underlying interests and concerns without making rights or power particularly salient, then there is a chance that this approach will be reciprocated by the other side. You can always transition to a more adversarial strategy, but it is difficult to move in the reverse direction.

² Brett JM, Shapiro DL and Lytle AL, “Breaking the Bonds of Reciprocity in Negotiations” (1998) 41(4) *Academy of Management Journal* 410.

³ Donohue WA, “Analyzing Negotiation Tactics: Development of a Negotiation Interact System” (1981) 7 *Human Communication Research* 273; Putnam LL, “Small Group Work Climates: A Lag Sequential Analysis of Group Interaction” (1983) 14 *Small Group Behavior* 465; Putnam LL and Jones TS, “Reciprocity in Negotiations: An Analysis of Bargaining Interaction” (1982) 49 *Communication Monographs* 171; Weingart LR, Thompson LL, Bazerman MH and Carroll JS, “Tactical Behavior and Negotiation Outcomes” (1990) 1 *International Journal of Conflict Management* 7.

⁴ Barsade SG, “The Ripple Effect: Emotional Contagion and its Influence on Group Behavior” (2002) 47 *Administrative Science Quarterly* 644; Hatfield E, Cacioppo JT and Rapson RL, “Emotional Contagion” (1993) 2 *Current Directions in Psychological Science* 96.

- *Add something to help the other party save face* – Our research suggests that conceding to a threat involves a loss of face, and often parties will behave irrationally or walk away from an acceptable settlement rather than concede. If you need to threaten with rights or power, it may be strategic to combine the use of threats with some positive, interests-based incentive or benefit for the other side in order to help them preserve or save face.⁵
- *Do not reciprocate* – Refuse to reciprocate a threat with a threat and focus on a less contentious type of communication, such as asking an interests-based question to gather information about priorities and preferences. While some may suggest this could make you look weak, we are not suggesting making concessions, but focusing on the sharing of information that could lead to a more productive discussion. Our research shows that refusing to reciprocate rights or power can be effective in refocusing the negotiation and stopping the other party from continuing with a threatening approach in 77% of the cases.
- *Do not make unilateral concessions* – Concessions were not effective in inducing the other party to cooperate. In fact, making concessions may encourage, not stop, a conflict spiral because it rewards the contentious behaviour and encourages it to continue rather than stop.
- *Combining types of communications* – We realise that sometimes it is difficult in the face of a threat not to reciprocate – as some may perceive this to convey a message of weakness. Our research found that combining a threat with an interests-based communication at a minimum gives the other party the choice of what to reciprocate, and was effective in avoiding a conflict spiral 75% of the time, which is not significantly different from simply not reciprocating at all. So in other words, both not-reciprocating and combining types of communications were equally effective in averting conflict spirals.
- *Label the process* – Our results also found that recognising or labelling a tactic as ineffective can help to neutralise or refocus negotiations. Process labelling statements were effective in refocusing the other negotiator 82% of the time. For example, one party might threaten the other that they will launch a lawsuit. The other could respond “we disagree on the facts of this case and we feel we have a strong legal position, however, let’s see if we can move on and find some way to resolve this problem without resorting to a long and expensive battle ... what about ...”



Dr Anne Louise Lytle is the Director of Lytle & Associates Pty Ltd (<http://www.annelytle.com>) and an adjunct faculty of the Melbourne Business School and the University of Michigan Ross School of Business. She has more than 15 years teaching and research experience in the broad area of leadership and personal leadership competencies, especially across cultures.

⁵ Lytle AL, Brett JM and Shapiro DL, “The Strategic Use of Interests, Rights and Power to Resolve Disputes” [1999] *Negotiation Journal* 31.