

MEMORANDUM

To: Dr. Clare Ryan
From: Jacob Kovacs, negotiation facilitator (group 3)
Date: 1/28/2014
Re: Analysis of woodstove standards negotiation

SUMMARY OF MEMORANDUM

Written from the facilitator's perspective, this memorandum presents an analysis of group 3's woodstove standards negotiation. This analysis draws on concepts from conflict management theory to characterize the negotiation's dynamics and key events. Assessment of negotiation and facilitation strategies follows, including strategies to overcome the threat of impasse. In conclusion, several questions are raised for consideration by future facilitators.

APPLYING RELEVANT CONCEPTS TO KEY EVENTS

The dynamic of the negotiation was civil and collaborative from the outset. Perhaps this collaborative tone meant that the issue at hand had not "ripened" or escalated very far along the "**conflict spiral**" described by Carpenter & Kennedy (2001, p. 12). Positions were definitely in tension, but parties had not stopped communicating with each other; few resources had been committed; unfavorable perceptions had not crystallized; and a sense of crisis had not emerged. Another explanation for the collaborative dynamic is that the negotiators may have come to the table with a shared "**conflict management frame**", all preferring a consensus variety of "joint problem solving" (Gray, 2003, p. 25). At any rate, negotiators treated each other with respect and directed their energies towards understanding and fixing the problem (Fisher, Ury, & Patton, 1991, pp.37-38). Energy was not wasted making personal attacks or trying to dominate other parties (Carpenter & Kennedy, 2001, p. 223).

As evidence of parties' collaborative temperaments, they never articulated their sources of **power** as "threats", but as "[explanations] of the options available to each [of them]" (Carpenter & Kennedy, 2001, p. 221). This was true even though parties possessed different sources and degrees of power. Oregon and the EPA came to the table with "positional" authority to legislate, and access to "resources" (including "expertise"); representatives of NRDC and the WHA had the "coalitional" ability to lobby, and the "threat" to sue (Gray, 2003). What mattered more than these discrepancies of power was that all parties had incentive to participate in negotiation. By participating, each party could improve on their **BATNA** ("Best Alternative to a Negotiated Agreement"; Fisher, Ury, & Patton, 1991, p. 177). The WHA wanted to deal with uniform federal legislation rather than a patchwork of state-level requirements. The State of Oregon wanted to improve enforcement, and could secure additional resources from the EPA. The NRDC and EPA could save themselves the expense of a lawsuit.

With participants both collaboration-prone and invested in the process, the main "**drivers**" of the conflict became distrust and uncertainty (Nie, 2003). The **distrust** was fairly low-grade, voiced by Oregon and the EPA over woodstove companies' involvement in product testing. Because the WHA representative acknowledged this distrust as reasonable, tension on this point stayed low. A more significant driver was technical **uncertainty** over the pace and outcomes of the R&D process. Regulators were optimistic about the potential of R&D to rapidly enable lower emissions. Manufacturers were pessimistic on this point and therefore sought higher emissions standards and a later compliance date.

ANALYSIS OF NEGOTIATION STRATEGIES

The **joint problem solving** conflict management frame mentioned above can also be considered as a deliberate negotiation strategy. All parties treated each other's concerns and constraints as realistic and reasonable. Further, parties took common ownership of all aspects of the problem. They did *not* operate on the principle that, for each party, "solving their problem is their problem" (Fisher, Ury, & Patton, 1991, p. 59). Although our group did not reach full agreement (discussed below in the "Overcoming Difficulties" section), this mutual consideration and collaboration was an *effective* negotiating strategy. It preserved civility and generated empathy, laying the groundwork for a durable solution.

In addition, it seemed like all parties chose to be forthright and **honest** as a negotiating tactic. Specifically, parties opted to disclose their concerns immediately, going so far as to clearly identify which ones were primary concerns. This much honesty was not required by our "**good faith**" ground rule (Fisher, Ury, & Patton, 1991, p. 134). But parties chose this route anyway, perhaps believing that their honesty would be reciprocated and would simplify the negotiation process. Again, this strategy seemed *effective* because it created a climate of trust. In fact, at one point the congenial dynamic successfully overrode a small deception by one of the parties. The WHA representative first maintained that his constituents were worried about their small business members. This facade collapsed when the EPA offered a tiered compliance date: the WHA representative confessed that his organization wanted a single compliance date even though it would hurt their small business members. This seemed like a slight shift of loyalty brought about by the congenial nature of our discussion. The WHA representative decided to be honest with the group even when it put the WHA in a poor light. His confession represented his faith that the negotiation process would produce a good outcome for his constituents, even if their initial position was discarded.

ANALYSIS OF FACILITATION STRATEGIES

As facilitator, I chose to be **unintrusive** when it came to the **substance** of the conflict. I did not look for solutions to propose; instead I focused on improving the quality of parties' statements and interactions (described below). The one exception was my reaction to a comment by the WHA representative. He insisted that his constituents needed a compliance date fully two years after publication of the final rule. I suggested that his participation in the negotiation should shorten that time, since he would know the emission levels chosen by our group well before they were published as a final rule. I don't think this small intervention compromised my perceived **impartiality** (Carpenter & Kennedy, 2001, p. 187). However, I think it was an *ineffective* strategy. At that point I had established my unintrusive role, and parties expected me to maintain it. Stepping outside my role was too conspicuous to be helpful.

I was more **directive** when it came to the **process** of the negotiation. For example, in response to the complexity of the problem I set a slow **pace**, wary of making false progress that might later collapse (Carpenter & Kenney, 2001, p. 239). I kept the pace slow by asking many clarifying **questions** that prompted parties to elaborate on their comments (Carpenter & Kennedy, 2011, p. 159; Fisher, Ury, & Patton, 1991, p. 57). As another example of controlling process, I took notes and verbally confirmed parties' statements (Carpenter & Kennedy, 2011, pp. 160-163), but I didn't record initial **positions** on the whiteboard. I was afraid that writing them prominently would reinforce their rigidity and detract from our pursuit of more fundamental, perhaps more compatible **interests** (Fisher, Ury, & Patton, 1991, p. 40).

Despite my many questions and intentions along these lines, my strategies were *not effective* at bringing interests to the surface. When I asked parties about their desired emissions standard, I asked them to also share the reasons underlying their position. This compound question proved too complex for parties to answer. I should have broken it into separate questions. At any rate, we did not have frank discussion

about the interest of air quality, which might have led us in the direction of old stoves and opened up opportunities for **joint gains** (Fisher, Ury, & Patton, 1991, p. 59; Bacow & Wheeler, 1984, p. 33). Other groups noticed this aspect of the issue, and I wish my facilitation had brought it to the surface in our group.

OVERCOMING DIFFICULTIES

Our major and related difficulties were lack of time, volume of information, and inherent **complexity** (Nie, 2008). As facilitator, I prodded people to engage with this complexity rather than rush to a premature solution. This makes me mostly responsible for our problem with time, but I thought it was necessary to reach a good solution. To prevent parties' frustration with this slower pace, I paid careful **attention** to them, giving them the satisfaction of being listened to (Carpenter & Kennedy, 2001, p. 34). I also **jumped forward** in the agenda when we were in danger of getting stuck, so parties could build momentum and confidence in the process. Then, to deal with the complexity and volume of information, I liberally **summarized, recorded, clarified** and **visually illustrated** parties' statements. In the allotted time our group could only agree on testing arrangements. But thanks to these strategies, we were moving steadily towards agreement the whole time. We never experienced a dramatic, discouraging impasse.

OPEN QUESTIONS

This experience raises four interesting questions for facilitators of future negotiations. These questions reflect points of concern, ambiguity, or curiosity that I feel about my own experience facilitating, and indicate actions I might do differently next time:

Pacing

As described above, I chose to slow down the pace in order to discuss the issues thoroughly. Maybe we would have reached a comprehensive agreement more quickly if I had used a facilitation style that sacrificed subtleties and more aggressively sought solutions.

Participation

The NRDC representative spoke least of all the participants. I suspect his silence made the negotiation easier, because his perspective was most at odds with the WHA. If he had staked out a more passionate, unyielding position, the negotiation could have been more adversarial. As it was, I always wondered what he was holding in reserve and when it would surface, with what effects. Carpenter and Kennedy claim that the facilitator is responsible for drawing out contributions from quiet parties (2001, pp. 160-161). Next time I would probably take their advice.

Personalities

Related to the question about participation, I wonder how my unintrusive facilitation style would have worked with a group with very different personalities --- ones that were less shy or collaborative, more aggressive and adversarial. With a different mix of personalities, I may have needed to be more assertive with my facilitation tactics.

Partitioning

Fisher, Ury, & Patton recommend generating options before evaluating options, structuring them as entirely separate activities in the negotiation process (1991, p. 60). Instead of partitioning activities in this way, our group dove directly into evaluating. Next time I would make sure to dedicate time specifically to brainstorming.

References

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