

Resolving Disputes through Negotiation

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Over the years of writing this column, it has become clear that nearly every aspect of a coach's work has some underlying legal element. We have written about the coach's obligations to maintain a safe environment and to make decisions fairly, and in more recent years, we have touched on a broad range of topics including volunteer screening, nutritional supplements, publicity rights, restraint of trade, bullies, job descriptions, performance evaluation, and professionalism in coaching.

Interestingly, the work of the Centre for Sport and Law today revolves almost entirely around helping people in sport deal with disputes. In our last column, we discussed conflict and identified negotiation skills as a key set of skills for sport leaders, including coaches. Coaches are problem-solvers who engage in negotiation every day — with athletes, other coaches, other service providers, administrators, facility managers, parents, and funders. Although it is important for coaches to be diligent about safety and supervision, the most pressing issues that coaches have today are related to their communications, conflicts, and negotiations with others.

The Harvard Negotiation Project at Harvard University has been doing innovative work in the negotiation field for decades. Roger Fisher and William Ury (authors of the 1983 classic text *Getting to Yes: Negotiating Agreement without Giving in*) can be credited for first articulating the elements of principled negotiation.

Principled negotiation recognizes that, in any negotiation, there are really two discussions going on: At one level is the discussion about what's directly at issue in the negotiation — the annual salary, the performance bonus, the term of the coaching contract, the facility schedule — while at another level are the indirect procedures that the parties use to attack the substantive problem. We tend not to notice this second level of indirect negotiation because we are so caught up in our focus on the main problem.

Principled negotiation is a method of negotiation that explicitly acknowledges the process that we use to negotiate the substantive problem. It involves specific techniques that can be learned and applied in almost any negotiation circumstance. In a principled negotiation, the coach approaches the substantive discussion using four principles:

- ❑ people (separating people from the problem)
- ❑ interests (focusing on interests, not positions)
- ❑ options (generating a variety of options before deciding what to do)
- ❑ criteria (insisting that results be based on objective standards)

SEPARATING PEOPLE FROM THE PROBLEM

Human beings are not computers. We are imperfectly skilled in communication, we perceive the actions and words of others differently, and we are creatures of long memories and strong emotions. Emotions, personalities, and feelings become entangled in the substance of the problem. To discuss the substance, the people

issues need to be acknowledged and addressed. People skilled in principled negotiation will view themselves as working side by side, attacking a problem and not each other. Sometimes this can be aided by simple body language and body positioning, as when the two parties negotiating sit side by side at a table, as opposed to across from one another.

FOCUSING ON INTERESTS, NOT POSITIONS

It is human nature to take a position on something. "The player must be punished to set an example"; "I will not accept a stipend less than x"; "I need 12 hours a week in this facility." The more the coach explains and clarifies his position to defend it against attack, the more committed he becomes to it. The more the coach tries to convince the other side that she cannot move from her position, the more difficult it becomes to do so. Two parties entrenched in their respective positions are not likely to reach agreement. If the parties do reach agreement, it will most often involve making small concessions to arrive at a disappointing compromise that fails to satisfy either of them. On the other hand, coaches who can communicate their interests (where interests are the substantive, procedural, and emotional needs and desires that cause people to choose their positions) and probe the other side's interests are more likely to reach agreements that will satisfy these interests.

GENERATING OPTIONS FOR MUTUAL GAIN

It is human nature to dislike conflict. There is a tendency in difficult discussions or in tense negotiations to get it over with quickly, with the result that parties move hastily to proposed solutions. If the negotiation is going to take an hour, then 55 minutes of that hour should be spent exploring interests and creatively inventing options to meet those interests. However, inventing options does not come naturally; in fact, not inventing them is the normal state of affairs. It takes a conscious effort to postpone deciding until all possible options have been placed on the table. The more time that is devoted to designing alternatives, the better the end result is going to be.

BASING RESULTS ON OBJECTIVE CRITERIA

Where parties' interests are directly opposed, one side in a negotiation can prevail just by being stubborn. However, this tends to produce an arbitrary and unjust result. It is preferable to frame discussions around a fair standard that is independent of the parties' positions or wills. This can be an objective standard such as market value, average salary in the industry, precedent, expert opinion, custom, or law. By using objective criteria as a guide, neither party has to give in to the other; rather, both parties can defer to a fair and independent solution.

Principled negotiation is a method of negotiation that is explicitly designed to produce outcomes efficiently and amicably. Such outcomes are important in sport, where resources are typically limited and the relationships between and among parties must be preserved. The techniques of principled negotiation can significantly improve communications between parties and will usually strengthen and improve their relationship, in addition to producing wise agreements.

Getting to Yes is a slim paperback that can be purchased cheaply at local bookstores. Although now 20 years old, it is full of excellent ideas that can help every coach improve negotiation skills. Whether the issue is an employment contract, a family quarrel, or an international peace agreement, applying the techniques of principled negotiation will yield a better result. The coach who can understand and apply these techniques will also be a better coach.