CHAPTER 2

Strategy and Tactics of Distributive Bargaining

Objectives

1. Understand the basic elements of a distributive bargaining situation as well as the strategy and tactics of distributive bargaining.

2. Explore options for closing the deal in a distributive situation.

3. Consider the strategic impact of position taken during a negotiation and the role of concessions.

4. Gain an appreciation for commitment as a communication tactic.

Eighteen months ago Jackson decided to move closer to where he works. Following this decision to move, he put his condo on the market and started to look for a new one—but with no results. Fourteen months later, Jackson finally received an offer to buy his condo and, after a brief negotiation, settled on the selling price. Because he had not yet found a condo to buy, he postponed closing the sale for six months to give himself additional time to look. The buyer, Barbara, was not happy about having to wait that long because of the inconvenience and the difficulty of getting a bank to guarantee an interest rate for a loan so far in advance. Jackson adjusted the price so Barbara would accept this postponement, but it was clear that she would be much happier if he could move the closing date earlier.

There were relatively few condos on the market in the area where Jackson wanted to live, and none of them was satisfactory. He jokingly said that unless something new came on the market, he would be sleeping in a tent on the town common when the leaves turned in the fall. Two months later a condo came on the market that met his requirements. The seller, Sofia, set the asking price at $145,000, which was $10,000 above what Jackson hoped to pay but $5,000 below the most he would be willing to pay. Jackson knew that the more he paid for the condo, the less he would have to make some very desirable alterations, buy draperies and some new furniture, and hire a moving company.

This illustration provides the basic elements of a distributive bargaining situation. It is also 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. As a result, each party will use a set of strategies to maximize his or her share of the outcomes to be obtained. One important strategy is to guard information carefully—negotiators should only give information to the other party 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 (Walton and McKersie, 1965).

For many, the strategies and tactics of distributive bargaining are what negotiation is all about. Images come to mind of smoke-filled rooms packed with men arguing for their points of view. Many people are attracted to this view of negotiation and look forward to learning and sharpening an array of hard-bargaining skills; others are repelled by distributive bargaining and would rather walk away than negotiate this way. They argue that distributive bargaining is old-fashioned, needlessly confrontational, and destructive.

There are three reasons 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 (Lax and Sebenius, 1986). Integrative negotiation focuses on ways to create value but also includes a claiming stage, where the value created is distributed. (Integrative negotiation is discussed extensively in Chapter 3.) Understanding distributive strategies and tactics is important and useful, but negotiators need to recognize that these tactics can also be counterproductive, costly, and may not work. Often they cause the negotiating parties to focus so much on their differences that they ignore what they have in common (Thompson and Hrebec, 1996). These negative effects notwithstanding, distributive bargaining strategies and tactics are quite useful when a negotiators want to maximize the value obtained in a single deal, when the relationship with the other party is not important, and when they are at the claiming-value stage of negotiations.

Some of the tactics discussed in this chapter will also generate ethical concerns. The topic of ethics and negotiation is discussed in detail in Chapter 9. Do not assume that the other party shares your ethical values when negotiating. While you may not believe that it is ethical to use some of the tactics discussed in this chapter, other negotiators will be quite comfortable using them. Alternatively, you may be comfortable using some tactics that make other negotiators uneasy. Some of the tactics discussed are commonly accepted as ethical when bargaining distributively (portraying your best alternative deal as more positive than it really is, for instance), whereas other tactics are generally considered unacceptable (see the discussion of typical hardball tactics later in this chapter).

The discussion of strategies and tactics in this chapter is intended to help negotiators understand the dynamics of distributive bargaining and thereby obtain a better deal. A thorough understanding of these concepts will also allow negotiators who are by nature not comfortable with distributive bargaining to manage distributive situations proactively.
Finally, an understanding of these strategies and tactics will help negotiators at the claiming-value stage of any negotiation.

**The Distributive Bargaining Situation**

To describe how the distributive bargaining process works, we return to our opening example of Jackson’s condo purchase. Several prices were mentioned: (1) Sofia’s asking price, (2) the price Jackson would like to pay for a condo, and (3) the price above which Jackson would not buy Sofia’s condo. These prices represent key points in the analysis of any distributive bargaining situation. Jackson’s preferred price is the *target point*, the point at which a negotiator would like to conclude negotiations—his optimal goal. The target is also sometimes referred to as a negotiator’s *aspiration*. The price beyond which Jackson will not go is the *resistance point*, a negotiator’s bottom line—the most he will pay as a buyer (for a seller, it’s the smallest amount she 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; Jackson might decide to counter Sofia’s asking price with his *initial offer*—the first number he will quote to the seller. Using the condo purchase as an example, we can treat the range of possible prices as a continuum (see Figure 2.1).

How does Jackson decide on his initial offer? There are many ways to answer this question. Fundamentally, however, to make a good initial offer Jackson must understand something about the process of negotiation. In Chapter 1, we discussed how people expect give-and-take when they negotiate, and Jackson needs to factor this into his initial offer. If Jackson opened the negotiation at his target point ($135,000) and then had to make a concession, this first concession would have him moving away from his target point to a price closer to his resistance point. If he really wants to achieve his target, he should make an initial offer that is lower than his 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 Jackson made the first offer too low (e.g., $100,000), Sofia might break off negotiations, believing him 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 Jackson decided to offer $133,000 as a reasonable first offer—less than his target point and well below his 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 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 (Raiffa, 1982). One party may not learn the other’s resistance point even after the end of a successful negotiation, and frequently may underestimate how much the other party would have paid or accepted (Larrick and Wu, 2007). 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.

Negotiators’ 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, Jackson would have been willing to pay up to $150,000 for the condo Sofia listed at $145,000. Jackson can speculate that Sofia may be willing to accept something less than $145,000 and might well regard $140,000 as a desirable figure. What Jackson does not know (but would dearly like to) is the lowest figure that Sofia would accept. Is it $140,000? $135,000? Jackson assumes it is $130,000. Sofia, for her part, initially knows nothing about Jackson’s position but soon learns his starting point when he offers $133,000. Sofia may suspect that Jackson’s target point is not too far away (in fact it is $135,000, but Sofia doesn’t know this) but has no idea of his resistance point ($150,000). This information—what Jackson knows or infers about Sofia’s positions—is represented in Figure 2.2.

The spread between the resistance points, called the bargaining range, settlement range, or zone of potential agreement, is particularly important. In this area the actual bargaining takes place, because 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—he is minimally willing

| FIGURE 2.2 | The Buyer’s View of the Condo Negotiation (Extended) |
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Sofia’s resistance point (inferred) | Jackson’s initial offer (public) | Jackson’s target point (private) | Sofia’s target point (inferred) | Sofia’s asking price (public) | Jackson’s resistance point (private) |
| $130,000 | $133,000 | $135,000 | $140,000 | $145,000 | $150,000 |

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to pay more than she is minimally willing to sell for, as is true in the condo example—there is a positive bargaining range. 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 range. In the condo example, if Sofia would minimally accept $145,000 and Jackson would maximally pay $140,000, 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 settlement range 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 reevaluate 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 (Galinsky, Mussweiter, and Medvec, 2002); opening offers play an important role in influencing negotiation outcomes (see below); resistance points play a very important role as a warning for the possible presence of hardball tactics (see below); and a positive bargaining range increases the likelihood of settlements (Krause, Terpend and Petersen, 2006).

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 Jackson and Sofia, another condo may come on the market in the neighborhood where Jackson wishes to buy. Similarly, if Sofia waits long enough (or drops the price of the condo far enough), she will presumably find another interested buyer. If Jackson picks a different condo to buy and negotiates the best price that he can with the owner, that price represents his alternative. For the sake of argument, let's assume that Jackson's alternative condo costs $142,000 and that Sofia's alternative buyer will pay $134,000.

An alternative point can be identical to the resistance point, although the two do not have to be the same. If Jackson's alternative is $142,000, then (taking no other factors into account) he should reject any price Sofia asks above that amount. But Jackson's alternative may not be as desirable for reasons other than price—perhaps he likes the neighborhood less, the condo is 10 minutes farther away from where he works, or he likes the way Sofia has upgraded her condo. In any of these situations, Jackson may maintain his resistance point at $150,000; he is therefore willing to pay Sofia up to $8,000 more than his alternative (see Figure 2.3).

Alternatives are 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. For negotiations in
which they have many attractive alternatives, they can set their goals higher and make fewer concessions. For negotiations in which 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 that they can properly gauge how firm to be in the negotiation (Fisher and Ertel, 1995). Good bargainers also try to improve their alternatives while the negotiation is underway. If Jackson’s negotiations with Sofia extend over a period of time, he should keep his eye on the market for other alternatives. He may also continue to negotiate with the owner of the other condo for a better deal. Both courses of action involve efforts by Jackson to maintain and expand his bargaining power by improving the quality of his alternatives. We discuss power and leverage in bargaining in detail in Chapter 7.

Strong BATNAs can also influence how a negotiation unfolds. Negotiators with stronger BATNAs are more likely to make the first offer in a negotiation and appear to negotiate better outcomes (Magee, Galinsky, and Gruenfeld, 2007). The positive benefits of a good BATNA appear particularly strong when we bargaining range is small because negotiations with smaller bargaining ranges are more competitive and less likely to yield agreements (Kim and Fragale, 2005).

Finally, negotiators need to ensure that they have a clear understanding of their best alternative to a negotiated agreement, or BATNA (Fisher, Ury, and Patton, 1991). 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 provides 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. Negotiators who have a strong BATNA, that is a very positive alternative to a negotiated agreement, will have more power throughout the negotiation and accordingly should be able to achieve more of their goals (the power of BATNAs is discussed further in Chapter 7).

### Settlement Point

The fundamental process of distributive bargaining is to reach a settlement within a positive bargaining range. The objective of both parties is to obtain as much of the bargaining range 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

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<th>Sofia’s resistance point (inferred)</th>
<th>Jackson’s initial offer (public)</th>
<th>Sofia’s alternative buyer (private)</th>
<th>Jackson’s target point (private)</th>
<th>Sofia’s target point (inferred)</th>
<th>Jackson’s alternative house (private)</th>
<th>Sofia’s asking price (public)</th>
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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 Jackson thinks he got the short end of the deal, he could make life miserable and expensive for Sofia by making extraneous claims later—claiming that the condo had hidden damages, that the fixtures that were supposed to come with the condo were defective, and so on. Another factor that will affect satisfaction with the agreement is whether the parties will see each other again. If Sofia is moving out of the region, then Jackson may be unable to contact her later for any adjustments and should therefore ensure that he evaluates the current deal very carefully (good advice in any situation, but especially the case here).

**Bargaining Mix**

In the condo-purchase illustration, as in almost all negotiations, agreement is necessary on several issues: the price, the closing date of the sale, renovations to the condo, and the price of items that could remain in the condo (such as drapes and appliances). The package of issues for negotiation is the *bargaining mix*. Each item in the mix has its own starting, target, and resistance points. Some items are of obvious importance to both parties; others are important only to one party. Negotiators need to understand what is important to them and to the other party, and they need to take these priorities into account during the planning process. See Chapter 4 for a detailed discussion of planning.

For example, in the condo negotiation, a secondary issue important to both parties is the closing date of the sale—the date when the ownership will actually be transferred. The date of sale is part of the bargaining mix. Jackson learned when Sofia’s new condo was going to be completed and anticipated that she would want to transfer ownership of her old condo to Jackson shortly after that point. Jackson asked for a closing date very close to when Sofia would probably want to close; thus, the deal looked very attractive to her. As it turned out, Jackson’s closing date on his old condo was close to this date as well, thus making the deal attractive for both Jackson and Sofia. If Jackson and Sofia had wanted different closing dates, then that issue would have been a more contentious issue in the bargaining mix (although if Jackson could have moved his closing date earlier, he might have been able to strike a better deal with Barbara, the buyer of his condo). As the bargaining mix gets larger there is more opportunity for trade-offs across issues where negotiator preferences are not identical on each issue. When this occurs, integrative negotiation strategies and tactics may be appropriate; they are discussed in Chapter 3.

**Fundamental Strategies**

The prime objective in distributive bargaining is to maximize the value of the current deal. In the condo 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 her resistance point by influencing the seller’s beliefs about the value of the condo (e.g., by telling her that the condo is overpriced), and thereby increasing the bargaining range.

3. If a negative settlement range exists, to convince the seller to reduce her resistance point or to change his own resistance point, to create a positive settlement range. Thus, Sofia could be persuaded to accept a lower price, or Jackson could decide he has to pay more than he wanted to.

4. To convince the seller to believe that this settlement is the best that is possible—rather than having her think that it is all she can get, or that she is incapable of getting more, or that the buyer is winning the negotiation. 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 favorable agreement (see Box 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 (Stein, 1996). 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 favorable to you. Each side wants to obtain some information and to conceal other information. Each side also knows that the other party wants to obtain and conceal information. As a result of this 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. 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. Jackson sets his resistance point based on the amount of money he can afford to pay (in total or in monthly
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 to North Carolina, 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.

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

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 party 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. For instance, Sofia could act as if she was not in a great rush to sell her condo to signal her price is firm.

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 Jackson and Sofia have satisfactory alternatives. Sofia can portray her alternatives as more positive by mentioning several people have asked to see the condo.

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. For instance, Jackson could suggest that while the fixtures in the condo are nice, they are not exactly to his taste.

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. Knowing that a position is important to the other party, however, you will expect the other to resist giving up on that issue; thus, there may be less possibility of a favorable settlement in that area. As a result, you may need to lower your expectations to a more modest resistance point. For instance, Jackson could insist he loves the appliances and wants them included in the deal without raising his offer.

**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 in a distributive bargaining situation 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*). (See Box 2.2 for some advice on gathering information for negotiation.)

**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 labor 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 the dealer may be open to bargaining on price), or consult reference guides to find out what a dealer pays wholesale for different cars.

A variety of information sources can be used to assess the other party’s resistance point. One can make observations, consult readily available documents and publications, and speak to knowledgeable experts. It is important to note, however, that these are indirect indicators. One person may interpret a given set of data very differently from another person. Having a large inventory of automobiles may make a dealer willing to reduce the price of a car. However, the dealer may expect the market to change soon, may have just started a big promotional campaign of which the buyer is unaware, or may see no real need to reduce prices and instead intends to wait for a market upturn. Indirect measures provide valuable information that may reflect a reality the other person will eventually have to face. It is important to remember, however, that the same piece of information may mean different things to different people and therefore may not tell you exactly what you think it does.

**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
Sources of Negotiation Information

Gathering information before you go to the negotiating table is one of the most critical factors for success in negotiation. Many expert negotiators stress that effective information gathering is absolutely essential to being prepared and that the “lead time” between knowing that a negotiation will take place and actually beginning the negotiation should be filled with information collection activities. Negotiators who wait until the last minute risk undercutting themselves because they haven’t done enough “homework.”

Some of the most important information should be gathered on the substantive issues under negotiation. For instance, if you are planning to buy a new car, you should find information about the makes and models that interest you: list prices and selling prices, ratings of the automobiles’ quality, how well they have been selling, etc. Sources for this kind of information include:

- Internet Web sites that evaluate brands and models of new cars, and provide up-to-date information on manufacturer pricing and dealer incentives.
- Magazines that test and rate automobiles (found in most book stores and libraries).
- Web sites that evaluate the reputation of car dealerships.
- Friends who may have owned this make and model of car.

A second critical topic for information search is to find out as much as you can about the people with whom you’ll be interacting, and the company or organization that they represent. Knowing the other party—even if you have never met him or her before—can help you shape your strategy. Master negotiator Herb Cohen suggests the following questions that would help you negotiate with this individual:

- Why are they negotiating with me?
- What are their time constraints and deadlines?
- By whom and how will their decisions be made?
- How do they react to conflict?
- What is their negotiating style?
- What are the limits to their authority?
- Who do they report to?
- Does he or she have a budget or quota?
- How are they compensated?
- What is their negotiating experience and background?
- Do they have a realistic alternative to making this deal?
- What incentives do they have to make this deal?
- What are their underlying interests and concerns?
- What is their track record for honesty and integrity?
- What are their expectations with respect to the outcome?

Author John Patrick Dolan recommends that once face-to-face interaction is under way, you should listen more than you talk. Asking open-ended questions—which usually begin with what, why, where, when, or how—can encourage the other party to volunteer potentially valuable information. The more you know about the other party’s agenda, the better you will be able to use that information to enhance your ability to achieve your desired outcome.

Sources: Adapted from Herb Cohen, Negotiate This! (New York: Warner Books, 2003); and John Patrick Dolan, Negotiate Like the Pros (New York: Putnam, 1992).
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 espionage, government agencies may cultivate sources, intercept messages, and break codes. In labor 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, a seller may entertain a prospective buyer with abundant alcoholic beverages to loosen the buyer’s tongue with the hope that he will reveal information (see Schweitzer and Kerr, 2000). 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. 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. 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, labor-management relations, and many business negotiations—channeling all communication through a team spokesperson reduces the chance of inadvertently revealing information. Team negotiations are discussed more extensively in Chapter 13. 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 (Karrass, 1974).

**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 favorable 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.”

Negotiators should justify their positions and desired outcomes in order to influence the other party’s impressions. Power and influence tactics are discussed in more detail in Chapter 7 and 8. Negotiators can use industry standards, benchmarks, appeals to fairness, and arguments for the good of the company to draw a compelling picture for the other party to agree to what they want. These arguments are most convincing when the facts have been gathered from a neutral source because then the other party will not see them as biased by your preferred outcome. However, even with facts that you provide, selectivity can be helpful in managing the other party’s impression of your preferences and priorities. It is not necessary for the other to agree that this is the way things would look if he or she were you. Nor must the other agree that the facts lead only to the conclusion you have presented. As long as the other party understands how you see things, then his or her thinking is likely to be influenced.

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. Disappointment or enthusiasm usually suggests that an issue is important, whereas boredom or indifference suggests it is trivial or unimportant. A loud, angry outburst or an eager response suggests the topic is very important and may give it a prominence that will shape what is discussed. Clearly, however, emotional reactions can be real or feigned. We
discuss emotions in more detail in Chapter 5. The length of time and amount of detail used in presenting a point or position can also convey importance. Carefully checking through the details the other side has presented about an item, or insisting on clarification and verification, can convey the impression of importance. Casually accepting the other party’s arguments as true can convey the impression of disinterest in the topic being discussed.

Taking direct action to alter another’s impression raises several potential hazards. It is one thing to select certain facts to present and to emphasize or de-emphasize their importance accurately, but it is a different matter to fabricate and lie. The former is expected and understood in distributive bargaining; the latter, even in hardball negotiations, is resented and often angrily attacked if discovered. Between the two extremes, however, what is said and done as skillful puffery by one may be perceived as dishonest distortion by the other. Ethical considerations are explored in detail in Chapter 9. Other problems can arise when trivial items are introduced as distractions or minor issues are magnified in importance. The purpose is to conceal the truly important and to direct the other’s attention away from the significant, but there is a danger: the other person may become aware of this maneuver and, with great fanfare, concede on the minor points, thereby gaining the right to demand equally generous concessions on the central points. In this way the other party can defeat the maneuverer at his or her own game.

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. For example, in union–management negotiations, management may demonstrate that a union request for a six-hour workday would, on the one hand, not increase the number of employees because it would not be worthwhile to hire people for two hours a day to make up for the hours taken from the standard eight-hour day. On the other hand, if the company were to keep production at the present level, it would be necessary to use the present employees on overtime, thereby increasing the total labor cost and, subsequently, the price of the product. This rise in cost would reduce demand for the product and, ultimately, the number of hours worked or the number of workers.

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 significantly the cost of producing the products. 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 key areas 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.\(^2\) In addition, time pressure in negotiation appears to reduce negotiator demands (de Dreu, 2003), and when a negotiator represents a constituency, time pressure appears to reduce the likelihood of reaching an agreement (Mosterd and Rutte, 2000). The effects of representing a constituency are discussed in more detail in Chapter 11. 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 through disruptive action. 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 (Jacobs,
1951). 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 es-
calate the conflict.

Alliance with Outsiders Another way to increase the costs of delay or terminate nego-
tiations is to involve other parties who can somehow influence the outcome in the process.
In many business transactions, a private party may suggest that if negotiations with a mer-
chant are unsuccessful, he or she will go to the Better Business Bureau and protest the
merchant’s actions. 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, individual
utility consumers often enhance their negotiation with public service providers on con-
sumer rates and service by citing compliance with public utility commissions’ guidelines
to substantiate their requests.

Schedule Manipulation The negotiation scheduling process can often put one party at a
considerable disadvantage, and the negotiation schedule can be used to increase time pres-
sure on negotiators. Businesspeople going overseas to negotiate with customers or suppli-
ers 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 in or-
der to extract concessions from the visiting party (Cohen, 1980). 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 ne-
egotiation 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 rel-
atively 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 increas-
ingly true). There are far fewer opportunities for an individual to create costly delays
when negotiating a home purchase than when negotiating a bulk order of raw materials.
Nonetheless, the tactic of increasing costs by manipulating deadlines and time pres-
sures is an option that can both enhance your own position and protect you from the
other party’s actions (Camerer and Loewenstein, 1993; Stuhlmacher, Gillespie, and
Champagne, 1998).
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 (see Tutzauer, 1992). At the beginning of negotiations, each party takes a position. Typically, one party will then change his or her position in response to information from the other party or in response to the other party’s behavior. The other party’s position will also typically change during bargaining. Changes in position are usually accompanied by new information concerning the other’s intentions, the value of outcomes, and likely zones for settlement. Negotiation is iterative. It provides an opportunity for both sides to communicate information about their positions that may lead to changes in those positions.

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? An offer seen as modest by the other party could perhaps have been higher, either to leave more room to maneuver or to achieve a higher eventual settlement. Should the opening offer be somewhat closer to the resistance point, suggesting a more cooperative stance? These questions become less perplexing as the negotiator learns more about the other party’s limits and planned strategy. While knowledge about the other party helps negotiators set their opening offers, it does not tell them exactly what to do.

Research by Adam Galinsky and Thomas Mussweiler (2001) suggests that making the first offer in a negotiation is advantageous to the negotiator making the offer. It appears that first offers 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. In general, negotiators with better BATNAs are more likely to make the first offer (Magee et al., 2007). Negotiators need to be cautious when they know the other party’s BATNA, however, because there is a tendency to make a more conservative first offer when the other party’s BATNA is known (Buelens and Van Poucke, 2004).

The fundamental question is whether the opening offer should be exaggerated or modest. Studies indicate that negotiators who make exaggerated opening offers get higher settlements than do those who make low or modest opening offers. There are at least two reasons that an exaggerated opening offer is advantageous. 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 exaggerated opening offer acts as a meta-message 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 (Putnam and Jones, 1982; Yukl, 1974). Two disadvantages of an exaggerated opening offer are that (1) it may be summarily rejected by the other party and halt negotiations prematurely, 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 negotiators should make 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 (Weingart, Prietula, Hyder, and Genovese, 1999). That is, negotiators tend to match distributive tactics from the other party with their own distributive tactics.

To communicate effectively, a negotiator should try to send a consistent message through both the opening offer and stance (Eyuboglu and Buja, 1993). 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. Timing also plays a part, as is shown in Box 2.3. Ethical considerations are explored in detail in Chapter 9.

**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. 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 to 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 initial concession
signal a position of firmness; a moderate opening offer, a reasonable, cooperative 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 maneuvering room for later in the negotiation. Firmness can also create a climate in which the other party may decide that concessions are so meager that he or she might as well capitulate and settle quickly rather than drag things out. Paradoxically, firmness may actually shorten negotiations (see Ghosh, 1996). 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 (Olekalns, Smith, and Walsh, 1996). 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 cooperative 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, in fact, 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 (Galinsky, Seiden, Kim, and Medvec, 2002).

Immediate concessions are perceived less valuable than gradual, delayed concessions, which appear to increase the perceived value of the concession (Kwon and Weingart, 2004). 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

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**The Power of the First Move**

In 1997, Mississippi was one of 40 states that initiated legal action against tobacco companies to recover money they spent on health care problems associated with smoking. In July of that year, Mississippi announced that it had reached a settlement with the four largest tobacco companies, guaranteeing that the state would receive $3.6 billion over 25 years and $136 million per year thereafter.

The settlement was a personal battle for Mississippi attorney general Michael Moore, who single-handedly began an effort in 1994 to recoup his state’s losses from tobacco-related illness. Over the next three years, he convinced 39 other states and Puerto Rico to join Mississippi in the suit. Their efforts led to a national-level settlement that banned billboard advertising and also forced tobacco companies to include stronger warning labels on cigarettes.

Moore parlayed his efforts into the first successful settlement with the tobacco companies, guaranteeing payment even before federal action was taken. By acting first, he ensured that Mississippi would receive adequate compensation for its losses.

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.”


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, has been illustrated many times in labor relations. 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. Rubin and Brown (1975) suggest that bargainers want to believe they are capable of shaping the other’s behavior, of causing the other to choose as he or she does. 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 maneuvering 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, “Because 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. For example, “If you will move on A and B, I will move on C and D.” Packaging concessions can lead to better outcomes for negotiators than making concessions singly on individual issues. A particularly effective package is to concede more on lower priority items to gain more on higher priority items. This is an integrative negotiation tactic known as logrolling and is discussed in Chapter 3.

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. Suppose a negotiator makes a first offer $100 below the other’s target price; an initial concession of $10 would reduce the maneuvering room by 10 percent. When negotiations get to within $10 of the other’s target price, a concession of $1 gives up 10 percent of the remaining maneuvering room. A negotiator cannot always communicate such mechanical ratios in giving or interpreting concessions, but this example illustrates how the receiver might construe the meaning of concession size, depending on where it occurs in the negotiating process.

The pattern of concession making is also important. Consider the pattern of concessions made by two negotiators, George and Mario, shown in Figure 2.4. Assume that the negotiators are discussing the unit price of a shipment of computer parts, and that each is dealing with a different client. Mario makes three concessions, each worth $4 per unit, for a total of $12. In contrast, George makes four concessions, worth $4, $3, $2, and $1 per unit, for a total of $10. Both Mario and George tell their counterparts that they have conceded about all that they can. George is more likely to be believed when he makes this assertion because he has signaled through the pattern of his concession making that there is not much left to concede. When Mario claims to have little left to concede, his counterpart is less likely to believe him because the pattern of Mario’s concessions (three concessions
worth the same amount) suggests that there is plenty left to concede, even though Mario has actually conceded more than George (see Yukl, 1974). Note that we have not considered the words spoken by Mario and George as these concessions were made. It is also important to justify concessions to the other party, especially those involving price reductions (Yama, 2004). Behaviors 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.

In multi-issue negotiations, skilled negotiators will also suggest different forms of a potential settlement that are worth about the same to them. They recognize that not all issues are worth the same amount to both parties. For example, a negotiator in a purchasing agreement may be interested solely in the total revenue of a package and not care whether it is paid in full within one month without interest or over six months with a financing fee at current interest rates. The length of the repayment period may, however, be critical to the other party who has a cash flow problem; that party may be willing to pay the financing fee for the right to spread the payments over six months. In fact, different combinations of principal, interest rate, and payback period may have the same value for one party but quite a different value for the other.

**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—counterconcession 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 (Walton and McKersie, 1965). 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.

**Commitment**

A key concept in creating a bargaining position is that of commitment. One definition of commitment is the taking of a bargaining position with some explicit or implicit pledge regarding the future course of action (Walton and McKersie, 1965, p. 82). An example is a sports agent who says to the general manager of a professional sports team, “If we do not get the salary we want, my player will sit out next year.” This act identifies the negotiator’s bargaining position and pledges future action if that position is not reached. The purpose of a commitment is to remove ambiguity about the negotiator’s intended course of action. By making a commitment, a negotiator signals his or her intention to take this course of action, make this decision, or pursue this objective—the negotiator says, “If you pursue your goals as well, we are likely to come into direct conflict; either one of us will win or neither of us will achieve our goals.” Commitments also reduce the other party’s options; they are designed to constrain the other party to a reduced portfolio of choices.

A commitment is often interpreted by the other party as a threat—if the other doesn’t comply or give in, some set of negative consequences will occur. Some commitments can be threats, but others are simply statements of intended action that leave the responsibility for avoiding mutual disaster in the hands of the other party. A nation that publicly states that it is going to invade another country and that war can be averted only if no other nation tries to stop the action is making a bold and dramatic commitment. Commitments can also involve future promises, such as, “If we get this salary increase, we’ll agree to have all other points arbitrated as you request.”

Because of their nature, commitments are statements that usually require a follow-through in action. A negotiator who states consequences (e.g., the player will sit out next year), and subsequently fails to get what he or she wanted in the negotiation, is not going to be believed in the future unless he or she acts on the consequences (e.g., the player does not report to training camp). In addition, a person would likely suffer a loss to self-image after not following through on a publicly made commitment. Once a negotiator makes a commitment, therefore, there is strong motivation to hold to it. Because the other party probably will understand this, a commitment, once accepted, will often have a powerful effect on what the other party believes is possible (Pruitt, 1981).
Tactical Considerations in Using Commitments

Like many tools, commitments are two-edged. They may be used to gain the advantages described earlier, but they may also fix a negotiator to a particular position or point. Commitments exchange flexibility for certainty of action, but they create difficulties if one wants to move to a new position. For example, suppose that after committing yourself to a course of action, you find additional information indicating that a different position is desirable, such as information showing that your earlier estimate of the other party’s resistance point was wrong and that there is actually a negative bargaining range. It may be desirable or even necessary to shift positions after making a commitment. For these reasons, when one makes commitments one should also make contingency plans for a graceful exit should it be needed. For the original commitment to be effective, the contingency plans must be secret. For example, the player’s agent might have planned to retire shortly after the expected completion of negotiations. By advancing retirement, the agent can thereby cancel the commitment and leave a new negotiator unencumbered. The purchaser of a condo may be able to back away from a commitment to buy by discovering the hitherto unnoticed cracks in the plaster in the living room or being unable to obtain financing from the bank. (In Box 2.5, see examples of how to avoid premature commitments in salary negotiations.)

Commitments may be useful to you as a negotiator, but you will find it advantageous to prevent the other party from becoming committed. Further, if the other party should take a committed position, it is to your advantage to keep open one or more ways for him or her to get out of the commitment. The following sections examine these tactical issues in more detail.

Establishing a Commitment

Given that strong, passionate statements—some of which are pure bluff—are made during negotiation, how does a negotiator establish that a statement is to be understood as a commitment? A commitment statement has three properties: a high degree of finality, a high degree of specificity, and a clear statement of consequences (Walton and McKersie, 1965). A buyer could say, “We need a volume discount, or there will be trouble.” This statement is far less powerful than “We must have a 10 percent volume discount in the next contract, or we will sign with an alternative supplier next month.” The latter statement communicates finality (how and when the volume discount must be granted), specificity (how much of a volume discount is expected), and a clear statement of consequences (exactly what will happen if the discount is not given). It is far stronger than the first statement and much more difficult to get released from. Several ways to create a commitment are discussed next.

Public Pronouncement A commitment statement increases in potency when more people know about it. The sports agent’s statement about sitting out the season would have a different impact if made during a television sportscast than if made only at the bargaining table. Some parties in negotiations have called press conferences or placed ads in newspapers or other publications stating what they want and what will or will not happen if they don’t get it. In each of these situations, the wider the audience, the less likely the commitment will be changed. The effect of the broader social context on negotiations will be discussed in Chapters 10 and 11.
Box 2.5

Salary Negotiation Tips

Myron Liebschutz, writing in *The Wall Street Journal*, offers these tips for success when job applicants must negotiate a salary package with a prospective employer:

- Delay discussion of compensation until after you have been offered the job.
- After the employer presents the offer and quotes the salary range, remain silent for about 30 seconds. By remaining quiet, you invite the other person to mention a higher figure or talk about flexibility. Then negotiations can begin.
- Don’t comment on the salary offer immediately. Instead, clarify some other aspect of the job’s responsibilities, and reaffirm where and how you believe you can benefit the organization.
- Then say that the offer is a bit on the conservative side, although the position is still very attractive. Say you would like to think it over and talk again the next day.
- Don’t discuss benefits before salary. Get agreement on salary first, then negotiate the fringe benefits.
- Be aware of overnegotiating. Asking for too much, even if you get it, may cause you to be viewed with resentment and can hinder you in future salary reviews.
- Whatever the offer, do not accept it on the spot. Express interest, but again ask for a day to think it over. The job won’t go away, and the employer may be able to come up with a better offer given some additional time to get approval.
- If the company cannot meet your annual salary requirements, look for other options such as a one-time, up-front bonus, extended vacation, or specific monetary rewards for performance goals. Typically, there is little room for negotiation when you are applying for a low-level job, when the company is highly bureaucratic, or when the labor supply exceeds demand. There are more opportunities to negotiate when you are applying for a new or high-level, high-profile position and when you possess multiple or unique skills.


Linking with an Outside Base

Another way to strengthen a commitment is to link with one or more allies. (Negotiation coalitions are discussed in Chapter 12.) Employees who are dissatisfied with management can form a committee to express their concerns. Industry associations may coalesce to set standards for a product. A variation of this process occurs when negotiators create conditions that make it more difficult for them to break a commitment they have made. For example, by encouraging dedicated colonists to settle on the West Bank near Jerusalem, the Israeli government made it more difficult for Israel to concede this land to the Palestinians, a point the Israelis initially wanted to reinforce.

Increase the Prominence of Demands

Many things can be done to increase the prominence of commitment statements. If most offers and concessions have been made orally, then writing out a statement may draw attention to the commitment. If prior statements have been written, then using a different size typeface or different colored paper will draw attention to the new one. Repetition is one of the most powerful vehicles for making a statement prominent. Using different communication channels to convey a commitment makes the point strongly—for example, telling the other party of a commitment; then handing over a written statement; then reading aloud the statement; then circulating the commitment to others.
**Reinforce the Threat or Promise**

When making a threat, there is the danger of going too far—stating a point so strongly that you look weak or foolish rather than threatening. Statements like “If I don’t get a concession on this point, I’ll see that you don’t stay in business another day!” are more likely to be greeted with annoyance or dismissal than with concern or compliance. Long, detailed statements that are highly exaggerated undermine credibility. In contrast, simple, direct statements of demands, conditions, and consequences are more effective.

Several things can be done to reinforce the implicit or explicit threat in a commitment. One is to review similar circumstances and their consequences; another is to make obvious preparations to carry out the threat. Facing the prospect of a strike, companies build up their inventories and move cots and food into their factories; unions build strike funds and give advice to their members about how to get by with less income should there be a strike. Another route is to create and carry out minor threats in advance, thereby leading the other party to believe that major threats will be fulfilled. For example, a negotiator could say, “If the progress of these negotiations does not speed up, I am not going to return to the negotiation table after lunch,” and then do just that.

Finally, research on threats in negotiation suggests that negotiators who make threats are perceived as more powerful than negotiators who do not (see de Dreu, 1995; Shapiro and Bies, 1994). This perception of greater power does not appear to translate into higher negotiation outcomes for threat users, however. In fact, threat users are also perceived as less cooperative, and their outcomes in integrative situations seem to be lower than those of negotiators who do not use threats (Shapiro and Bies, 1994). Integrative negotiations are discussed in greater detail in Chapter 3.

**Preventing the Other Party from Committing Prematurely**

All the advantages of a committed position work against a negotiator when the other party becomes committed, so it is important to try to prevent the other negotiator from becoming committed. People often take committed positions when they become angry or feel pushed to the limit; these commitments are often unplanned and can work to the disadvantage of both parties. Consequently, negotiators should pay careful attention to the other party’s level of irritation, anger, and impatience.

Good, sound, deliberate commitments take time to establish, for the reasons already discussed. One way to prevent the other party from establishing a committed position is to deny him or her the necessary time. In a real estate deal with an option about to run out, a seller may use up the time by being unavailable or requiring extensive checking of deeds and boundaries, thereby denying time to a potential buyer to make an offer by the deadline and ultimately allowing another buyer who would pay more to enter into negotiation. Another approach to keep the other party from taking a committed position is to ignore or downplay a threat by not acknowledging the other’s commitment, or even by making a joke about it. A negotiator might lightheartedly say, “You don’t really mean that,” or “I know you can’t be serious about really going through with that,” or simply move negotiations along as though the commitment statement was not heard or understood. If the negotiator can pretend not to hear the other party’s statement or not to consider it significant, the statement can be ignored at a later point without incurring the consequences that would have ensued had it been taken seriously. Although the other negotiator can still carry out the threat, the belief that it must be carried out may be reduced.
There are times, however, when it is to a negotiator’s advantage for the other party to become committed. When the other party takes a position on an issue relatively early in a negotiation, it may be very much to a negotiator’s advantage to solidify that position so it will not be changed as the negotiation on other issues progresses. A negotiator may handle this situation in one of two ways: by identifying the significance of a commitment when it is made or by taking notes and keeping track of the other’s statements. An employee might be very upset about the way a particular problem was handled but might also say that she will never get upset enough about it to resign. The manager might focus on this point at the time it is made or refer to it later if the employee has not calmed down. Both actions are designed to keep the employee from making a rash decision out of anger, and may allow a cooling off period before resuming discussions.

Finding Ways to Abandon a Committed Position

Frequently negotiators want to get the other party out of a committed position, and many times that party will also want a way out. How can this be done? We suggest four avenues for escaping commitments.

Plan a Way Out  One method has already been noted: when establishing a commitment, a negotiator should simultaneously plan a private way out. The negotiator may also reword a commitment to indicate that the conditions under which it applied have changed. Sometimes information provided by the other party during negotiations can permit a negotiator to say, “Given what I’ve learned from you during this discussion, I see I am going to have to rethink my earlier position.” The same could be done for the other party. A negotiator, wanting to make it possible for the other to abandon a committed position and yet not lose credibility, might say, “Given what I’ve told you about the situation [or given this new information], I believe you will see that your earlier position no longer holds.” Needless to say, the last thing a negotiator wants to do is to embarrass the other party or make judgmental statements about the shift in position; rather, the other party should be given every opportunity to retreat with dignity and without losing face.

Let It Die Silently  A second way to abandon a commitment is to let the matter die silently. After a lapse of time, a negotiator can make a new proposal in the area of the commitment without mentioning the earlier one. A variation on this process is to make a tentative step in a direction previously excluded by the other’s commitment. For example, an employee who has said that he would never accept a certain job assignment may be asked to consider the benefits to his career of a “temporary” placement in that job. In bureaucratic institutions, changes can be introduced as “innovative experiments” to see if they work before they are formally adopted. If the other party, in response to either of these variations, indicates through silence or verbal comment a willingness to let things move in that direction, the negotiation should simply be allowed to progress.

Restate the Commitment  A third route is to restate the commitment in more general terms. The party that wants to abandon a commitment will make a new proposal, changing some of the details to be more in line with his or her current needs, while ostensibly still
Minimize the Damage  Finally, if the other party backs off from a committed position, it is important to help him or her save face, which means helping minimize any possible damage to the other party’s self-esteem or to constituent relationships. One strategy to use in this instance is to make a public attribution about the other party’s move to some noble or higher outside cause. Diplomats can withdraw from a committed position because of their deep concern for peace and humankind. A buyer or seller can back off from a point during a real estate transaction to support the economic well-being of the community. Managers can leave a committed position for the good of the company.

A committed position is a powerful tool in negotiation; it is also a rigid tool and must therefore be used with care. As with any other tool, we must be as alert to ways of denying it to the other party as we are to ways we can use it for ourselves. Unfortunately, many commitments are made impulsively out of anger or a desire to stop making concessions, rather than as a result of clearly thought-out tactical planning. In either case, the essential effect of a committed position is to remove an issue from further discussion—to make it no longer negotiable except at serious risk to one or both parties. The committed position has to be believable, and it must appear inevitable—if X happens, Y is inevitable. Convincing the other party that fate is sealed on the matter at hand is a demanding task and requires preparation, time, and skill. Consequently, getting out of a committed position is not easy, but the process is made simpler by planning a means of escape at the time the commitment is being established. Many of the steps a negotiator can use to get out of a commitment can also be used to help the other party get out of a committed position or, even better, to keep him or her from establishing one in the first place.

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. Negotiators can call on several tactics when closing a deal (see Cellich, 1997; Girard, 1989); 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 may say something like “Shall I get the paperwork started?”
and act as if the decision to purchase something has already been made (see Girard, 1989).

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, be-
cause things are so close, “why don’t we just split the difference?” While this can be an ef-
fective 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 in order to
pressure the other party to agree quickly and is an extreme version of manipulating negoti-
ating schedules. 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, how-
ever, 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 in order to prevent the other party from continuing to search for a poten-
tially 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, however, 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 ne-
egotiation discuss using hardball negotiation tactics to beat the other party. Such tactics are
designed to pressure negotiators to do things they would not otherwise do, and their pres-
ence 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 adver-
sarial negotiators are not effective negotiators (Schneider, 2002). Many people find hard-
ball 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.
(Negotiation ethics are discussed in Chapter 9). 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, however, 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.9

### 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 here, 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 (Fisher, Ury, and Patton, 1991; Ury, 1991; Weeks, 2001). Then offer to negotiate the negotiation process itself, such as behavioral 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. 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. A participant in a negotiation seminar told one of the authors the following story about bargaining for a carpet in a northern African country:

I knew that the value of the carpet was about $2,000 because I had been looking at carpets throughout my trip. I found the carpet that I wanted and made sure not to appear too interested. I discussed some other carpets with the vendor before moving on to the carpet that I really wanted. When I asked him the price of this carpet, he replied $9,000. I replied that I would give him negative $5,000. We bargained for a while and I bought the carpet for $2,000.

The purchaser in this negotiation clearly responded to a hardball tactic with one of his own. When asked if he felt comfortable with his opening bid, he responded:

Sure. Why not? The seller knew the value of the carpet was about $2,000. If anything, he seemed to respect me when I bargained this way. If I had opened with a positive number I would have ended up having to pay more than the carpet was worth. And I really wanted the carpet.

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 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; it can frequently be seen in episodes of popular television series such as *Law and Order* and *CSI*. 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 behavior, 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 (Brodt and Tuchinsky, 2000; Hilty and Carnevale, 1993).

This tactic has many weaknesses. As mentioned earlier, 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 reevaluate his or her own opening offer and move closer to or beyond their resistance point. For example, one of the authors of this book was in a labor-management negotiation where the union’s first offer was to request a 45 percent salary increase over three years. Given that recent settlements in neighboring universities had been 3 to 4 percent, this qualified as a highball offer!

The risk of using this tactic is that the other party will think negotiating is a waste of time and will stop the process. Even if the other party continues to negotiate after receiving a lowball (or highball) offer, however, 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 counteroffer, but to ask for a more reasonable opening offer from the other party (the union in the preceding example responded to this request by tabling an offer for a 6 percent increase, above the industry
average but not qualifying as a highball offer). 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 defense against this tactic (see Chapter 4). 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, however, 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 asks for large concessions on other issues to give you the bogey issue (that you really don’t want), and you spend 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 maneuver 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.

Research by O’Connor and Carnevale (1997) suggests that bogeys occur more often by omission than commission. They suggest that negotiators who wish to use the bogey should “get the other person to state his or her preferences on all the issues first and look for common value” (p. 513). This presumes that the other person will state their preferences accurately, which is not always true—negotiators may deliberately misstate their true preferences to try to

Hardball Tactics
set up a bogey. O’Connor and Carnevale do suggest that the tactic may be harmful to relationships, however, if the other party reacts strongly to being misled. We explore ethical issues involved in the use of this and other deceptive tactics in Chapter 9.

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 (e.g., 1 to 2 percent of the total profit of the deal) on an item that hasn’t been discussed previously in order to close the deal. Herb Cohen (1980) 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. 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 (1997), there are two good ways to combat the nibble. 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.

Chicken  The chicken tactic is named after the 1950s challenge, portrayed in the James Dean movie Rebel without a Cause, of two people driving cars at each other or toward a cliff until one person swerves to avoid disaster. The person who swerves is labeled a chicken, and the other person is treated like a hero. Negotiators who use this tactic combine a large bluff with a threatened action to force the other party to “chicken out” and give them what they want. In labor–management negotiations, management may tell the union representatives that if they do not agree to the current contract offer the company will close the factory and go out of business (or move to another state or country). Clearly this is a high-stakes gamble. On the one hand, management must be willing to follow through on the threat—if the union calls their bluff and they do not follow through, they will not be
believed in the future. On the other hand, how can the union take the risk and call the bluff? If management is telling the truth, the company may actually close the factory and move elsewhere.

The weakness of the chicken tactic is that it turns negotiation into a serious game in which one or both parties find it difficult to distinguish reality from postured negotiation positions. Will the other party really follow through on his or her threats? We frequently cannot know for sure because the circumstances must be grave in order for this tactic to be believable; but it is precisely when circumstances are grave that a negotiator may be most tempted to use this tactic. Compare, for instance, the responses of Presidents Bill Clinton and George W. Bush to Iraq’s defiance of the United Nations weapons inspection program. It appears that Iraq felt it could “stare down” President Bush because it had successfully avoided outright conflict during President Clinton’s term. The subsequent war in Iraq demonstrated the error of this assessment.

The chicken tactic is very difficult for a negotiator to defend against. To the extent that the commitment can be downplayed, reworded, or ignored, however, it can lose its power. Perhaps the riskiest response is to introduce one’s own chicken tactic. At that point neither party may be willing to back down in order not to lose face. Preparation and a thorough understanding of the situations of both parties are absolutely essential for trying to identify where reality ends and the chicken tactic begins. Use of external experts to verify information or to help to reframe the situation is another option.

**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. One of the authors of this book had the following experience:

Once while I was negotiating with a car salesman he lost his temper, destroyed his written notes, told me to sit down and listen to him, and went on to explain in a loud voice that this was the best deal in the city and if I did not accept it that evening I should not bother returning to that dealership and wasting his time. I didn’t buy the car and I haven’t been back, nor I suspect have any of the students in my negotiation classes, to whom I relate this story every year! I suspect that the salesman was trying to intimidate me into agreeing to the deal and realized that if I went elsewhere his deal would not look as good. What he didn’t realize was that I had asked the accountant at the dealership for further information about the deal and had found that he had lied about the value of a trade-in; he really lost his cool when I exposed the lie.

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 preprinted official forms and agreements are less likely to be questioned than those that are delivered verbally (Cohen, 1980); long and detailed loan contracts that banks use for consumer loans are seldom read completely (Hendon and Hendon, 1990). 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. In an ongoing negotiation in China when he was younger, one of the authors of this book found that his Chinese counterparts were frequently changing their team members so that older and older members appeared in each subsequent negotiation session. He decided to bring a senior colleague of his own to subsequent meetings in order not to be intimidated by the age and experience of the counterparts on the other negotiating team. 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 Behavior**  Similar to tactics described under intimidation, aggressive behavior tactics include various ways of being aggressive to push your position or attack 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 signaling 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 behavior tactics, an excellent response is to halt the negotiations in order to discuss the negotiation process itself. Negotiators can explain that they will reach a decision based on needs and interests, not aggressive behavior. Again, having a team to counter aggressive tactics from the other party can be helpful for
the same reasons discussed under intimidation tactics. Good preparation and understanding both one’s own and the other party’s needs and interests together make responding to aggressive tactics easier because negotiators can highlight the merits to both parties of reaching an agreement.

**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 information and technical language so that the nonexperts 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., “Because 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.

**Distributive Bargaining Skills Applicable to Integrative Negotiations**

This chapter has provided an overview of distributive bargaining situations and discussed the classic strategies and tactics that are used in distributive bargaining. Negotiators in a distributive bargaining situation need to execute these strategies and tactics well in order to increase their chances of obtaining a positive agreement. For instance, negotiators need to set clear target and resistance points, understand and work to improve their BATNA, start with a good opening offer, make appropriate concessions, and manage the commitment process. Many of these skills are also applicable to the latter stages of integrative negotiation when negotiators need to *claim value*, that is to decide how to divide their joint gains. Negotiators need to be careful, however, not to seriously change the tone of those negotiations by adopting an overtly aggressive stance at this stage. Integrative negotiation is discussed in detail in Chapter 3.
Chapter Summary

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. Distributive bargaining begins with setting opening, target, and resistance points. One soon learns the other party’s starting points and his or her target points directly or through inference. Usually one won’t know the other party’s resistance points (the points beyond which she or he will not go) until late in negotiation—they are often carefully concealed. All points are important, but the resistance points are the most critical. The spread between the parties’ resistance points defines the bargaining range. If positive, it defines the area of negotiation within which a settlement is likely to occur, with each party working to obtain as much of the bargaining range as possible. If negative, successful negotiation may be impossible.

It is rare that a negotiation includes only one item; more typically, a set of items, referred to as a bargaining mix, is negotiated. Each item in a bargaining mix can have opening, target, and resistance points. The bargaining mix may provide opportunities for bundling issues together, trading off across issues, or displaying mutually concessionary behavior.

Under the structure of distributive bargaining, a negotiator has many options to achieve a successful resolution, most of which fall within two broad efforts: to influence the other party’s belief about what is possible and to learn as much as possible about the other party’s position, particularly about their resistance points. The negotiator’s basic goal is to reach a final settlement as close to the other party’s resistance point as possible. To achieve this goal, negotiators work to gather information about the opposition and its positions; to convince members of the other party to change their minds about their ability to achieve their own goals; and to justify their own objectives as desirable, necessary, or even inevitable.

Distributive bargaining is basically a conflict situation, wherein parties seek their own advantage—sometimes through concealing information, attempting to mislead, or using manipulative actions. All these tactics can easily escalate interaction from calm discussion to bitter hostility. Yet negotiation is the attempt to resolve a conflict without force, without fighting. Further, to be successful, both parties to the negotiation must feel at the end that the outcome was the best they could achieve and that it is worth accepting and supporting. Hence, effective distributive bargaining is a process that requires careful planning, strong execution, and constant monitoring of the other party’s reactions. Finally, distributive bargaining skills are important when at the value claiming stage of any negotiation. This is discussed in more detail in the next chapter on integrative negotiation.

Endnotes

1 Refer to Walton and McKersie (1965, pp. 59–82) for a more extensive treatment of this subject.

2 See Lim and Murnighan (1994); Roth, Murnighan, and Schoumaker (1988); and Walton and McKersie (1965).

3 See Brodt (1994); Chertkoff and Conley (1967); Cohen (2003); Donohue (1981); Hinton, Hamner, and Pohlan (1974); Komorita and Brenner (1968); Liebert, Smith, and Hill (1968); Pruitt and Syna (1985); Ritov (1996); Van Pouke and Buelens (2002); and Weingart, Thompson, Bazerman, and Carroll (1990).

4 See Pruitt (1981) and Tutzauer (1991) for further discussion of these points.

5 The term *Boulwarism* is named after the chief labor negotiator for the General Electric Company in the 1950s. Rather than let the union present its contract demands first, the company placed a single “fair” offer on the table and refused to negotiate further. The National Labor Relations Board eventually ruled against GE by stating that this practice was unfair because management did not engage in “good faith bargaining.” See Northrup (1964) and Selekmam, Selekmam, and Fuller (1958) for further discussion of this point.

6 See Baranowski and Summers (1972); Crumbaugh and Evans (1967); Deutsch (1958); and Gruder and Duslak (1973).


8 For instance, see Aaronson (1989); Brooks and Odiorne (1984); Cohen (1980); Levinson, Smith, and Wilson (1999); and Schatzski (1981).

9 See Fisher, Ury, and Patton (1991); Ury (1991); and Adler, Rosen, and Silverstein (1996) for an extended discussion of these points.