



Turning lemons
into lemonade

Unit 8 Problem Solving as an Advocate Instructor's Guide

Public Conflict Resolution

A lecture and role-play will introduce skills that prepare the participants to problem solve as advocates. By focusing on interests and effectively communicating them, participants will learn the basics of interest-based negotiation.

Purpose

This session teaches participants how to negotiate as advocates, as non-neutrals. Understanding negotiation alternatives and how to communicate interests are among the topics emphasized.

Objectives

As a result, participants will:

- Learn the alternatives to negotiating.
- Practice solving a public conflict as an advocate.

Time

Two hours

Materials Needed

Flip chart and Easel
Markers
Overhead Projector

Overheads

31 Three Degrees of Alternatives
32 You Are Ready to Negotiate When:

Handouts

Unhappy Trails

Directions

1. In order to problem solve as an advocate you must understand the purpose of negotiation. The trainer mentions that the purpose of negotiation is not always to reach agreement. Agreement is only one means to an end, and that end is to satisfy your interests. The purpose of negotiation as an advocate is to explore whether you can satisfy your interests better through interest-based techniques than you could pursuing your Best Alternative to a Negotiated Agreement (BATNA).

The idea of a BATNA deserves further discussion. Despite the emphasis this training places on negotiation processes, it isn't always desirable or necessary to settle public conflicts through interest-based problem solving techniques. People tend to overestimate their position going into a negotiation: "Our group is right"; "The public supports us"; or "Legally, we're right." Sometimes it is best for a stakeholding party to approach problem solving through other means. Best Alternatives may include: litigation proceedings; an economic boycott; waiting for public sentiment to change; building stronger grassroots support for your issue; or simply sleeping on it. All of these possible alternatives to formal problem solving techniques should be weighed by stakeholders who are trying to advocate for the best possible resolution of their problem. By the same token, such options may end up as the Worst Alternative to a Negotiated Agreement (WATNA) or simply as the Most Likely Alternative to a Negotiated Agreement (MLATNA). A stakeholder advocate must reasonably understand their parties' BATNA, WATNA, and MLATNA in order to take an effective problem solving approach.

2. The first step in preparing for negotiation as an advocate is to clarify your own thinking. The trainer should write on the flip chart the following questions, which focus on uncovering the parties' interests:
 - a. What are your concerns and interests?
 - b. What options might solve your concerns and be acceptable to the other parties?
 - c. What kind of outcome do you want?
 - What do you aspire to?
 - What would you be content with?
 - What could you live with?
 - d. How can you maneuver around your "bottom line?"

Overhead 31

3. Before negotiations begin, the advocate should understand what their alternatives to negotiation are. The trainer displays **Overhead 31** to list the three degrees of alternatives: BATNA, WATNA, and MLATNA. Tell the participants that if the acronyms are confusing that remembering 'Best', 'Worst', and 'Most Likely Alternative' is what is important.

4. The trainer should mention that after having identified their 'Best', 'Worst', and 'Most Likely' Alternatives to a Negotiated Agreement, the advocate then needs to decide what is the key to leveling the playing field so that they may pursue their 'Best Alternative'. The advocate may opt for the "Walkaway" alternative (where the advocate withdraws from negotiations with the opposing advocate), the "Interactive" alternative (where opposing advocates negotiate between themselves without a neutral), or the "Third-party" alternative (where a neutral helps opposing advocates work to negotiate some agreement).
5. Preparing for negotiation as an advocate also requires that the other parties be understood. The trainer should write the following questions concerning the other parties in conflict on the flip chart:
 - a. Who else has an interest in this issue? Should they be brought into the process?
 - b. What resources do they bring?
 - c. What perceptions do they have that may complicate the issue?
 - d. What is their BATNA (Best Alternative)?
 - The key is to develop an agreement that is superior to their best alternative.
 - If their BATNA is so good that they won't negotiate, can you change it?
6. It is at this point that the advocate decides if they should negotiate. In considering the responses that the advocate comes up with to the questions written on the flip chart, the trainer should tell the participants not to overestimate their own BATNA (Best Alternative), and to remember their WATNA (Worst Alternative) and MLATNA (Most Likely Alternative) too.
7. If the advocate chooses to go forward with the interest-based negotiations, they should determine the negotiation processes and strategies they will employ. The trainer should read the following questions:
 - a. Tough issues first or last?
 - b. Should we use experts and data?
 - c. Should the process be assisted or unassisted by a neutral?

Overhead 32

8. The trainer emphasizes that all of the above preparation is important before an advocate begins negotiating. **Overhead 32** (You Are Ready to Negotiate When:) is shown and read aloud to restate the preparation on the part of an advocate that should precede negotiation.
9. The trainer should distribute the handout role-play "Unhappy Trails" and follow the directions posted on the first page (which only the trainer has a copy of). Have the participants act out the role play for as long as the sides are making progress in identifying the answers to the questions raised in this unit.



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Unit 8
Problem Solving as an Advocate
Handouts



Unhappy Trails Handout 1

Public Conflict Resolution

DISCUSSION GUIDE FOR CONFLICT COACHES

- Step # 1 Everyone in the group gets a copy of the sheet "Unhappy Trails." This should be read aloud by three of the participants. Each takes his/her turn reading one of the paragraphs.
- Step # 2 Divide the group in half. Half of the group receives "Confidential Information to Representatives of Dixie Rails Trust" while the other half receives "Confidential Information to Representatives of the Greenleaf Property Owners Association." Everyone receives a copy of the sheet, "Preparation for Negotiation Worksheet."
- Step # 3 Each of the two groups attempts to find a space to meet and prepare for negotiation. Each group will fill out the "Preparation for Negotiation Worksheet." They will also select two spokespersons from the group to meet with the other side and negotiate.
- Step # 4 The actual negotiation takes place. The coach may choose to serve as a neutral or he/she may choose to let the two parties come together and negotiate without a neutral.
- Step # 5 The coach conducts a debriefing session. Some questions you might ask include:
- Why did you come to the table? Why didn't you pursue litigation?
 - Were your real interests met? Why or why not?
 - Do you think the other side's interests were met? Why or why not?
 - What were the highlights of the negotiation process?
 - Why was a deal made? Why or why not?



Unhappy Trails Handout 1

Public Conflict Resolution

Public Information

This information should be distributed to everyone.

The Old Milwaukee & Southern is finally pulling up its rails. The rails ran in an east-west direction through Monroe County since the 1880s. Like many railroads of its day, the Old Milwaukee purchased lands as well as easements along its right-of-way. Many of these easements contained clauses that the land would revert to its owners if the railroad were ever abandoned. The tracks ran through a variety of settings: industrial areas, farmland, neighborhood settings and a business district. Monroe County recently opened two parks on both ends of the track.

With the abandonment approaching, many people in Monroe County saw this as a wonderful opportunity. The County was interested in keeping the corridor open for future public uses such as water mains, fiber optic cables, or even construction of a new railroad. Many trail enthusiasts saw the opportunity to connect the county park on the east with the county park on the west. In fact, the Dixie Rails Trust, a statewide organization that purchases abandoned rail rights-of-way and converts them to trails has begun proceedings to have the corridor deeded to the state. They will then purchase the rights from the state for the purpose of building the trail. They have the support of the Monroe County government, the local bicycling club, the Downtown Association and the "Senior Walkers Society" and the local chapter of the Sierra Club.

A group of farmers and a small collection of homeowners in the unincorporated hamlet of Greenleaf, a three mile area along the track, are worried. Historically, the corridor in this area was obtained through easements attached to property deeds. The deeds state that the land reverts back to private ownership upon abandonment by the railroad. However, the people near Greenleaf are also aware that in many such cases, court decisions have not come down in their favor. They have petitioned both the County of Monroe and the State Department of Transportation to block the transfer of the 22 mile rail corridor. Neither body has acted on the petition.

Preparation for Negotiation Worksheet

- 1) What is your perception of the problem?
- 2) What is your alternative to negotiating an agreement at the table? (i.e., lawsuit, economic boycott, etc.) What might theirs be? Is it necessary to think of a way to make it easier for them to come to the table and negotiate?
- 3) What are your interests (needs, desires, concerns, fears)?
- 4) What do you estimate their interests to be? (Treat these as theory and test them early in the negotiation.)
- 5) What are the core interests here?
- 6) How might you frame the problem to bridge all known interests? One way to do this is to ask, "how can we...?" Remember you are using the inclusive "we" here.
- 7) As you meet, keep the Principled Negotiation process in mind:
 - Separate the people from the problem.
 - Focus on interests, not positions.
 - Invent options for mutual gain.
 - Evaluate options using an objective criterion.
- 8) Should you reach an agreement, how can you be assured that all parties will live up to the agreement?

This sheet was adopted from Getting Past No: Negotiating Your Way From Confrontation to Cooperation William Ury, New York: Bantam Books, Revised Edition, 1993.

Confidential Information to Representatives of Dixie Rails Trust

You are tired of greedy landowners who see the opportunity to get free land. These people never really owned the property. In most cases, these homes were not in the same family when these rail easements were signed back in the 1800s. Now you have people—spearheaded by groups such as the Association for Reversionary Property Owners—crying "violations of my property rights!" and waving the flag and serving apple pie at their meetings. They say that such trails invade their privacy and invite crime into their neighborhoods.

You envision a trail that runs all the way from the Monroe County Eastside Park to the Westside Park, a distance of approximately twenty-two miles. Another trail built eight years ago in the town of Apple Hill is very successful. In fact, the stores and restaurants that abut the trail now cater to trail walkers and bikers. They point to the trail as a real profit booster. You have no recollection of complaints of crime or other afflictions from the residents that live near it. Studies have shown that this is merely a problem of perception, not reality.

The unincorporated hamlet of Greenleaf is the only holdout along the entire planned trail route. The opposition is quite strong and you don't have the support of the community like you do in Monroe County. In this western county, the elected officials backed down after a small group of neighbors came in full force to stop it. The Department of Transportation says they will defer to the local governing body in such disputes.

The Greenleaf property owners' position is that the corridor should revert to them when abandoned. But, you know that in most cases the law has upheld continued public uses of corridors regardless of deed reversions. You could probably ignore the Greenleaf people, let them sue, and continue with the trail after they lose in court.

However, the new mix of state legislators has changed this equation somewhat and they are breathing new life into the anti-trail efforts in the state. It may only be a matter of time before it becomes more difficult to do your job. If you can appease the Greenleaf people, you may be able to get what you need.

The trail is going to be very expensive to develop as planned. The county has pledged some money to landscaping and other amenities and you have received donations from several trail organizations. Your budget is fairly good going into the project but you don't really want to spend additional money on things you feel aren't necessary like legal fees or paying off the "squeaky wheels." You need to get this trail built. You feel you will lose a lot of your statewide support for your organization if you lose another one.

A couple of representatives from the Greenleaf Property Owners Association have agreed to meet with two representatives from your organization. Your task today is to prepare for a potential negotiation.

Confidential Information to Representatives of the Greenleaf Property Owners Association

You and your neighbors have worked hard to improve the unincorporated hamlet of Greenleaf. Some of the old homes and farms in the Greenleaf area were run down in the 1950s, but in the last 20 years, Greenleaf has really turned around. Greenleaf's prosperous farmers and homeowners fear the loss of the value of your property if a trail cuts through your land. The trail will provide direct access to Greenleaf from people who walk or ride bikes down the trail. By day, you envision people snooping on your farm or backyard and by night, you are sure the trail will become a "burglar's highway." You have done some research and have found places where trails such as this have actually degraded property values, turning quiet, secluded neighborhoods into parkways and byways.

But most important, you believe the rail corridor is really your land. You and your neighbors have researched your deeds and have discovered that the corridor reverts to you when abandoned by the railroad. You are a strong advocate for private property and feel that when the public takes private property, the landowner should be compensated. It's a constitutional right! But you also know that in most cases the law has upheld continued public uses of abandoned rail corridors. A Vermont couple took their case all the way to the Supreme Court and lost. But the new legislators in the state have changed the situation somewhat; they are breathing new life into property rights efforts. New judges are sitting on district court benches and it's only a matter of time before the situation turns around. An attorney friend of yours said that "win or lose, its going to cost you a bundle to go to court."

You know that the section that runs through your Greenleaf area is a crucial link. In order to get support from the Monroe County Merchants Association and others, the trail's group needs this link.

Most of your neighbors in the Greenleaf area agree with your position and don't want the trail. In fact, a recent string of burglaries has reinforced your neighbors' fears. Privacy and solitude are also big issues with people. Some farmers have said that the railroad did not allow them to cross easily from one end of their farm to another but if they got the land back, they could easily haul machinery from one end of the farm to the other.

Although you have support from your neighbors, several have said they aren't all that keen on a long fight in the courts. Three members of Property Owners Association said they did not support your position but they would not get in the way. You are not likely to get any support from the Monroe County elected officials. A couple of board members are sympathetic to your cause but the Sierra Club has their first loyalty.

You have been meeting with the farmers and others in the Greenleaf area for weeks about this issue. The Dixie rail-trails group has asked to meet with you to discuss the issue. You and your neighbors have decided to prepare for this meeting.