

Negotiation

(A resource for community advice offices and community-based paralegals brought to you by NADCAO, from the Paralegal Manual published by the Education and Training Unit and the Black Sash.)

Most of us deal with some or other negotiation every day of our lives. The paralegal will constantly be involved in negotiating on behalf of clients.

What is negotiation?

Negotiation takes place when two or more people or groups who have a conflict try to come together to agree on how best to resolve this conflict. This might mean that one side must compromise. Usually it means that both sides compromise so that they can reach a settlement. This is called a 'win-win' situation.

How do you negotiate?

The main purpose of being a negotiator is to get the best settlement possible for yourself or for the person or group that you are representing. To do this, a negotiator needs certain skills such as:

- Finding out facts and information about the other side before you start negotiating
- Knowing what questions to ask
- How to create the right atmosphere for successful negotiation - if you are too aggressive too early in the negotiation this will create a very tense atmosphere.
- Knowing how much to tell the other person or group - for example, you should not give too many details too early in the negotiation as this gives the other person or group an advantage over you.
- Knowing when to put your proposals to the other person or group
- Controlling your attitude towards the other side - all kinds of different emotions, prejudices, different values and cultures can affect your attitude towards the other side. This can make it harder for you to communicate properly with them.

Example

A union official negotiates with the manager of a farm about the right of workers to join the union. The union official is very emotional because the manager is threatening to dismiss the workers. The union official also believes that the manager is not concerned about the workers and that he is cruel and immoral.

The manager is also very emotional. He believes that the union official is trying to take over the farm. He is worried about financial losses, and believes that as soon as workers join a union they will go on strike. He believes that all workers

are lazy and only want money to spend on alcohol.

In this example there are many conflicting emotions, prejudices, and values between the two sides. This will affect negotiations between the two parties.

Preparing for negotiations

Steps in planning and preparing for a negotiation

(a) Identify the issue

- Background and context - Analyse the background and context to the issue. Each issue has its own particular background and history that is important to know and acknowledge in a negotiation.

- Power and positions of the parties - Look at the power and positions that the different parties will have in the negotiation you are preparing for. For example, a local authority wants to build a road through a town. To do this it needs to move people living there. The people are not prepared to move until the municipal council finds them acceptable alternative land. The council has the power of its official position and it has the power of the law behind it (under the Constitution property can be expropriated in certain circumstances). The community also has the power of the law (they cannot be arbitrarily evicted from the land/ they cannot be evicted without a court order). The community also has the power of large numbers

(b) Define your objectives

Work out your key points and what you want to achieve in the negotiation

(c) Be clear about your mandate

As a paralegal you will be representing either a person or a group in negotiations. You must know what your mandate is from that person or group. In other words, you must know exactly what they want and how much they are prepared to compromise.

(d) Selecting a negotiation team

It is usually better to have more than one person in a negotiating team.

(e) Getting to know the other side

You need to have as much information as possible about the people in the party you are negotiating against. For example, you need to know what their interest and needs are in the issue, their strengths, weaknesses, problems and pressures.

(f) Plan your actual presentation

Organise all your information you have gathered in a logical format so that it can be used in the negotiation.

The process of negotiation

Steps in the process of negotiation:

- a. The parties meet and they acknowledge a problem exists. Each party states the reason (as they see it) for the negotiation.
- b. The negotiation moves into the issues and parties say what their needs and interests are. This is the exploration phase where the parties ask lots of questions and acknowledge the common points.
- c. Parties move into the bargaining phase where they start to look for possible solutions or options for solving the problem. During this phase the parties may even start moving closer together and there may be a feeling of working together to solve a common problem. Negotiation does not always mean that parties have to be aggressive towards each other. For a negotiation to end in an agreement, one side must show that it is ready to 'move' or compromise.
- d. The parties reach an agreement. At this point you may need to take the agreement back to the person or group that you are negotiating on behalf. If the agreement falls within the mandate you were given, then you can make a final agreement.
- e. Reporting back to the group
You will always need to report back to the person or group you were representing to tell them what the outcome of the negotiation was.
- f. Putting the settlement into practice
Once you agree to something with the other side, then you must make sure that the agreement is put into practice.

Example of the stages of the negotiation process

Negotiating to get an employee's job back

You are representing an employee who has been dismissed. You have to negotiate with the manager of the company where she was working.

Getting a mandate

The employee wants her job back.



Preparing and planning for the negotiation

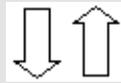
- Find out all the details about the dismissal of the employee. Find out how many warnings she received in the past, her length of service, what her job was, whether she was a member of a union, why she thinks she was dismissed, and so on.
- Find out about the company, the name of the manager, whether the

- company has a reputation for treating its workers badly, and so on.
- Plan what you are going to say to the manager when you phone.



Meeting or contacting the other side

- You phone the manager. You explain who you are representing, and the reasons for your telephone call. You ask for the manager's side of the story. You explain that the employee wants her job back. The manager refuses but makes you another offer (this is called a counter-offer).
- You do not have a mandate to accept this. You tell the manager that you must go back to the employee.



Going back to the person or group you are representing

- You go back to the employee and explain what the manager has offered. (If you think it is a good settlement you can try to encourage the worker to accept it.) If the employee accepts the offer, you phone the manager again and say that you agree to the company's offer.



Putting the settlement into practice

- You immediately write a letter to the company confirming your agreement.
- If the company does not keep to its side of the agreement, you must meet again with the employee, and decide together what you are going to do.