

MORE EFFECTIVE NEGOTIATION

Greater Self-Direction in Resolving Conflict

Most of us would prefer to avoid confrontations with angry opponents, yet such opportunities are common in construction. Many companies react by turning problems over to their attorney. This response can conveniently deflect or postpone a difficult encounter. The downside is that companies miss the opportunity to negotiate an immediate and lasting resolution themselves. Early intervention can be the most effective response, preventing problems from escalating without jeopardizing other options.

Taking an enhanced role in disputes should not be interpreted as “going it alone”. Problems involving legal liability should include the company attorney. Companies may appreciate legal counsel in all disagreements in order to strategize their negotiated response and to evaluate subsequent options.

Unfortunately, many companies abandon negotiation when facing an intimidating opponent or complex issues. Negotiation can be particularly challenging when the disagreement involves a client or other valued relationship; equally troubling are disputes involving employees. Handling such disagreements requires experience and a certain level of skill. Most companies have not trained key employees in proven negotiation practices. The style they may have learned on the street often uses intimidation; it invites exaggerated demands to allow room for compromise. When this approach fails, as it often does, there may be little recourse beyond legal action.

Greater preparation – A critical factor in successful negotiation is preparation. Each side must select the right participants, someone with objectivity whose interest is not in “winning” but in resolving the disagreement. A thorough review of the background, potential risks, and acceptable outcomes is essential before beginning to negotiate.

Interest-based negotiation - Disputing parties are often so angry that they cannot communicate effectively, adopting an adversarial position without understanding the issues. Interest-based negotiation offers more effective involvement. It explores the events leading to conflict. Parties exchange documents, listen to opposing views, and eventually consider solutions beyond financial reparation to reduce the perceived damage and expand the list of acceptable solutions. It may be surprising to discover that strong emotions can fuel disagreements and can be appeased by addressing the underlying concerns.

Taking your fair share - As difficult as it may be to admit, it is the rare dispute that does not involve shared responsibility. The key to agreement is often the willingness of each party to accept a legitimate share of the problem. Yet even with all the right ingredients, negotiation may not resolve every issue. To preserve future options, it is important to part without burning bridges.

Tracking disagreements – Every company will benefit from the careful oversight of every emerging problem. By following the course of conflicts, the company can evaluate, strategize, and plan the most appropriate response.

Step negotiation - One of the most effective strategies in negotiation is to elevate a dispute to a level where meaningful dialogue provides lasting results. By including more senior members into the negotiation, problems rise above emotions to incorporate the best interests of the company.

Summary - Contractors will be pleased to realize how greater self-direction allows many problems to be resolved through practical and inexpensive negotiation that averts even greater headaches. The long-term benefits of a more active role go beyond the reduction of claims to include a stronger participation in resolving all disputes.

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