Part 6 Employee relations

Negotiation techniques (Shaun Tyson)
In our examination of negotiation, we will assume the negotiation is perceived by both sides as what is called ‘distributive bargaining’, where a gain for one side leads to a loss for the other side, as might well be the case in the typical negotiation in furtherance of a trade union claim for a pay rise for a group of employees. This is in contrast to ‘integrative bargaining’, where both sides are problem solving, for example in cases where both sides wish to improve productivity, but there is no agreement on the best way forward.

Negotiation is not always a formal affair. Managers and shop stewards may find themselves taking a continuous negotiating stance. Pressure from management or pressure from the unions for changes are part of the everyday interaction when either side may be engaged in persuasion. Our description of negotiation techniques will assume that the negotiation is sufficiently formal for a number of stages to be followed. However formal the arrangements, the principles remain the same, and it is the responsibility of management to ensure that they are not rushed into agreements, or give way to pressures, but that they have prepared a strategy that they can follow. The section is divided into two: preparing the case and conducting the case.

Preparing the case
The aim
The first task is for an overall aim to be set. This should be consistent with the employee relations policy and should be achievable. For example, one aim could be to change the production system in order to improve productivity, or another to achieve an agreement with the unions in line with the corporate plan on wages/salaries. From the aim, objectives that are not so rigid that they are unalterable in negotiation should be thought through. In the first instance, these may be to do with the types of machines, numbers employed, etc., or in the second example, amounts to be paid to the various groups.

Research
The issues over which the negotiation is to take place should be researched. A good understanding of the history and background to date is invaluable. The researcher will be looking for trends: signs of the way the union is going on particular issues. It is as well to use more than one source for the accounts you gather or to check minutes of previous meetings. Where the negotiation is over pay, recruitment or similar substantive matters, management should be armed with a survey of pay rates or of labour market information.

Bargaining power
The strategy to be followed will be dependent on the bargaining strength of the union. This will be a variable, according to the issues on which it represents the workforce, and the degree of support for the union tactics, as well as the membership numbers.

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One way of analysing power is to list the issues over which the negotiation will take place and then to note the costs and benefits to each party of the different outcomes. Where the negotiation is over substantive issues, most of the costs are likely to be to the company, although as inflation rises a pay increase of less than the inflation rate is a reduction in real wages which is a cost to union membership. Similarly, in productivity bargaining, overtime or bonus earnings may be traded for other benefits, which can be costed.

Chamberlain (1951) used the following model to define the relative costs of agreement or disagreement between two parties $A$ and $B$:

<table>
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<tr>
<th>Bargaining power of $A$</th>
<th>The costs to $B$ of disagreement with $A$’s terms</th>
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<tbody>
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<td></td>
<td>The costs to $B$ of agreement with $A$’s terms</td>
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Bargaining power of $B = \text{The costs to } A \text{ of disagreement with } B\text{’s terms}$

| The costs to $A$ of agreement with $B\text{’s terms}$ |

Thus if $A$ is the union, $B$ management, the greater the cost of disagreeing in relation to the cost of agreeing to a union’s demands, the more power the union possesses. If, for either party, the ratio is less than 1, there will be disagreement. Concessions or strikes can lower or raise the cost of disagreement to the point where a settlement is possible.

**The strategy**

Given an understanding of what the union is likely to raise, and an assessment of their power on these issues, management should be in a position to predict the demand the union will make, or what kind of offer they should attempt. There is an opportunity now to work out the argument for and against each proposal, notably the benefits/disbenefits to each party of agreeing/disagreeing. In particular, managers should look for the weakness in their own case and try to find counter-arguments.

The position of each side on the issues can be determined under three possible situations that may emerge, which Atkinson (1977) has labelled as follows:

1. If management achieves its objectives entirely, what would be the ideal settlement?
2. If management makes some progress, but with power from the union realistically assessed, what would be a realistic settlement?
3. If management is forced to concede or make no progress, what is its fall-back position?

As an example, if the union is demanding an increase of £50 per week (its realistic settlement), there is clearly room for agreement, if the union’s fall-back position and the management’s idea of a realistic settlement coincide, i.e. if the management’s realistic settlement is around £40–£50 per week. If the union is able to discover that management’s fall-back position is higher than their fall-back demand, they would no doubt revise their fall-back demand upwards.

Management should now be able to work out what its own demand would be or its response to the union’s demand. If management intends to make an opening statement containing a first offer, the amount of movement this will allow should be considered. Any possible concessions should be examined and, to gain maximum response from the other side, their timing has to be calculated.

Management’s strategy is established, therefore, from the range of issues to be covered, the strength of the parties on each issue, management’s position on each issue and where the union is anticipated to stand, and the arguments that can be marshalled for and against the management’s case. There is the tactical question of whether or not to open with a bid and how high this should be, which has to be resolved in the light of how much

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movement is possible and how much power each side has. It is also useful if managers can agree in advance what reaction they will have to any threat of sanctions that the union might propose.

The agenda
This raises tactical and practical questions. It is valuable to have items on the agenda which can be linked so that there is the prospect of gaining movement on problems which otherwise might remain unresolved. The agenda should not be cryptic, however, and must be acceptable to both sides, so that both have time to prepare. The ordering of the items on the agenda can be used to put time pressures on the last items, but it must be remembered that the other side may not accept the order.

Preconditioning
The history of the dispute will already have preconditioned the participants. Active attempts are sometimes made to formulate a climate of opinion in which the outcome of the negotiations is made more acceptable. For example, advance publicity of poor trading results, statements in newspapers and company reports which reflect the strength of the competition and the company’s problems all influence attitudes. On the union side, large pay settlements in other parts of industry, results of comparability studies, the inflation rate, etc., may be used in a propaganda war before the negotiations commence.

Providing unions with information
There is now a general duty on employers to disclose information at all stages of collective bargaining to representatives of independent trade unions, and a code of practice for this has been produced by the Advisory Conciliation and Arbitration Service (ACAS). The code gives examples of the types of information covered which includes cost structures, gross and net profit figures, sources of revenue, as well as data related to performance and details of pay, benefits, and staffing levels, including the bases on which these matters are decided.

The management team and the setting
Whoever is selected to conduct management’s case must be articulate, persuasive, and carry sufficient authority to make decisions. He or she should be acceptable to the other side at a personal level, and his or her intellectual abilities should be sufficient to enable him or her to translate the possible effects of proposals on company policy. It is a useful ploy to retain some distance between the negotiators and the ultimate authority (say, the board of directors), although the negotiators should always remain in their confidence. While the chief negotiator is conducting the case for his or her side, other members of the team should be keeping a record of what is happening and listening to the interplay of the argument, looking for strategic developments and be able, therefore, in an adjournment, to give an analysis of the negotiations. There should be sufficient rapport between members of the negotiating team for the members to pick up non-verbal as well as verbal clues that they are needed to intervene. The setting for the negotiations ought to be

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comfortable, free from interruptions, with the chief negotiators facing each other in central positions.

Conducting the case
The opening statement
This is a broad statement of the position as you see it. It should leave enough room for further negotiation. No details or contentious counter-demands should be attempted at this early stage. It is sometimes quite effective to give parts of the opening statement to other members of the team to present. In listening to the opening statement from the other side, try to find clues to the strategy they are adopting, and be prepared to revise your strategy accordingly. Look also for areas of agreement. Both sides will derive a sense of achievement from early agreement on part of the negotiations.

The argument
A number of techniques are common in the art of persuasion:

1. Gaining commitments from the other side which can then be used to further your own case. For example, an agreement by the union that its members should not suffer any job losses can lead on to a conclusion that increases in pay would result in a reduction in employment, and then be used to reduce the union’s demand.

2. The argument should dwell on the benefits to the other side of acceptance. Opportunities for the other side to agree without losing face should be provided.

3. Appeals to emotional issues as well as to reason may be effective. There is sometimes a sense of relief from all sides when the problems are expressed in human terms, instead of concentrating always on the financial or business implications.

4. State the case with conviction and, if necessary, forcefully, but without shouting or using abusive language. You must convey your own belief in your arguments.

5. Information should only be released during negotiations for a reason, and this should have been decided in the planning phase. The timing and method of releasing it (verbal or written) may be important, and the negotiators will have to decide during the negotiations when the moment is right.

6. If no progress is being made on one point, having clarified the problem which is holding up agreement, it is probably as well to set it aside and return to it later.

7. Linking issues together may help over a stumbling block. Conversely, if there is a halt on all fronts because of a sticking point on one of the items, the technique of isolating the issue as in (6) above can be used.

There are interpersonal skills in negotiation which help:

1. Listen carefully to what is said.

2. Ask questions rather than make statements all the time.

3. Do not try to score personal points. If the opposition descends to personal vituperation, either ignore it, or make your stance clear that you will not continue if abuse is used.

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4 Avoid taking advantage of any division in the opposing team. It will result either in unifying them against you or in the break-up of the negotiations.

5 Do not use long convoluted sentences; use instead simple language and a tone of voice which treats your opposite number as your equal.

Concessions
The timing of a concession can be crucial to the outcome. Concede too early and the opponent may accept the concession as of right and then move on to his main argument. If a concession is to be made, it will probably yield most value if it is granted in response to the opponent’s main argument, and if it is attached to a push for a reciprocal action on his or her part it may result in a modification of his or her demand.

In negotiations one sometimes encounters the ‘phoney concession’, which is a gesture that appears to be a concession but, on reflection, is seen to be an inevitable or worthless concession. It is a trick, rather like selling a pass in rugby, and as such may not work. Where it does work, and can be carried off convincingly, your opponent will believe that he or she has scored a victory, and may be prepared to make a real concession in return.

If it appears that you are being forced into concessions, the best plan is to try to slow the pace, either by creating a diversion, taking up another point with a suggestion that you will return to the problem later, or by adjourning proceedings for a short time.

Adjournments
There are a number of reasons for wanting to adjourn. The most important occasion is when the negotiating team needs to consider the other side’s proposals. The time should be fully utilized by analysing what has happened and going back through the record of what has been said and agreed. This kind of adjournment allows the team to consult with senior management or to seek advice from experts on a topic (for example, if changes in the pension scheme rules are being discussed, actuarial advice may be necessary).

As indicated above, adjournments can also be used judiciously as a break point to prevent you from being swamped. The time can still be used to advantage so that the team is able to formulate a reply.

Finally, adjournments at natural breaks are sensible, for lunch, tea, or in the evening. Fatigue in negotiations can be as dangerous as time pressures, since there is a temptation to speak without thinking or to give away an important point merely out of tiredness.

Settlements
The objective of negotiation is to obtain agreement. Before the negotiation teams break up, it is as well to agree how the settlement is to be communicated to the workforce. If a new agreement has been negotiated, the length of time the agreement will run will have been part of the negotiations. Stability is achieved by long-term rather than short-term
agreement but, if the agreement is for a long time, it ought to contain provisions for interpretation, and the disputes procedure ought to be sufficient to cope with any disagreement that may result from the long period during which the agreement is in operation.

References