



Negotiation

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How to negotiate when values are at stake

Negotiators are accustomed to focusing on interests. But to resolve an entrenched dispute over differences in values and beliefs, you'll need a new set of tools.

By Lawrence Susskind



A company launched a diversity campaign aimed at encouraging employees to be more respectful of one another's ethnic and lifestyle differences. When the company put up posters on the outside of all the work cubicles in its offices, one employee—we'll call him Jake—objected. The poster on the outside of Jake's cubicle showed a large photograph of an employee with the phrase, "I'm gay, and I work at Company X." Jake asked his superiors for permission to remove the

poster. When they refused, he tacked Bible verses on his cube condemning homosexuality.

The incident led to multiple rounds of heated debate among Jake, the diversity campaign's director, and the company's human resources office. Eventually, an HR representative encouraged Jake to take a paid week off and spend some time thinking about the issue. While Jake was away, the Bible verses, deemed "hateful," were removed from his cubicle, while the poster remained.

Jake returned to work having secured legal representation from a national organization that claimed to be willing to "go all the way to the Supreme Court" to fight for his right to express his religious beliefs. Moreover, Jake's lawyers argued, why shouldn't the company's diversity campaign encompass a religiously defined, anti-gay point of view?

There's a generally accepted presumption in most negotiations that parties know what they want. That is, they're aware of their own interests and seek to communicate them and to uncover the other side's interests as well. When interests are in conflict, we assume negotiators will find a way to reframe, bundle, or otherwise trade on their differences to create value. Even if they sometimes exaggerate during the give-and-take of negotiation, they usually discover whether a zone of possible agreement exists, and, if so, they seek to craft an agreement and are willing to be bound by it.

The same logic doesn't necessarily apply, though, when we're talking about disputes that involve deeply held values or beliefs in which identities—and not just interests—are at stake.

In our opening story, interests are certainly in play: Jake wants to keep his job, and the company feels it has the right to launch a diversity campaign of its own design. Yet this dispute primarily concerns deeply held beliefs. Historically, negotiation theory hasn't been very clear on how such values-based and identity-based disputes, commonly known as "VBDs," should be handled. ▶▶

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FAST FACT When values and identities are at stake, parties are less willing to soften their demands.



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When values and identities are at stake, parties are less willing to soften their demands, even if doing so could lead to trades that would satisfy other interests they might have. Such situations tend to heighten defensiveness, distrust, and alienation. Feelings of anger or hurt may intensify, prompting parties to be more judgmental and certain that the other party acted inappropriately. Such situations may lead to personal attacks as well. Parties may feel there's a great deal at stake, causing them to harden their commitment to particular principles or to worry that any agreement they reach might set a bad precedent. Overall, there may be a greater sense that such disputes are intractable, since values often appear to be incompatible and mutually exclusive, write Chester Crocker, Fen Osler Hampson, and Pamela Aall in their book *Taming Intractable Conflicts: Mediation in the Hardest Cases* (U.S. Institute of Peace Press, 2004).

Addressing values-based disputes

Given the divisive nature of values-based disputes, you might wonder if they are even solvable. Indeed, there are four different ways that negotiators, perhaps assisted by a mediator, might proceed in these situations.

1. Consider interests and values separately. Begin by trying to separate the values- or identity-based elements of a dispute from more traditional interest-based compo-

nents, then address the interest-based portion of the dispute in the usual way. Doing so could make it possible for the parties to confront the values-based portion of their disagreement at a later time.

In our opening story, Jake has an interest in keeping his job and in being treated fairly. The company has an interest in maintaining its reputation as a good place to work and in not driving away employees who have unpopular beliefs.

However their disagreement about the appropriateness of accepting homosexuality in the workplace is resolved, the two sides might be able to figure out a short-term solution. For example, given its interests, the company might agree to replace the poster on Jake's cubicle with another poster from the diversity campaign, conditional on Jake not posting any more Bible verses. The company might also agree to sponsor a professionally facilitated forum in which employees can discuss how companies should deal with highly charged differences of opinion about fundamental beliefs.

2. Engage in relationship-building dialogue. Instead of seeking to resolve a values-based dispute, aim for a different goal: moving beyond demonization toward mutual understanding and respect through dialogue.

In particular, you can pursue cognitive understanding in such dialogue-centered negotiations. The goal of cognitive understanding is for all parties involved to reach an

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accurate conceptualization of one another's point of view. This type of understanding doesn't require sympathy or emotional connection, only a "values-neutral" observation that enables negotiators to describe accurately what someone else believes about the situation, write Robert Mnookin, Scott R. Peppet, and Andrew S. Tulumello in *Beyond Winning: Negotiating to Create Value in Deals and Disputes* (Harvard University Press, 2004).

In particular, negotiators can gain understanding of each other through a method called looping, in which parties can explain themselves and each repeat back the other person's point of view.

Suppose, for example, that Jake and the company's HR director meet with a mediator to address their differences. After the two sides present their points of view, the mediator might ask Jake to state the company's stance toward diversity and homosexuality, and then ask the HR director whether Jake has captured it accurately. If necessary, the mediator would allow the HR director to clarify the company's viewpoint, then ask Jake to try again until the HR director confirms that he has captured the company's stance. Finally, the mediator would repeat the process, this time with the HR director trying to explain Jake's point of view.

Disputants uneasy about discussing the more emotional

dimensions of a conflict may be most comfortable working at this cognitive level. Negotiations that facilitate cognitive understanding can also enable parties to develop ground rules to guide their future interactions, even if the discussion doesn't generate empathy for the other side's point of view.



You may be able to reframe your values-based dispute by appealing to other values that you and your counterpart share, including universal beliefs such as equal rights or nonviolence, rather than focusing on your differences.

3. Appeal to overarching values.

You may be able to reframe your values-based dispute by appealing to other values that you and your counterpart share, including universal beliefs such as equal rights or nonviolence, rather than focusing on the differences in beliefs that precipitated the dispute. In the diversity-campaign case, for instance, both sides might agree that it is important to maintain a work environment in which employees are not penalized for their deeply held beliefs.

Recognizing common values can open lines of communication, build trust, and otherwise improve relations. It might also be a springboard to inventing ways of working together more effectively in the future. This approach to seeking

settlement sidesteps the value differences that triggered the dispute.

4. Confront value differences directly. Finally, you might try to confront your value differences in a carefully controlled fashion by exploring and questioning each other's values with the goal of possibly altering beliefs. Although we tend to resist

the notion that anyone ever alters his fundamental beliefs, the fact is, such conversions take place all the time. In the end, at least one of the parties might change his beliefs or self-perceptions.

Even if people engaged in values- or identity-based disputes won't agree to compromise or change their beliefs, reconciliation may still be possible. In the realm of global politics, for example, there have been numerous occasions when groups with diametrically opposed values and identities have, through the therapeutic effects of truth-telling, cast aside generations of hatred and mistrust and transitioned into the long, slow process of reconciliation. When we think about the divided societies that have managed to build a workable peace after decades or even generations of bloodshed, such as South Africa and Ireland, we ought to be encouraged.

In the diversity-campaign case, someone with experience managing difficult conversations could help to promote a more productive exchange at the empathetic level. Empathetic understanding ►►

The case described in this story is adapted from "Peacemaking in the Culture War Between Gay Rights and Religious Liberty," by Jennifer Gerarda Brown (*Iowa Law Review*, 2010). The case is also the subject of a role-play simulation published by the Clearinghouse of the Program on Negotiation at Harvard Law School, www.pon.org, and discussed in the teaching note "Teaching About the Mediation of Values-Based and Identity-Based Disputes," written by students in Professor Susskind's Fall 2009 Advanced Negotiation course at Harvard Law School.

goes deeper than the cognitive understanding described above, as it aims to enhance trust, reduce defensiveness, and potentially change relationships for the better. The point of empathetic understanding is not to transform parties' identities or values, but rather to help them engage with each others' beliefs and move past stereotypes. Ideally, they will be able to overcome misconceptions and find a path to cooperation.

In Jake's case, it may be that he has never had a face-to-face interaction with someone who has fully and comfortably embraced his or her homosexuality. The HR director might tap others in the firm or in the community who can speak from this perspective. And perhaps the HR director has never taken the time to listen closely to someone like Jake who believes fervently that homosexuality is a violation of his faith.

Negotiators caught up in values-based disputes need not aim for

settlement in the traditional sense. Increasing our respect for views contrary to our own and learning to live with fundamental differences in values and beliefs are themselves laudable goals. When we engage in values-based dialogue, we may not resolve our disagreements, yet we can strive to learn more about one another so that we can more easily live side by side. ♥

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3 keys to negotiating over values

- 1 Focus on reconciliation.** When parties are engaged in values-based or identity-based negotiations, the usual problem-solving logic probably won't help. The logic of reconciliation—the process of learning to understand and appreciate one another's points of view—may be more appropriate.
- 2 Practice new skills.** Even experienced negotiators may have to learn new ways of interacting when values or identity are at stake. Your outside alternatives to agreement probably are not relevant, and calculating reservation values may not be possible. Learning to appreciate differences appears to require other, dialogue-based skills.
- 3 Bring in a mediator.** When interest-based and values-based concerns are intertwined, negotiators are smart to seek the help of a trained mediator. Working together, the mediator and the disputants can decide which of the four strategies described in this article they want to pursue.

Bet you didn't know... *Negotiation research you can use*

Online all the time? Resolving technology-related workplace conflicts

The explosion of communication technologies—from e-mail to text messages, GPS to Twitter, blogs to Facebook—has helped organizations cut costs and increase efficiency. Yet technology has blurred the boundaries between employees' personal and professional lives, triggering workplace conflicts that can be difficult for organizations to manage.

Personal use of the Internet on the job, offensive communications, and monitoring of employee conduct are just a few issues that organizations must now negotiate. Given that laws and company policies tend to lag behind technological advances, managers are often left dealing with such cases on an ad hoc basis.

But there's one realm where workplace disputes involving new technologies are being addressed more methodically, though sometimes with inconclusive results: arbitration cases in the union sector,

writes assistant professor Ariana R. Levinson of the University of Louisville.

Following contract provisions and past precedents, arbitrators are applying age-old principles such as just cause to resolve cutting-edge HR matters. These arbitration decisions have the potential to guide the resolution of technology-centered conflicts beyond the unionized workforce.

Learning from arbitrators

Levinson surveyed more than 400 technology-related arbitration decisions dating from 1999 to 2009, many of them employee appeals of disciplinary action. Here are a few of the issues arbitrators have addressed:

1. Personal use of company-owned technology. Arbitrators have generally upheld rules prohibiting employees' personal use of workplace computers, but only if these rules are uniformly enforced within