Continuities

Principles of Negotiation

By C. Derrik Hiatt

"Few librarians negotiate contracts on a regular basis and even fewer are trained in the negotiation of contracts." So wrote Duncan Alford in a 2002 article of the Law Library Journal. A recent survey of (primarily academic) librarians by Matt Dunie of Data-Planet would seem to indicate that the situation has changed little over the past decade. In Dunie’s survey, 45 percent of respondents said that their organization has no specialized licensing position, 95 percent indicated that their departments or organizations conduct training to help with negotiating with vendors no more than once every few years, if at all, and 81 percent said that they do not have a documented “negotiation process.”

Because the work of negotiating is done by people, by representatives of the interested organizations, negotiation is ultimately about interpersonal communication. The following principles of negotiation are not intended as techniques or tactics, or how to get a good bargain. Instead, they are attitudes and values that have helped me be successful in my work negotiating license agreements. These principles apply to either party—librarians and vendors alike—and most can be applied more broadly than electronic resource licensing. This is not intended as a comprehensive list, but these are principles in which I believe and they are becoming increasingly important to me in my work.

Do Not Take It Personally

Communication can be a difficult task. It is easy to become frustrated when the other party just does not seem to “get” what you are trying to say. When you feel yourself getting frustrated, take a break, take a step back, and take some time to cool down. Try to leave your ego out of it. When the two of you cannot agree on some license term, it rarely has anything to do with you personally nor is it the fault of the other person. You are each acting on behalf of your respective organizations. It is an institutional disagreement, not a personal one.

Know How Far You Can and Cannot Go

To reiterate, you are acting on behalf of your organization. That organization—library, university, publishing house, vendor—has certain rules. Effective negotiators need to know the limits of their authority. Be aware of the types of situations in which you are and are not permitted to make exceptions.
Each organization also has certain needs. The content provider usually needs to make a profit or at least meet expenses. The library is usually trying to acquire the product for some particular purpose. As a steward of your organization’s resources, it is your job to ensure that the term(s) in question will not make it difficult or impossible for your organization to meet those needs.

Knowing the reasons behind the organization’s rules and needs will help you to know which terms are acceptable and which are not, and will help you explain to the other party why they are unacceptable. For example, the librarian should be able to explain to the licensor why they cannot block walk-in users’ access, why the university cannot guarantee that all content on their users have downloaded will be destroyed upon cancellation, and so forth. Being able to explain why certain terms are needed or unacceptable—rather than an obstinate “No, we can’t” or “Yes, you must”—will go a long way toward helping both parties reach an agreement.

Learn About the Other Party

Learn about the organization with which you are negotiating. How does the business operate? What does the organization value? For content providers, this means learning about the library market. A provider dealing with various types of libraries—e.g., both public and academic, or different sizes of academic libraries—needs to understand the differences between them. Librarians who work with vendors need to understand the different types of businesses and how those organizations operate. What drives their business? Are subscriptions their main source of revenue? What is the source of their content? Does the provider have legal commitments with third-party organizations (such as an aggregator might have with individual publishers) that could conflict with requests you are making? Knowing the other party’s operations and values will help you understand the reasons behind certain license terms or requests and it will also help you phrase your own requests and explanations in terms the other party can more readily understand.

Harris recommends asking questions to ensure that you understand exactly what the other party is saying. “Never assume anything at any point. If you are unsure about what you just heard, ask the other person to repeat it. If something appears to be missing, ask why. For example, if the other party says he wants to know how his copyright-protected materials are used, ask for clarification on how this is to be done and what sort of time and costs are involved.” Clarifying terms is not the only reason for asking questions. If a particular clause is worrisome, Ashmore and Grogg advocate asking the other party for the reasons behind it. The more you know and understand about the other party in the negotiation, the easier it will be to reach mutually-agreeable terms.

Respect the Other Party’s Position

Just as your organization has certain rules and needs, so does the organization with which you are trying to do business. You should not expect the other party to readily accept every proposal you present. They may do so, but respect their right not to.

Your behavior during negotiations also has repercussions beyond the completed deal. Baugh points out that in many cases, your business relationship with the other party’s representative will continue after the contract is signed. Keep in mind that the representative you are negotiating with is not to blame for their institution’s policies; avoid making them a target of your frustration. Even if the negotiation itself turns out successfully, a lack of respect during the negotiation process could lead to a poor ongoing business relationship.

Look for the Win-Win

Stephen Covey’s fourth habit of highly effective people, “Think win/win,” plays an important role in successful negotiation. There is a tendency to think of license negotiation as a competition, an adversarial situation in which the other party must lose if you are to win, but in reality it is not. The library wants to buy the product, the content provider wants to sell it. The situation is more complex than that, of course; there will be differences in the details, things one party desires but that the other party cannot agree to. But both parties ultimately want the business transaction to take place.

The win-win scenario does not always come together easily. Crawford recommends that “libraries and information providers should brainstorm together to generate several solutions, not assume there is only one answer to a problem.” Work to find solutions that are agreeable to both parties, and try not to think in terms of one party winning and the other losing.

When Necessary, Bring Other People into the Negotiation

When a specific rule or policy in your organization is hindering the (continued on page 12)
Continuities

Principles of Negotiation

(continued from page 11)

Negotiation and an exception might be warranted but you lack the authority to make the exception, ask your supervisor for help. If the person you are negotiating with is unable to explain their organization’s position satisfactorily, you can ask to speak with his or her supervisor or perhaps the organization’s lawyer. Asking other people for help in the negotiation draws on their experience and can help resolve sticking points. Additional people such as supervisors and legal counsel can draw on their own experience to suggest solutions of which you might be unaware and have authority that you may lack.

Remember to leave your ego out of it. Speaking to a supervisor is not about poor job performance and it does not mean that you or the person with whom you are negotiating has failed. It is a matter of bringing in additional perspectives, other experiences, and abilities.

Be Patient When Negotiations Stall or Take Time

My library recently completed a license agreement that took a full 16 months to complete. During that time, three different people here took turns working with different people at the publishing company, trying to reach an agreement. There were various reasons for the delay. Much of it had to do with waiting for feedback from the publisher’s lawyer. On more than one occasion, we had all but given up on being able to purchase the product. I would occasionally check in with the publisher to ask for a status update and let them know that we were still interested, but there was little or nothing I could do to rush the process. Finally, a key conversation with the right person led to a breakthrough in the negotiation. Sometimes you have to be patient and wait for things to fall into place.

Try to Remain Optimistic

This principle is closely related to looking for the win-win. Sometimes it can be tempting to give up on the negotiation, especially when communication becomes frustrating and tempers flare a bit. Stay positive and keep trying. One supervisor has taught me to say to the vendor, “I am confident that we can find a solution that works for both of us.” Remember, the vendor wants to sell the product and the library wants to buy it (even if you personally no longer want to), and there is almost always a way to accomplish that. Keep looking for it.

Learn and Document

Although this is also a practical tip, the underlying principle of learning from experience will help streamline future negotiations for you and your successors. Whenever you learn something about your organization’s needs, policies, rules, etc., document it somewhere where it will be found later. At Wake Forest University’s Z. Smith Reynolds Library, a section of a staff wiki has been designated as a “licensing manual,” where local needs, procedures, rules, and deal-breakers are recorded. Whenever we have to consult with the University’s legal counsel about a licensing issue, we record his answer in the wiki. Documenting what we have learned in the process saves time in later negotiations by helping us avoid asking the same questions time after time.

Keep Learning and Stay Positive

If you are among that majority of librarians receiving little or no training in negotiation, you may want to develop your negotiation skills on your own. Because contract negotiation is not limited to the library realm, Ashmore and Grogg suggest looking for training opportunities from the commercial world. Fisher, Ury, and Patton’s book Getting to Yes was mentioned in several of the sources I read for this column. Keep an eye out for workshops, webinars, and other possible development opportunities.

As I developed this list of principles, it occurred to me that the list is quite optimistic. That caught me a little off guard, given that it deals with a process that is often so frustrating. But I do believe that if the library and the content provider both want to make the deal happen and both are willing to negotiate in good faith, they can find a way.

References

4. Beth Ashmore and Jill E. Grogg,

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