

EXPAND THE CAKE WITH INTEGRATIVE BARGAINING

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“That’s not fair! He got the biggest piece!” This cry is familiar to everyone who has, or has been, a child. The negotiation style that culminated in this unhappy observation is often referred to “distributive bargaining.” While all negotiations include tension between cooperation and competition, the parties engaged in distributive bargaining place themselves in an almost entirely competitive process. They assume that there is a fixed piece of cake, and whatever one side gains, the other must lose. Over the years creative parents have intervened with a number of strategies to move these unhappy participants into a more cooperative posture. These strategies bring the cake dispute into the world of “integrative bargaining.”

Resolving disputes with integrative bargaining requires the participants, or the intervening facilitator, to take a global view of the dispute. Instead of viewing the dispute as one over a piece of cake, integrative bargaining focuses on the interests which are driving the parties to their positions, not the positions themselves. The Pepperdine University Straus Institute for Dispute Resolution describes four types of interests which may be present in negotiations and can provide assistance in resolving disputes: process interests, interests in principles, relationship interests, and substantive interests.

Process Interests: Process interests concern the procedures used to resolve the dispute. Fairness to all parties, for example, is a process concern. When parents let one child cut the cake and the other choose the first piece, process interests are being satisfied. In *Getting to Yes*, Roger Fisher and William Ury describe this use of process interests to resolve a portion of a complex dispute over underwater mining sites. The party with the greatest expertise located the mining areas and identified two sites. The other party then chose between the sites.

Interest in Principles: Interest in principles involves beliefs, ethics or morals which have an effect on the agreement a party will enter into. The parent might remind the offended child that the “birthday child” is always entitled the biggest piece of cake, enforcing a tradition in which both children have an interest. Again in *Getting to Yes*, Fisher and Ury observe that recognition of Egypt’s interest in sovereignty over land that had been part of Egypt since the pharaohs was key to resolving the issues between the Israelis and Egypt over the Sinai Peninsula in 1978.

Relationship Interests: Relationship interests concern dealings between the parties. One child may be less concerned about the equity of this cake-cutting than its effect on his siblings future demands about sharing toys. Similarly, landlords and tenants generally have strong relationship interests. The landlord wants a stable tenant and the tenant wants a permanent residence. A businessman may be more concerned about future business dealings than driving the hardest bargain in this negotiation. Relationship interests can have strong effects on negotiation results.

Substantive Interests: Substantive interests relate directly to the issues of the negotiation itself and the basis for the parties’ positions. If one child likes the cake and another likes the icing, dividing the cake so that the icing decoration is mostly one piece may resolve the issue. In fact, if the icing happens to be the much-coveted rose decoration, the “cake child” might negotiate a substantially larger piece by giving up that trophy. Substantive interests in adult negotiations might include one party’s interest in receiving payments over time. That party’s might place significant value on long-term security. Similarly, one heir may have great sentimental attachment to the family home. Like the “icing child,” that heir may be willing to take a smaller portion of the entire estate in order to obtain the property.

To use these interests as tools in integrative bargaining, you need to discover them. Asking “what” and “how” is key to getting these interests into the negotiations. Before the negotiations, you should use all resources available to determine each of your client’s interests and every likely interest of the other party. During the negotiations, continue to ask these questions of your client and to the other side. Stay focused on the facts of the case while you determine these interests and stay away from “why” questions. They can be interpreted as attack on the position and a demand for justification. Knowing the reason the “icing child” likes icing isn’t doesn’t assist in dividing the cake.

Integrative bargaining provides a broader range of settlement possibilities in part by looking for ways to “expand the cake.” Remember that the interests of the other side are not their negotiating position. Their position is simply fueled by underlying interests which might be resolved in a way that results in mutual gains for the parties. Like the “icing child” and the “cake child,” the parties can develop solutions that have them coming away happier than if they simply had gotten half the cake.