

McGUIREWOODS

MCCA 2017 General Counsel Summit Negotiation: Learn by Doing

An Interactive Workshop

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Key Elements of Negotiation

- Understand opposition's interests
- Build trust
- Create value

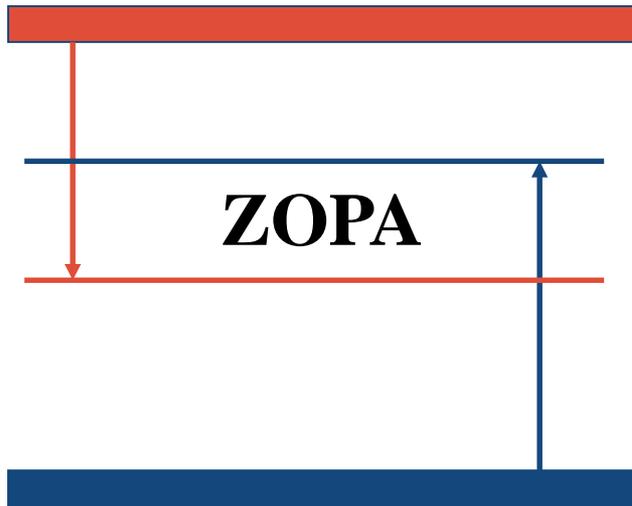
Key Concepts

- BATNA
- ZOPA
- Reservation Price

BATNA

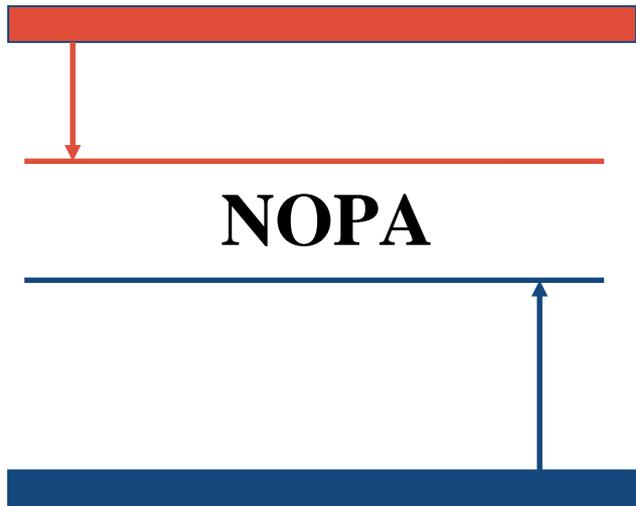
- Evaluate Own Interests
- Understand Other Side's Interests
- How Can I Improve My BATNA?
- Options for Mutual Gain?

ZOPA



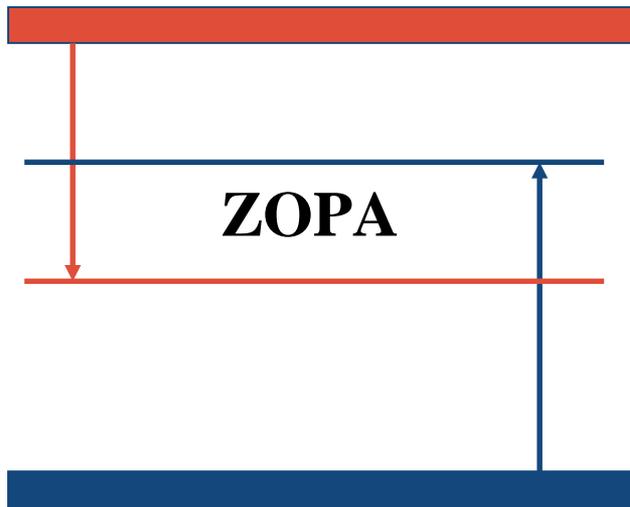
- Reservation Price
- Reservation Price

NOPA



- Reservation Price
- Reservation Price

Claiming Value



- Understand both sides' BATNA and RP
- Shape ZOPA perception
 - Anchoring
 - Concessions
 - First Reactions
 - Positioning

Anchoring – First Offer

- Conventional Wisdom
 - Let other reveal information first
- Anchoring
 - Know ZOPA - shape range

Negotiator's Dilemma

- *Probe* underlying interests
- Identify key *differences*:
 - Relative time/value, expectations, risk tolerance
- *Send message*

Creating Value

- **Different Value:**
 - Resources
 - Valuations
 - Forecasts
 - Risk Pref.
- **Opportunity:**
 - Trade (win-win)
 - Contingent Agmt.
 - Installments
 - Insurance

Hard v. Soft

- **Hard:**

- Principled
- My Way
- Extreme
- Stubborn
- Threaten (won't)

- **Soft:**

- Compromise
- Relationship
- Reasonable
- Concede
- Offer (will)

Interactive Thinking

- **Engaging (who)**

- Friend/Foe Easy/Hard

- **Framing (what)**

- Outside objective (soft on people/hard on issues)

- **Norming (how)**

- Serve/Volley Principled negotiation

Uncommon Ground

- Valuation
- Time Horizon
- Expectations (contingencies)
- Risk Tolerance
- Relationships (long term)

Listen & Observe

- First Reaction
- Opposition's most important concerns
- Developing trust
- Creating complications to spark creativity

Build Relationships/Trust

- Understand other side's interests
- Think interactively (how will they react)
- Be trustworthy . . . Not naïve
- Separate from your client

Suspend Judgment

- Explore interests of both sides
- Invent without committing
- Generate options
- Use neutrals/mediators

Principled Negotiations

- Find points of agreement
- Negotiate from points of agreement
- Think in present & future

Conclusion

■ Key Elements

- Understand
- Build trust
- Create value

■ Key Concepts

- BATNA
- Reservation Price
- ZOPA

■ Dilemma

- Claiming Value
- Creating Value
- Hard vs. Soft

■ Approach

- Listen & observe
- Build relationships
- Focus on present
- Find building points

Thank you.

Questions or Comments?

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SALLY SOPRANO I



Sample Preparation Memo

ISSUES TO BE CONSIDERED

1. Salary
2. Publicity
 - What will Lyric do?
 - What could Sally do?
3. Future contracts between Sally and Lyric
4. Rehearsals
5. Work-related benefits and incentives, e.g., flowers in dressing room, limousine
6. Joint ventures e.g., create records and tapes of performance
7. Other joint gains?

SALLY'S ALTERNATIVES

Sally's alternatives to an agreement include:

- Sit home and watch TV on opening night
- Hope for the TV special to come through based on her past performances
- Look for another role
- Volunteer to teach classes on performing arts to get publicity

Discussion of alternatives from the perspective of Sally's representative:

None of these alternatives is appealing to Sally. She would much prefer reaching an agreement with Lyric. Her BATNA with Lyric seems to be for her to find another role for this season. We must determine how likely such an alternative would be, especially since the season is only three weeks away. Before going into the negotiation, however, I will want to discuss with Sally what might be done to improve her alternatives. For example, could she start talking to other opera companies about roles (hopefully, roles which she already knows) or could she set up a TV or radio interview to discuss her past performances and her upcoming return to the opera world? I would be stronger in the negotiation if Sally and I could improve her BATNA by having already set up another role, even one that she would prefer not to take given the choice between it and the lead in *Norma*.

LYRIC OPERA'S ALTERNATIVES

The Lyric Opera's alternatives to an agreement include:

- Use the inexperienced secondary soprano in the lead role and probably pay her less than \$28,000 (twice her salary in the secondary role)
- Look for other lead opera singers
- Cancel the show
- Start a large-scale publicity campaign featuring the secondary soprano
- Start a publicity drive to lower expectations for this season because of Renata Risingstar's sudden unfortunate illness.

Discussion of alternatives from the perspective of Lyric's representative:

Canceling the show right now would be devastating from a financial perspective and from the perspective of the opera's reputation in the operatic community. It is probably too late to find another lead opera singer because all of the good ones would be in rehearsal for other operas. Our BATNA is to use our current secondary soprano in the lead role. This is taking a chance since she lacks experience in demanding lead roles. We should improve our BATNA before going into the negotiation with Sally's agent by starting the secondary singer in rehearsal right away. In fact, tonight I will call the director and voice coach and tell them to start the secondary in rehearsal first thing in the morning.

SALLY'S INTERESTS

Sally's interests include:

- Making a comeback in opera
- Proving to the opera world that she's still good enough
- Enhancing her reputation
- Performing a primary role
- Renewing her relationship with the Lyric Opera
- Establishing a precedent of a high salary
- Receiving treatment appropriate to her past fame

Discussion of interests from the perspective of Sally's agent:

Before going into the negotiation, I must prioritize these interests. Sally seems most interested in *getting* the lead role and less interested in what the actual salary is. Of course, I recognize that Sally would be happier singing for more money than for less. She is also concerned, however, that the world views her as a successful and talented star, despite her age and recent withdrawal from the opera world. Since she also wants to get the TV role, any option Lyric's representative and I come up with should take into account how the media and the TV producers will see Sally. Therefore, whatever publicity we can arrange, the better the deal will be. I think that Lyric may have a strong interest in publicity for this last-minute substitution, as well.

THE LYRIC OPERA'S INTERESTS

The Lyric's interests include:

- Successful run of *Norma*
- Establishing the precedent of always paying only the appropriate salary
- Not being taken advantage of
- Use of the best available opera singer
- Good box office sales
- Providing and receiving adequate publicity

Discussion of interests from the perspective of Lyric's representative:

Lyric's highest priority interest is to get the best possible opera singer for the lead role so that the season will be a success. It cannot afford, however, to have opera singers think they can take advantage of Lyric's misfortune by demanding extraordinary salaries in a situation like this where the original star cannot perform. On the other hand, Lyric wants to maintain its reputation of treating its singers fairly. If we reach an agreement with Sally, both parties will have an interest in a successful run of the opera. There also seems to be a shared interest in good publicity for the opera and for Sally.

RELATIONSHIP

What interest does each party have in pursuing a good working relationship?

A good relationship will help Sally in her performance, which benefits both parties. Consequently both parties need to be able to work well together during the run of *Norma*. Because a success is important to both, neither party wants to create a situation in which one or the other sabotages the performances.

How should that be reflected in the negotiation?

An ideal negotiation in this situation is an amicable one in which the parties feel like this is a joint problem to be solved by taking into consideration the best outcome for all involved. Pushing to the last dollar could possibly prevent agreement and would be counter-productive since both parties are worse off without an agreement.

What interest do the parties have in a long-term relationship?

The possibility of a long-term contract should be discussed as a future possibility to keep our options open. I should go back to my client to find out if there is an interest in such a contract. That is not crucial to this negotiation, however.

Other long-term relationships could be beneficial to the parties since both Lyric and Sally have a certain amount of fame and expertise. They may be able to help each other out.

COMMITMENT

What would be possible good outcomes of this meeting?

- A firm contract
- An agreement in principle to be shown to Sally and Lyric
- A press release to the media about Sally's comeback and Lyric's new star

In reaching this agreement, the commitment must be:

SUFFICIENT: It must cover all interests such as salary, publicity, etc.

REALISTIC: It must be an agreement that both parties can perform.

OPERATIONAL: Its terms must be such that it can be carried out as soon as the parties sign the contract. Everyone must know exactly what he or she is expected to do.

Among the possible outcomes, I believe my client would prefer a firm contract. I have the authority to commit to a contract for the run of the *Norma* season. I would need to consult with my client before agreeing to anything of a more long-term nature.

COMMUNICATION

I will be much more persuasive if I can show the other party's representatives that I am listening to them and that I understand what they are saying. Once they recognize that I hear them, they can hear what I am saying. If they do not believe that I am listening/understanding them, they will expend all their energy advocating their position, and it will be twice as hard for me to persuade them.

How can I show that I'm listening?

- Paraphrase what they say and repeat it back with: "If I've heard you correctly, I think you've said that..."
- Maintain good eye contact
- Ask questions
- Acknowledge their concerns even if I disagree with them by saying, for example, "I understand why you see this as a problem. Let me add my perception of the situation."

First, it is important for me to remember that I can acknowledge what they say without agreeing with them. Second, I must not lead them to believe that my acknowledgements of what they say mean that I am agreeing with them. For example, if I tend to nod my head when I am listening attentively I must tell them explicitly that I hear what they are saying but that I do not necessarily agree entirely. Third, by the tone I set in the negotiation, I can disagree without being disagreeable.

**Appendix A:
SOME POSSIBLE CRITERIA FOR ESTABLISHING A SALARY**

Below are some of the possible standards by which one can establish a salary for Sally for her performance of *Norma*. Note: The first and the last are not independent or objective standards.

\$45,000	what Lyric is willing to pay to get her to sing
\$45,000	last title role in <i>Norma</i> x 2 (for inflation in opera salaries) + \$1,000 (because time is short)
\$44,000	last title role x 2 (for inflation in opera salaries)
\$38,500	same premium (2.75 x secondary) Sally received 4 years ago when she sang lead
\$36,000+	best recent secondary role x 2 (for lead) + some adjustment for inflation
\$31,250	what Lyric paid last year's lead + 25% for inflation
\$31,250	Sally's last secondary role with the Lyric x 2 (for lead) + 25% (one year's inflation in opera salaries)
\$30,000	what Lyric would have paid Renata Risingstar, the soprano originally cast as Norma
\$30,000	last year's secondary role x 2 (for lead) + 25% (one year's inflation in opera salaries)
\$29,999	less than Lyric would have paid the other singer because Lyric preferred her to Sally
\$28,000	current secondary role x 2 (for lead)
\$25,000	Sally's lowest-paying secondary role in the past 2 years x 2 (for lead) + 25% (inflation)
\$25,000	what Lyric paid Sally last year (secondary role) x 2 (for lead)
\$20,000	Sally's lowest-paying secondary role in the last two years x 2 (for lead)
\$18,000	Sally's highest-paying recent (secondary) role
\$15,000	lowest payment Sally has received in the last 2 years + 50% (inflation)
\$12,500	what Lyric paid Sally last year for secondary role
\$10,000	lowest payment Sally has received in the last 2 years
\$0	what Sally said she'd be willing to accept for the lead role in <i>Norma</i>

Appendix B: ILLUSTRATIVE COMPONENTS OF AGREEMENTS

Percentage of gate to go to Sally:

- X percent of excess over average gross ticket sales
- X percent of excess over last five operas put on by Lyric
- X percent of ticket revenues after Sally's name is publicly announced minus average ticket sales in three weeks prior to opening
- X percent of ticket revenues over Lyric's break-even point
- After 75 percent of seats sold for a given performance, X percent of ticket revenues if house is 75 to 85 percent full, Y percent of ticket revenues if house is 85 to 95 percent full, and Z percent of ticket revenues if house is 95 to 100 percent full

Advertising

- Lyric agrees to \$X advertising budget
- Lyric agrees to increase existing advertising budget by \$X (or X percent)
- For every three dollars increase in the Lyric's advertising budget, Sally will contribute a dollar to the Lyric (subject to ceiling of \$X contribution by Sally)
- Sally and her agent get input into content of ad campaign
- Sally gets superstar comeback buildup in Lyric's advertising

Superstar perks for Sally:

- Enormous limo for Sally during entire run of *Norma*
- Dressing room and hospitality room, each with big star on door, fully stocked with goodies
- Dozens of roses to be thrown up on stage by adoring fans (to be planted by Lyric) after each performance
- Huge opening night gala, complete with show-biz stars, searchlights, and lots of media

Other components

- Sally and Lyric agree to create records and tapes of the performance; they will cut a deal on the royalties and jointly negotiate with the recording company.
- Sally and Lyric agree to pack first three rows with enthusiastic fans each night to precipitate tumultuous ovations.
- Sally agrees to conduct master classes at the Lyric, locking in long-term employment for Sally and opera world notoriety for Lyric.
- Sally agrees to specifically plug the wonderful people at the Lyric on national prime-time TV if the television deal comes through.
- Lyric agrees to hire the best make-up artist in the business to make Sally appear more youthful and vibrant.
- Lyric agrees to pay Sally \$100,000 for the role (payable over 20 years, so present value is about \$20,000).
- Lyric pays Sally \$45,000 and she agrees to contribute half to Lyric's newly established "Sally Fund" to aid struggling young sopranos.

- Sally sings for nothing in charity run of *Norma* and Lyric contributes all net proceeds to the Sally Fund.
- Lyric pays Sally \$45,000 and she agrees to match dollar for dollar any corporate contributions to the Sally Fund that are raised by the Lyric's business manager.
- Sally gets an extra \$5,000 and agrees to buy any unsold tickets at half the box office price (up to a ceiling of \$10,000) and to arrange for distribution of those tickets to students in arts programs, retirement homes, widows, orphans, etc.
- Lyric flies Sally down to Brazil for a quick facelift.