PROGRAM ON NEGOTIATION
HARVARD LAW SCHOOL

MANAGING MULTIPARTY NEGOTIATIONS

FREE REPORT

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Manage added complexity

The World Trade Organization's Doha Round of world trade talks was launched in Doha, Qatar, in 2001, with the goal of lifting developing nations economically by removing trade barriers. By 2003, negotiators had reached a tentative agreement in which countries would grant access to exports from the world's poorest countries, including many African nations.

But as the years passed, conflicts between a coalition of wealthy, developed countries (including the United States, Japan, and many European nations) and a collection of large developing countries (including India, China, and Brazil) held the negotiations hostage. Developed nations pushed for reforms on issues that some developing nations categorically refused to discuss, including government procurement transparency, customs reforms, and competition. Meanwhile, developing nations objected to U.S. and European Union agriculture subsidies. Stuck in the middle were the poorest nations, which were excluded from talks with fellow members of the group of developing nations.

The negotiations lurched forward in fits and starts in cities across the globe, finally sputtering to a halt in 2008. In January 2011, world leaders attending the World Economic Forum in Davos, Switzerland, called for the Doha Round to be resuscitated, though with more modest goals. "It's frankly ridiculous that it has taken 10 years to do this deal," said British prime minister David Cameron.

Negotiations between just two sides can be tough enough to manage. Add more parties to the mix, and things get a lot more complicated, as the Doha trade talks illustrate. Yet multiparty talks are common: think of department heads dividing up scarce resources, family members debating the future of a business, or a group of consumers launching a class-action lawsuit.

Three issues in particular make multi¬party negotiations such as the Doha Round more complex than two-party talks, according to Massachusetts Institute of Technology professor Lawrence Susskind and Harvard Law School professor Robert Mnookin: (1) coalition formation, (2) process-management issues, and (3) the fluctuating nature of each party's *best alternative to a negotiated agreement* (BATNA). By preparing for these differences, you will be well positioned to thrive in your next round of multiparty negotiations.

1. Choose coalitions wisely. Amid the clamoring voices in a large negotiation, it can be difficult to be heard. In such instances, you might choose to form or join a coalition with parties who share one or more of your goals. In the article "Can't Beat Them? Then Join a Coalition" in the March 2009 issue of *Negotiation*, we described how wind-energy developers began approaching Wyoming ranchers one by one in 2006 about selling the rights to build wind turbines on their land. Wisely, the ranchers began forming "wind associations"—coalitions that allowed them to negotiate land rights as a group to dozens of companies, in some cases triggering bidding wars.

As this example shows, coalitions can be powerful organizational tools that build on strength in numbers. Yet negotiators are often unprepared for the drawbacks of coalitions.

To join or not to join? As anyone who has watched the TV show Survivor knows, coalitions are unstable and tend to promote a competitive, untrusting atmosphere that leads to inefficient solutions. According to Susskind and Mnookin, your goal should be to build alliances to increase leverage *without* undermining relationships with other parties. That means reaching across party lines to keep communication flowing among all negotiators.

Whether you choose to join a coalition might depend on the number of parties at the table and the complexity of the topic at hand. Given that the World Trade Organization's Doha negotiations involved hundreds of parties discussing a multitude of issues, talks quickly would have dissolved into chaos if the parties hadn't formed coalitions of developing and developed nations.

Now imagine a smaller negotiation in which eight department heads are meeting to set a new hiring policy for their company. By focusing on their shared goal at the beginning of the meeting and talking together rather than caucusing, the group members should be on track to work together toward a solution that meets their overall goal. By contrast, if the group broke into factions early in the process, the negotiation could take on an adversarial "us versus them" tone that bodes poorly for a lasting agreement.

Vetting potential partners. In negotiations where coalition formation seems inevitable, consider joining one early in the process. Because parties tend to stick with their original coalitions, you may find that you are left out in the cold if you don't join one initially.

In addition, you'll need to carefully plan how and when to meet with potential coalition partners, say Susskind and Mnookin, as you could be asked to commit to a particular side before you have a chance to talk to other potential partners. If you do join a coalition, keep the flexibility you need to switch allegiances.

Types of coalitions. Susskind and Mnookin have identified two types of coalitions: *winning coalitions* and *blocking coalitions*. Negotiators form winning coalitions to improve the odds of a beneficial deal for coalition members. By contrast, parties might form defensive *blocking coalitions* to protect interests threatened by emerging deals.

When members of a winning coalition feel they are being ignored by other members of that coalition, they may form a blocking coalition to gain a voice in the discussion and, barring that, to sabotage a planned agreement. Left out of negotiations among other developing nations and the coalition of developed countries, the world's poorest nations did just that during the Doha Round talks.

2. Manage the process. Whether you are negotiating with three parties, 30, or 300, interactions are bound to be more complicated than when you are dealing with just a single party. Here's some advice on managing the intricacies of a multiparty negotiation process.

A checklist for multiparty talks

When preparing to negotiate with multiple parties, take time to answer these questions from Lawrence Susskind and Robert Mnookin:

- Which parties are currently scheduled to be at the table? Which parties might you want to include or exclude?
- Who is representing these parties?
- What are the interests of the parties and their representatives, and how might those interests diverge?
- What are the relationships among parties?
- Are winning and blocking coalitions desirable in this negotiation?

Who's in charge? Sometimes it makes sense to appoint a negotiation manager to oversee the group's efforts. The manager can be in charge of putting together the group's agenda, setting rules, summarizing understandings among parties, and communicating the final agreement to outsiders, among other tasks. Because the negotiation manager will have control over key issues, you may want to appoint a neutral meeting facilitator or professional mediator to do the job.

Getting organized. Another way to tame the potential chaos of multiparty talks is to create a *payoff matrix* of parties and interests before talks begin, writes professor Elizabeth Mannix of Cornell University in a February 2006 *Negotiation* article, "Three Keys to Navigating Multiparty Negotiations." A payoff matrix is essentially a spreadsheet that lists the names of the parties in rows, the issues to be discussed in columns, and the parties' priorities on those issues in the boxes that are formed. Priorities can be expressed quantitatively, using a point system of your choosing, or qualitatively (for example, low, medium, and high). During a multiparty negotiation, information flows continually: issues are added, opinions change, and tradeoffs are made. The negotiation manager can update the spreadsheet during the meeting, allowing parties to see at a glance what they have achieved and what still needs to be done.

A spreadsheet should also encourage parties to discuss multiple issues simultaneously. Groups that consider issues simultaneously rather than sequentially reach more valuable agreements, Mannix found, in a

Beyond majority rule

What's the best way to arrive at a group decision? Ever since U.S. general Henry M. Robert published *Robert's Rules of Order* in 1876, groups have relied on the principle of majority rule, measured with a simple yea or nay vote at the end of the negotiation process.

Majority rule appeals to our innate sense of fairness and prevents a vocal minority from overpowering the majority. But when negotiators know they will end up either winners (in the majority) or losers (in the minority), they may overlook the value of searching for the best possible outcome for all parties, write Lawrence Susskind and Jeffrey L. Cruikshank in their book *Breaking Robert's Rules: The New Way to Run Your Meeting, Build Consensus, and Get Results* (Oxford University Press, 2006).

Susskind and Cruikshank advocate *consensus building* as a powerful replacement for majority rule. Rather than allowing the majority to dictate terms to the minority, consensus building involves seeking overwhelming agreement among everyone at the table. Though unanimity is often unlikely, you can and should strive to reach the best agreement for the vast majority.

One key principle of consensus building is that parties must formulate proposals that meet the needs of every other negotiator as well as their own. When people realize that they can achieve their own goals only by helping others attain theirs, they spend less time trying to form winning coalitions and more time brainstorming as a group. Instead of taking a final vote, parties continually add to a package of recommendations that can be reviewed by their constituents.

study conducted with Harvard Business School professor Max H. Bazerman and Northwestern University professor Leigh Thompson.

When the numbers involved in a negotiation are especially large, consider breaking into smaller working groups to develop preliminary proposals on elements of the overall agenda, says Susskind. Such functional groups can serve to bridge differences among members of different coalitions. In addition, a process known as *consensus building*, described in the sidebar, helps promote lasting agreements.

3. Calculate dynamic BATNAs. As in a two-party negotiation, you should enter multiparty talks with a solid idea of your BATNA—that is, what you will do if a deal fails to materialize. Knowledge of your BATNA can help you stand firm in the face of offers that fall short of your goals.

Suppose that Mark, an unemployed marketing professional, is preparing to meet with his three siblings to discuss the future of their marginally profitable family business. Mark's preference is to dissolve the business and use his share of the assets to start a consulting firm. However, he knows that one or two of his siblings would prefer to keep the business running as is or sell it. If the negotiation doesn't work out as he would like, Mark decides that his BATNA is to move to a city across the country where a colleague has offered him a job.

You should also attempt to analyze the BATNAs of the other parties at the table. Roughly calculating the minimum you can offer someone to secure a commitment will help you immensely. Mark, for instance, expects that his sister Leah, who has been involved in the business, will demand a large share of the pie in exchange for agreeing to dissolve it. He estimates that she will ask for 50% of the assets but be willing to settle for about 40% and accept a position with a client.

In negotiations among a large number of parties, determining each party's BATNA can be a daunting, even impossible, undertaking. At the very least, try to foresee how parties may align and estimate the BATNA of each possible coalition.

Once discussions begin, parties' BATNAs will begin to fluctuate, according to Susskind and Mnookin. For instance, imagine that Mark persuades his sister Jaclyn and brother Tom that the business should be dissolved. At this point, because Leah is outnumbered, her BATNA becomes a virtual nonissue. Yet to preserve their relationship with her and each other, her siblings become focused on dividing up the assets in a way that satisfies them all. A payoff matrix will help you keep track of shifting BATNAs in addition to parties' preferences.

By Katherine Shonk, Editor, *Negotiation Briefings*.
Adapted from "How to Cope When the Table Gets Crowded."
First published in the August 2011 issue of *Negotiation Briefings*.

Learn from high-level business deals

Consider these multiparty negotiations:

- You want to make an offer to a job candidate who currently lives in another city, but you suspect your boss and the HR department won't like the candidate's request to telecommute until his family can relocate. How should you handle negotiations on this issue with the candidate, your boss, and HR?
- You've established a strong ongoing relationship with a customer. Out of the blue, the customer announces that her company will be holding an online auction for your contract this year. To retain the business, you will have to post the lowest bid in a field of unknown competitors. How should you respond?
- Soon after putting your house on the market, you get an offer. You negotiate a decent price, but you're not sure whether to do the deal. You believe you could get better offers in the weeks ahead, and you're in no rush. What should you do?

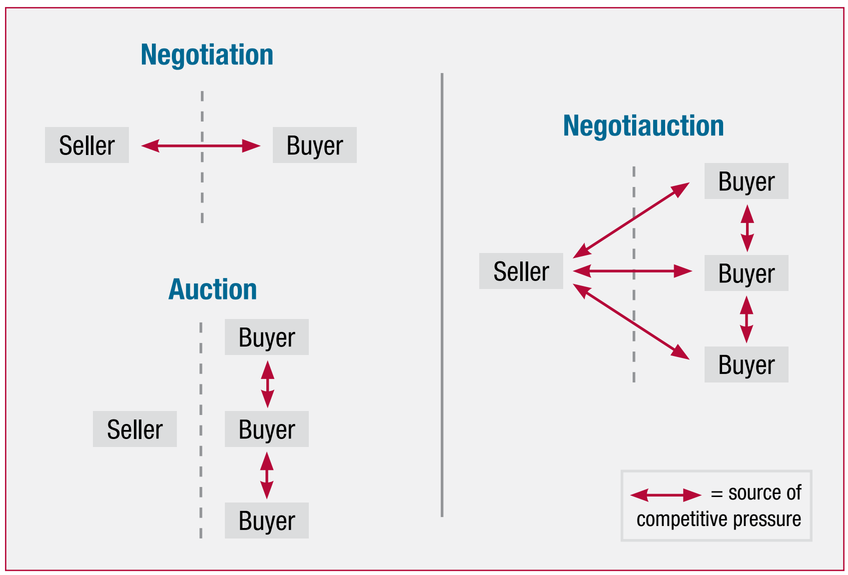
Negotiators often have to deal with more than one party to reach their goals. These situations pose unique challenges, yet most negotiation advice focuses on talks between two parties.

Where can we turn for guidance? For many years, Harvard Business School professors James Sebenius and Guhan Subramanian have studied real-world mergers-and-acquisitions (M&A) deals, which tend to involve experienced lawyers, bankers, and businesspeople, and many millions, even billions, of dollars. Some of these deals prove successful; others are well-known disasters.

Sebenius and Subramanian have begun to apply their observations about these complex agreements to other multiparty contexts. Here are three lessons you may be able to adapt to the multiparty negotiations that crop up in your business and personal life:

1. Set the right process. As illustrated by the following story from the acquisitions realm, multiparty negotiations are often unnecessarily complicated by lack of clarity about the rules of the game.

In 2003, Cable & Wireless PLC (C&W) held an auction to sell its underperforming U.S. division, Cable & Wireless America. Eight potential buyers showed up, and bidding proceeded in both sealed and open rounds. After 16 hours, C&W's negotiating team, a group of experienced lawyers and bankers, secured a high bid of just under $70 million—far less than the $120 million to $130 million they were expecting. The team of seasoned deal makers huddled together and asked themselves: What do we do now?



Up to that point, vague process rules established by the seller had deterred bidders from putting their final prices on the table. Note that a bidder could have changed the game by submitting a pre-emptive bid coupled with a threat: "$75 million; accept it in the next five minutes or we walk." This move could have been successful, given the seller's fear of losing the highest bidder.

Fortunately for the seller, its team came up with the idea of holding several "survivor rounds" that kicked out the lowest bidders one by one and pushed the selling price to a blockbuster $155 million.

The potential for chaos in a multiparty negotiation means it's important to think carefully before you begin about how the process should unfold. If you're interviewing candidates for a position in your department, decide in advance how to involve other interested parties, such as your boss and the HR department. You might conclude that it would be useful for your boss to sit in on the final round of interviews. If you both became enthusiastic about the same candidate, you'd gain a valuable advocate in your talks with HR. Strategic process decisions can spell the difference between a successful deal and a failed one.

2. Hold a negotiauction. Sellers of valuable assets, such as C&W, understand that an auction can help drive up the price when a lot of parties are interested in making the purchase. Sometimes you can improve upon these benefits by holding a *negotiauction*—a negotiation-auction hybrid that Subramanian and Richard Zeckhauser of The Harvard Kennedy School have found is commonly used in high-stakes deals. Vivendi Universal's sale of its Universal division in 2003 was a negotiauction, as was the Texas Rangers' signing of shortstop Alex Rodriguez in 2000.

A negotiauction typically has these features:

- Several potential buyers (usually three to 10) of a high-value asset
- Privileged information about the asset on the seller's side
- One-on-one negotiations between the seller and potential buyers
- One or more rounds of bidding and other forms of direct competition between potential buyers in a manner that resembles an auction.

More and more, negotiauctions are being used in multiparty deals in which the stakes aren't quite as high, such as routine procurement and real-estate negotiations. Why? For sellers, negotiauctions can offer the best of both worlds: they attract multiple competitive bidders while also opening up discussion of issues other than price. Negotiauctions allow parties to compete on both sides of the table.

Potential bidders can also benefit from proposing a negotiauction process. Suppose you're accustomed to negotiating one-on-one with a customer on issues such as delivery terms and financing. If the customer announces that her company is changing to an online auction format, remind her of the value you've gained from discussing multiple issues. Rather than handing a contract to the bidder who offers the best price, she might agree to weed out some bidders in an auction, then negotiate with the remaining three to determine the best match.

3. Borrow innovative deal terms. *Deal protection,* or the extent to which the parties are bound to each other between signing and closing a deal, is a heavily negotiated issue in M&A transactions. But outside the M&A context, say Sebenius and Subramanian, deal protection is rarely negotiated, even when it could create significant value.

Take the typical residential real-estate deal. In the time between the purchase-and-sale agreement and the closing, the seller is bound irrevocably to the transaction. This clause protects the buyer, but it means that the seller can't accept a higher offer—a condition that can be inefficient for both the seller *and* the buyer.

Imagine you're selling your home. A prospective buyer falls in love with your house and (unbeknown to you) one other house. After much debate, he makes a successful bid on your house.

Soon after you're under contract, you receive a blockbuster offer from another party. It's too late to back out, right? Not if you had negotiated deal protection. For example, you might have proposed a clause that would allow you to withdraw between signing and closing by paying the buyer a *breakup fee* of perhaps $25,000. For a buyer who is virtually indifferent between your house and another house, this should be an attractive alternative.

Buyers can make similar moves. Suppose parties are at an impasse, with the seller asking $500,000 and the buyer offering $450,000. The buyer might offer a "loose" $450,000 deal that allows the seller to accept a better offer between signing and closing by paying a modest breakup fee, such as the buyer's out-of-pocket costs.

Sophisticated deal structures create value by capitalizing on differing beliefs about the likelihood of higher offers. Such terms could be useful in home-buying transactions, where the stakes can feel just as high to the players involved as if they were hammering out a billion-dollar merger.

By Katherine Shonk, Editor, *Negotiation Briefings*.
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Build consensus around group decisions

In 1876, attempting to create a national standard for parliamentary procedure, U.S. General Henry M. Robert published *Robert's Rules of Order*, a guide that groups of all kinds could use to manage their deliberations. Somewhat surprisingly, this slim volume has remained the decision-making Bible in the United States for more than a century. Principal among General Robert's beliefs was the notion that, by the end of the decision-making process, a majority should rule. But does this deeply ingrained wisdom continue to serve groups well?

Consider how the typical group attacks a problem and negotiates a decision. In an opening meeting, a leader states the group's objectives, sets a schedule and an agenda, and forms subcommittees or issues data-gathering assignments. When the discussions are complete, the leader seeks the group's support for a specific set of recommendations, often through a vote or a straw poll. In most instances, the majority rules, though someone higher up may eventually supersede the group's authority.

While most teams don't follow all the requirements of Robert's Rules of Order, they do tend to adopt two key features of parliamentary procedure: motions are made and seconded, and decisions are made by majority vote.

Why do groups and teams rely on majority rule as their primary approach to negotiated decision making? First, because it prevents the few from dictating to the many, it satisfies our innate sense of fairness. Second, it leads to a firm decision. When deadlines loom, a vote effectively ends the discussion. Finally, majority rule presumably enhances the legitimacy of decisions or recommendations by communicating to others that more people liked the proposal than didn't.

There's one big problem with majority rule, however. It puts a premium on "winning," rather than on producing the best possible outcome for everyone. As a consequence, majority-rule decisions almost guarantee an unhappy minority—and instability. After all, an unhappy minority often will bide its time, awaiting an opportunity to sabotage the group's outcome.

A better way. Most people have a vague sense that some process other than an up-or-down vote could produce a better decision, but they don't know how to avoid the tyranny of the majority. What if there were a decision-making tool that generated even more legitimacy for a group recommendation? There is such an alternative: *consensus building*.

The goals of consensus building are to seek overwhelming agreement among all relevant stakeholders and maximize the possible gains to everyone involved. The result is a negotiated decision that is as close to unanimous as possible. More than just human relations talk for getting everyone to cooperate, consensus building allows a group to reach the best agreement it can find, not just one that is barely acceptable to a majority. This article walks you through the five-step consensus-building process and shows how it can improve group decision making in your organization.

Consensus building: A five-step process. Consensus building involves following these five steps (described in greater detail *The Consensus Building Handbook* [Sage, 1999] by Lawrence Susskind, Sarah McKearnan and Jennifer Thomas-Larmer).

1. Convene the group. Whether the group is using majority rule or consensus building, a *convener*—someone with the authority to take action, typically a high-ranking executive—begins the process by engaging others in a decision or an analysis of options. The convener's job is to define the task, indicate who needs to be at the table, and provide the resources necessary for the team to engage in a constructive dialogue.

In consensus building, the convener often taps a *neutral facilitator*—someone from inside the company or an outside mediator—to canvass all of the possible stakeholders. Sometimes the team leader appointed by the convener can play the facilitator role. The goal is to form a team that reflects the full range of concerns of everyone who should be involved.

Suppose that a manufacturing company's management appoints a multi-departmental team to come up with a way of speeding up the launch of new products. Recent delays, it seems, have cut deeply into company profits.

A convener from top management appoints a team leader, a vice president in charge of manufacturing, to oversee the effort. She is encouraged to use consensus-building techniques and to take into account every relevant department. The team leader, in turn, taps a trained facilitator to speak with each of the 30 employees most involved in recent product launches and to prepare, based on the interviews, a written analysis of possible reasons for launch delays. Everyone interviewed then receives a copy of the draft assessment for review and comment. Based on a revised draft, the facilitator helps the team leader spell out the agenda, timetable, ground rules, and possible additions to the original team.

2. Clarify responsibilities. Once the team is assembled, it's important to clarify who will assume which responsibilities. While the team leader is clearly in charge, she might prefer to have the facilitator manage the group meetings.

Here's where consensus building differs markedly from majority rule. The only way to get a near-unanimous outcome is to make sure that all persons involved understand that they are responsible for formulating proposals that not only meet their own needs, but the needs of everyone at the table. Why? If all you need is a majority, you're likely to spend time outside the meeting piecing together a winning coalition. Once you have it, you won't care much about what those outside the coalition have to say.

By contrast, in a consensus-building process, everyone understands that he won't be able to achieve his own goals unless he helps others achieve theirs. Now the group's face-to-face work becomes very different.

The person leading the meetings, whether it's the team leader or the facilitator, must be proficient in group problem-solving techniques. A recorder must be assigned to produce ongoing summaries of key points of agreement. Finally, team members must agree to an explicit set of ground rules governing their interactions. It is unlikely that a consensus will emerge unless team members agree on their objective.

In the case of the manufacturing company, the facilitator prepares suggested ground rules, an agenda, and a work plan for the team. A few new people are added in light of unexpected agenda items, and everyone arrives at the first meeting with a clear understanding of the group's mandate. They initial the proposed ground rules, which contain statements such as, "The group will seek unanimity, but settle for overwhelming agreement after every possible effort has been made to meet the concerns of everyone involved."

3. Deliberate and brainstorm. In consensus building, it's important for team members to debate issues in a way that draws upon the best available information and a range of possibilities for responding to everyone's concerns. Thus, the goal of consensus-building deliberations can be understood as *maximizing joint gains*—coming as close as possible to meeting all the underlying interests of relevant stakeholders. By brainstorming value-creating options, the team increases the chances that it will reach a consensus.

In its first few meetings, the manufacturing company's team brainstorms ways of addressing each of the product-launch problems outlined in the assessment. It may be that there has been insufficient coordination between the product development and marketing divisions. Perhaps the legal department has become a roadblock after being brought into the process too late in the game. Or maybe the sales staff has not been given the information it needs early enough to integrate new products into its marketing materials. The group's recorder generates a Web page and posts summaries of points of agreement and disagreement after each meeting.

Why does consensus building produce better results?

Consensus building taps the knowledge and skill of everyone in the group. It doesn't depend on the strength of the leader or a winning coalition to push through a smart agreement. In addition, it puts a neutral facilitator in charge of managing the process, someone who has no interest in pushing his or her own agenda. Finally, it gives everyone an incentive to keep trying when the going gets tough, since there won't be an agreement until almost everyone gets on board.

Why do so many groups settle for majority rule?

They often don't know that a better option is available; consensus-building procedures have only recently been codified. Also, when cast in a leadership role, most people focus almost entirely on getting the job done—rather than on doing the best job possible. Many leaders are more interested in "taming" their group than in unleashing its creative potential.

What are the challenges of consensus building?

Because group members must learn how to operate in a new way, the transition process can be a bit difficult. Companies may need to invest in building their facilitation capabilities, either by training employees or hiring outside mediators. In the long term, these costs pay off in the form of better decisions and more-satisfied employees and customers.

4. Reach a decision. In a consensus-building process, reaching a decision isn't as simple as taking a vote. Rather, it means continually adding to a package of recommendations aimed at meeting everyone's interests. The goal is unanimity, but overwhelming agreement is sufficient.

The group's leader manages the decision-making process by summarizing the most recently proposed package. "Who can't live with this?" she will ask. If anyone indicates opposition, that person has the burden of suggesting ways to make the package acceptable to her—without making it worse for anyone else.

Eventually, the facilitator produces a final report for which the group leader feels comfortable taking responsibility. Group members are asked to take these proposed recommendations back to their department or constituency for comment. In their final report to top management, the team may propose radical changes in the way various departments need to communicate with one another, particularly during prelaunch decision making.

At the final scheduled meeting, the facilitator asks team members whether they can now live with the package they have taken back to constituents for review and comment. Last-minute improvements address almost all outstanding issues. When no one can come up with new ways to create additional value, the group's work is done. The representative of one department, unable to make the draft accommodate its existing practices while still incorporating everyone else's concerns and suggestions, refuses to sign. The others sign the final recommendations, noting their commitment to work to implement them.

The team leader then delivers the final report to top management and indicates that consensus (but not unanimity) has been reached. The group's final report should clarify to the convener that near unanimity was achieved, but also mention the concerns of the department that was unable to support the package.

5. Implement the decision. Often the group's work doesn't end when it has achieved consensus. Consensus building extends into the implementation process. The team will want to create arrangements to keep in touch so that they can iron out any surprises that occur.

Suppose that kinks arise the first time the company tries to follow its revised communication timetable for a new product launch. Rather than abandoning the new procedures, the team leader might reconvene the task force and ask for speedy revisions that take into account the problems that have arisen. The task force is the ideal group to monitor implementation and tweak new procedures once they've been put in place.

By Lawrence Susskind, Professor, Massachusetts Institute of Technology.
Adapted from "Breaking Robert's Rules: Consensus-Building Techniques for Group Decision Making."
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