

Community Dispute Resolution: Building Consensus on Public Policy

By Susan Sherry and Sharon Huntsman

California Center for Public Dispute Resolution

(A joint program of CSU Sacramento and McGeorge School of Law.)

<http://www.csus.edu/ccpdr/>

1303 J Street Suite 250

Sacramento, CA 95814

916-445-2079, Fax: 916-445-2087

Key Concepts:

1. Focus on interests, not positions.
2. Involve all stakeholders needed for sustainable agreement.
3. Invent options for mutual gain.
4. Insist on objective criteria for agreements.

Interest-based Approach

1. Interest - a specific need or concern that must be addressed in an agreement or plan for the agreement or plan to be satisfactory.
 - Underlying motivations
 - Needs and concerns
 - Fears
 - Aspirations
2. Issue - a matter or question in dispute, often stated as a problem.
3. Position - a statement by a party as to how an issue can or should be resolved, a proposal for a particular solution.
 - Things you say you want
 - Demands
 - Terms and conditions
 - Things you say you will do
 - Things you say you will not do.

Core Stakeholders

1. Interests are significantly affected by the issues.
2. Decision making authority over the issues.
3. Could potentially block an agreement or its implementation.

Invent Options for Mutual Gain

1. Shift focus from limited individual needs to wider needs of stakeholders.
2. Collaborative processes should create value - "grow the pie".
3. Requires exploring issues in detail, inventing options without deciding.

Objective Criteria for Reaching Agreements

1. Alternatives evaluated against objective criteria to reach agreement.
2. Criteria can be general or specific.

Favorable Conditions for Consensus-based Approach

1. Multiple issues to create value, potential areas of agreement.
2. Primary parties identifiable, willing to participate.
3. Each party has a legitimate spokesperson.
4. Relative balance of power among the parties.

5. External pressures to reach agreement.

Unfavorable Conditions for Consensus-based Approach

1. Issues require new legal precedents to be set.
2. One or more parties can get a better deal elsewhere.
3. Parties will likely not have future dealings with each other.
4. Unrealistic timeline.
5. Inadequate resource/funding to support negotiations.

Four Basic Steps in Inventing Options (Getting to Yes - Fisher and Ury)

1. Step I. The Problem.
What's wrong?
What are current symptoms?
Where are disliked facts contrasted with a preferred solution?
2. Step II. Analysis
Diagnose the problem
Sort symptoms into categories.
Suggest causes.
Observe what is lacking.
Note barriers to resolving the problem.
3. Step III. Approaches
What are possible strategies or prescriptions?
What are some theoretical cures?
Generate broad ideas about what might be done?
4. Step IV. Action ideas
What might be done?
What specific steps might be taken to deal with the problem?

Stages of Consensus Building

1. Assessment
2. Organization
3. Education
4. Negotiation
5. Implementation

Stage 1: Assessment

1. *Key questions:*
 - Who are the stakeholders? Are there legitimate spokespersons for each group?
 - Do the parties want to negotiate a consensus?
 - What are the chances of success?
2. *Outcomes*
 - go/no go recommendation
 - Goals
 - Range of issues
 - Preliminary process design

3. *Common pitfalls*
 - Excluding stakeholders
 - Not doing an assessment

Stage 2: Organization

1. *Key questions:*
 - What process should be used to negotiate?
2. *Outcome:*
 - Charter
 - Groundrules (behavior, decision making structure, dealing with press, etc)
 - Accountability to constituencies
 - Process design (often graphic)
3. *Common pitfalls:*
 - Unclear groundrules
 - Lack of transparency

Stage 3: Education

1. *Key questions:*
 - What are the issues and each stakeholders underlying interests and alternatives?
 - What information do we need and have? What portion is accepted by all? When do we have enough?
2. *Outcome:*
 - Shared understanding and language.
 - Framework for negotiation.
 - Education of constituencies
3. *Common pitfall:*
 - Rush to negotiate.

Stage 4: Negotiation

1. *Important steps:*
 - Develop objective criteria for evaluating options.
 - Generate options/trial balloons.
 - Link and package agreements.
2. *Outcome:*
 - Agreements: in principle, in detail, procedural
 - The goal is for agreements to be nearly self-enforcing
3. *Common Pitfalls:*
 - Not bringing constituents along, not negotiating implementation into the agreement.

Stage 5: Implementation

1. *Important steps:*

- Building assurances and monitoring into the agreement.
- Link it back into some agency or budget that can assure the work will be done.

2. *Outcome:*

- Memorandum of Understanding, administrative regulations, policy directives, legislation, funding commitments, oversight committees, etc.

3. *Beware:*

- Failing to ratify the agreement - both formally and informally - so that it cannot withstand changed circumstances.

Key Insights

1. Power of common data and knowledge.
2. Building relationships as well as solutions.
3. Wisdom from integration of divergent points.
4. Power of enlightened self interest.
5. Community of place.
6. Cascade of benefits.