

The importance of asking “Why?” in mediations and negotiations

One of my favourite negotiation stories in “The Sunday Minute” published by the Program on Negotiation at Harvard Law School, is the story by Max H. Bazerman, the Jesse Isidor Strauss Professor of Business Administration at Harvard Business School (HBS), and author of *3-D Negotiation: Powerful Tools to Change the Game in Your Most Important Deals*. He tells the story of how a negotiator broke a deadlock with a small European company that was selling his firm a new healthcare ingredient by asking, “why?”.

<http://reply.pon.harvard.edu/dm?id=6FCF2AE0C5A5709A724ED18B6D56D75A765F04CDB4FC7E8F>

The story reminds me of an anecdote told by a land agent who was a guest lecturer in my real property class at the University of Alberta Law School a number of years ago.

The land agent worked for an oil company who acquired surface leases from farmers in Alberta which allowed the company to drill an oil well or build a pipeline across farm land. When he approached one landowner, the agent was met with a rather hostile man who told the agent to get off his land stating that he did not trust oil companies and would never sign a surface lease. The agent asked “why?”, and was told that over 20 years ago, he had voluntarily granted a surface lease, and the moment he signed the document, the land agent ripped the lease out from under his hands, ran out the door, and roared out of his yard in his car. He was convinced the land agent had pulled a fast one on him, and since that day, the farmer was determined that he would never again voluntarily give up his land rights to an oil company.

When the land agent reviewed his searches on the title to the land, he noted that the owner had indeed signed one surface lease some 20 years previously, but all other entries required a Surface Rights Board order granting the land interest. Again, he asked, “why?” He obtained a copy of the surface lease from Land Titles and called the land agent who had witnessed the document and asked if he remembered the farmer. The agent laughed and explained that he was dating a pretty girl at the time who was upset with his long hours and missed dates and told him that if he was late for their date that evening, she would break off their relationship. He had concluded his negotiations with the farmer with time to spare, but had to rush to meet his date in time for dinner. He made it in time, and proudly reported that he had been happily married to the woman for 20 years.

Our land agent asked his colleague if he would phone the farmer and tell him that story. The next day, our agent attended on the farmer and was met by a laughing, good-natured man who thanked him for arranging the call with the first land agent. It helped alleviate his distrust of oil companies and, after diligent negotiations, he signed his first voluntary surface lease in 20 years.

As Max H. Bazerman notes in his article, “The first principle of investigative negotiation involves asking not just what the other side wants, but why he or she wants it. When you ask “why?” you are likely to uncover the deeper interests underlying your counterpart’s requests - and therefore, are better equipped to find novel ways of meeting both sides’ needs.”