



SHOVELING SMOKE: 10 GOLDEN RULES OF NEGOTIATION



Ronald F. Pol has conducted complex cross-jurisdictional negotiations in which he's been privileged to gain insights into the negotiating strategies of

a number of corporate organizations.

Mr. Pol is Immediate Past President of the Corporate Lawyers' Association of New Zealand, general counsel of a start-up software company, and serves on the governing Council of New Zealand's Law Society. He's also director of a company connecting strategy with teams' key motivating factors, and advises on improved connections between inside and outside counsel. He welcomes comments at ronald.pol@teamfactors.com.

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In-house counsel are often key members of negotiating teams. This enables them to share and refine their negotiation skills, and to observe (and occasionally utilize to advantage) the rules by which some companies seemingly operate.

Many have written, post-Enron, on the rules of good contract negotiation, but few have expanded on how companies really go about the process. Here, an insider helps close the reality gap—with tongue firmly in cheek.

The Rules

The company has enjoyed success in its major commercial negotiations over the years, and has developed considerable expertise from which it has distilled these rules for the benefit of man-

agers involved in commercial negotiations:

1. Do the deal, at all costs.

The chief executive will already have told the board that it will be done, so it must. In practical terms, for the company's negotiators the translation is simple—give away the farm, at the earliest opportunity. This is the paramount rule, against which all others are subordinate.

2. Open the kimono as early as possible in negotiations. Sharing our bottom line with the other side helps demonstrate our genuineness. Never, ever try to find the other party's bottom line. It would be idle speculation to do so, yet we know precisely where ours is—it should remain our guiding light at all times. If inadvertently we do identify the other side's bottom line, and they become disillusioned or disengage from negotiations, admonish our team's failure. Offer the other side whatever it takes to get them back to a comfortable place, preferably well above their last position.

3. Disregard misguided suggestions to prepare a coordinated negotiation strategy in advance. The other side can always be relied on to set the agenda, and to provide the framework for constructive negotiations in accordance with the paramount goal of Rule One.

4. If any member of the team breaks Rule Three, any such negotiation strategy should be rejected and disre-

garded—especially if all members of the core negotiating team have endorsed it. Great care should be taken to act in accordance with these rules rather than any such prepared strategy.

5. Executive management must never be seen to support the negotiating team. Negotiators thrive on challenge, and welcome the opportunity to spend more time focused internally than against the other side. The negotiation team especially welcomes it when, without consulting them, senior management gives away any position they are trying to maintain.

6. Teamwork is an over-rated management fad. Any signs of the advancement of a sense of cohesive purpose by the negotiating team almost inevitably runs counter to the spirit of these rules, and should actively be dissuaded.

7. If the other side even so much as hints that anyone on our team might prove an effective block to full farm transfer, any request to remove or marginalise that person should immediately be met. Such people are cancerous growths who risk infecting other team members. They should be cut out as soon as the other side usefully helps us identify them.

8. Before any deal is actually struck, always advise the board, and the market, of the terms of the deal. This gives the other side an opportunity to seek any part of the farm

we may inadvertently have retained, as the final price for consummating the deal we say we've already done. Elaborate publicly announced plans for a joint press conference, international travel underway by the most senior managers on both sides, and a joint press release are all useful tools for driving further concessions the other side might genuinely require.

9. The contribution of those most actively involved in negotiations should generally be minimised, especially if negotiations resulted in the retention of large parts of the farm in breach of Rule One. Good management practice also requires that those not directly involved in core negotiations—especially those who would sensibly follow these rules without asking irritating questions—should be recognised, rewarded, and promoted.

10. After the contract is signed, it should neither be retained nor subsequently referred to—especially by operational managers responsible for its implementation. It may, however, be appropriate immediately to instruct the company's lawyers to investigate how best to avoid any binding commitments inadvertently contained in the contract.

Remember, these rules must be closely followed, yet should never be expressed or revealed. They are unique, and represent a fundamental cornerstone of the company's competitive advantage.