Case Analysis

Post-Settlement Settlements in Two-Party Negotiations

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... we must recognize that a lot of disputes are settled by hardnosed, positional bargaining. Settled, yes. But efficiently settled? Often not... They quibble about sharing the pie and often fail to realize that perhaps the pie can be jointly enlarged... There may be another carefully crafted settlement that both (parties) might prefer to the settlement they actually achieved.

—Howard Raiffa (1985)

Howard Raiffa's article in the premier issue of this journal offered a promising new approach to minimizing limitations on rationality in negotiation. His basic idea is that players reaching a mutually acceptable agreement can later choose to allow a third party to help them search for a pareto-superior agreement—one that is better for both parties. Raiffa suggests that the negotiators may be more willing to allow a third party to create a superior agreement after the initial pact is reached. In the end, each negotiator would reserve the right to veto the post-settlement settlement (PSS) proposed by the third party, and revert to the original agreement.

This article extends Raiffa's PSS concept by arguing that, in complex two-party relationships, the creation of PSSs (without the help of a third party) should be viewed as part of an effective working relationship. In many situations, the development of a pareto-optimal agreement at a first or second meeting may not be feasible. After an initial agreement is reached, however, there may be ample opportunity for contract modification. In fact, the success of the ongoing two-party, or dyadic, relationship often depends largely on the propensity and ability of the negotiators to handle the PSS process. In our opinion, in fact, PSSs are more prevalent in complex dyadic agreements than Raiffa suggests, and should be part of our two-party training process—not a procedure reserved for third party experts.

Raiffa's use of a third party is based on their expertise in: (1) pooling the information already available to the negotiators, and (2) objectively analyzing the existence of mutually superior agreements based on that information. While helpful, this expertise need not be limited to third parties. Skilled negotiators can share information and make the appropriate analytical insights. In
addition, skilled negotiators can capture the bulk of the benefits available through PSSs. We argue that PSS training for involved parties, rather than an outsider, offers the greatest opportunity to increase the frequency and success of negotiated agreements.

We also distinguish between Raiffa's view of PSSs as an outcome, and the notion of PSSs as a process. Raiffa views a PSS as a subsequent agreement improving on an initial arrangement from the perspective of both parties. We see the concept as being most useful if thought of in terms of a process culminating in that end. Parties must constantly be alert to improving on an initial agreement. An effective process might also include an institutionalized structure to encourage such agreements. Thus, we see the PSS process as a method by which parties reaching an initial agreement have the commitment to continue to search for a more integrative solution as more information is obtained and analyzed.

This study is based on complex negotiations involving the consulting divisions of three different offices of the same national Big Eight accounting firm. The authors selected these negotiations based on their access to detailed written and oral accounts from both the consulting firm and the clients involved. Two of the cases are viewed as successes, and one is viewed as a failure (for both parties). The ability to manage and/or facilitate the dyadic PSS process is considered a critical determinant of that success or failure.

The dyadic PSS between consulting firm and client can take a variety of forms. If both parties are better off expanding the initial scope of the project, an opportunity for a PSS exists. If both parties are better off with the consulting firm providing a different "package" of services, an opportunity for a PSS exists. In this article, we will explore the existence or lack of existence of PSSs when the potential for improving the initial agreement exists. Initially, we will briefly describe the nature of the consulting firm, the three negotiations, and the effectiveness of the PSS process in each. More general recommendations on the role of PSSs in complex two-party negotiations will then be offered. Finally, we will argue that the PSS concept is relevant to negotiating parties in a wide variety of complex settings, particularly in the service sector, and is not limited to the specific consulting environment documented in this paper.

The Consulting Firm and the Nature of its Business

The market for auditing large corporations is dominated by the Big Eight public accounting firms. These firms are generally organized into three divisions—auditing, tax, and consulting. While the auditing component is the largest group in all Big Eight firms, consulting is viewed as the area with the greatest potential for growth.

Our focus here is on three negotiations involving the consulting division of Jones Jenkins, or JJ. (All organizations and people in this paper are disguised.) JJ has been actively working to expand its consulting practice. While once an auxiliary service for their auditing clients, the consulting division now plans to build its own clientele. In addition, its services have moved from a focus on general consulting (“if it’s broken, we’ll fix it”) to a specialized focus on systems consulting—primarily computer systems.

Case 1—Client: Southern and Central States

Southern and Central States (SCS) is a public utility holding company with a number of subsidiaries. Prior to 1979, data processing was handled within