

Dealing with Impasse

Impasse refers to a situation in which the parties fail to find a mutually satisfactory agreement for resolution of their differences. Dispute resolution efforts may reach impasse for many different reasons. Below are guidelines for handling a possible impasse.

Recognize and Accept It

Impasse is not a failure! It simply means that in this effort, using the approach that has been used among the specific parties involved an option has not been identified that meets all parties' interests better than their own outside options (their BATNA). It may mean that other methods of resolving the dispute may need to be utilized or that some essential ingredient of a good resolution was lacking. A mediator or facilitator should recognize in a very matter of fact manner that impasse seems imminent without treating it as a possible failure. Rather, it should be used to re-examine the resolution process used up to that point.

Re-examine Interests

Are there unidentified interests that parties have not disclosed clearly or that may have not been given adequate focus? Are there interests that need more exploration and a deeper understanding? Has the resolution attempt focused on the wrong ones? Have the options that have been identified in brainstorming failed to address critical interests?

Review the BATNA...and WATNA

At this point in the session, it may be productive to stop and discuss the alternatives that the parties have for the future of the situation if they do not discover a mutually agreeable solution at this time. What are the best and worst possible outcomes that may happen...basically, what's their bottom line? A clear discussion of the consequences of an impasse may motivate parties to work further, to make some concessions, to take a more sober and rational look at their situation, to be willing to negotiate about some aspects, etc. Or it may help the group to recognize that there really is a better option outside the session open to at least one of them that places them at impasse. Recognize that the BATNA and WATNA essentially sets the benchmark for an acceptable agreement in the session. If together a mutual-gain option can be found that is at least somewhat better than the BATNA of either party on their own, then the possibility of a resolution is high. If not, resolution is unlikely.

Dealing with Impasse continued...

Caucus with Individual Parties

If the session still seems at impasse, caucus with each party individually to assess whether there are hidden interests that have not been disclosed, to explore any possibility of concessions, new options, or areas of potential break through. At times parties may disclose something significant in a private session with the mediator that they have not been willing to discuss openly. Again, explore the possibility that significant interests have not received the necessary attention.

Review Accomplishment and Uncompleted Work

If, after the individual caucus, no break through has occurred, review with all parties together the accomplishments that have been made and identify possible areas of uncompleted work.

Review Options for Next Steps

Review possible ways that parties might continue to explore uncompleted work and/or other possible alternative dispute resolution methods that might be useful at this point. For example, an impasse in a mediation effort may indicate that a case will then move into a formal grievance procedure, or might be placed before an arbitrator.

Offer Future Assistance

Finally, offer your future assistance if the parties might deem it helpful to contact you at a later time to resume work or to seek your help in identifying another resource.