

Stop the Presses: Negotiating with Employers during Corporate Restructuring ***Introduction: Looking Backward and Forward in Corporate Negotiations***

By Frances Katz
New England School of Law

Employees in the undesirable position of negotiating with their current employers to keep their jobs during a corporate restructure should approach the negotiation from both the position of one who is entering into a new relationship in a deal-making negotiation *as well as* a dispute settlement negotiation to retain the rights and the benefits they enjoyed in their previous position.¹

Women negotiating as individuals with a corporate, government or another institution must not automatically assume the institution has the most power in the negotiation and assess their interests and alternatives as carefully as she analyzes her own and devise strategies to turn the company away from corporate-speak and focus on mutual needs. In their negotiating strategy, women in particular should not be afraid to determine exactly what they want from the negotiation and ask for it and avoid taking counter-offers and other negotiation tactics as personally.

Background: A Woman without a Country

Two weeks ago, Anna Tracey² went to work and found a sealed manila envelope on her desk. When she opened it, she was shocked to discover she was "a woman without a country." Her employer, *The Atlanta Journal Constitution*,³ announced a corporate restructure designed to create greater efficiency and control spiraling costs. Anna is still an employee and she still draws a paycheck, but technically she doesn't have a job. At the

¹ Frank E. Sander and Jeffery Z. Rubin, *The Janus Quality of Negotiation: Dealmaking and Dispute Settlement* 4. *Negot. J.* 109-13 (1988), reprinted in *Negotiation and Settlement Advocacy: A Book of Readings*, 2nd Ed. Charles B. Wiggins and L. Randolph Lowry eds. 2005.

² At the request of the subject, Anna Tracey is a pseudonym.

³ *The Atlanta Journal Constitution* is commonly referred to as the AJC, as it will be in this paper.

beginning of the process, the paper stated the "jobless" staff members would be reassigned to new jobs after an interview with a three-person panel of executive editors. There would be no negotiation and the decisions of the managers would be final. About half the newsroom staff is in the same "job but no job" situation. Many employees took the news in stride, but Anna was devastated. She has been working at the *AJC* for ten years in the same job and has won several major industry awards and was the winner of a highly coveted and competitive fellowship to the University of Michigan. She is hurt and angry and she feels her contributions to the company and the beat she covers, labor, employment and the workplace is too important to be left on the "cutting room floor."

She read the information in the packet and left the building to find a quiet place to take this all in. She phoned her mother, her fiancé and a labor lawyer. He told her no action could be taken until she was actually laid off or shunted into a severely inferior position and then she would have 180 days to consider her options. He cautioned her to think long and hard about suing the newspaper. Litigation would probably leave her in a worse position than she's in now, considering the cost of litigation, its uncertain outcome and what Anna really wants is her job not monetary damages from the *AJC*.

When she came back into the building she put her head down on her desk and started to cry. (Local newspapers reported that other employees left "jobless" had similar if not stronger reactions to the news including "hunting down senior editors to yell at them")⁴ When she looked up, Julia Wallace, the editor-in-chief, was waiting at her desk and asked if she'd like to come have a private talk. Anna says she has never spoken to the editor one-

⁴ Scott Freeman, *Fear and Loathing at the AJC*, Creative Loafing Atlanta, (alternative newsweekly), April 13, 2007 available online at <http://blogs.creativeloafing.com/freshloaf/2007/04/13/fear-and-loathing-at-the-ajc>. (last visited 04/20/07).

on-on in her 10 years at the paper. Her initial response was to her them to go away (which she did). Julia repeated her invitation to sit down and "talk things out."

Despite the fact that she is angry, insulted, humiliated, she considered her lawyer's advice and realized she was deeply concerned about her future and wanted to find a way to make this unpleasant situation work to her advantage. She decided to meet with Julia.

Anna's Dilemma: Looking Backward and Forward at the Same Time

Anna has two primary issues she wants to discuss with Julia. First, she must negotiate a dispute settlement agreement (DSN)⁵ which looks back on Anna's long association with the paper. She wants the paper to acknowledge and respect her years of service and the accolades she's brought to the company. She feels they can do this by either reinstating her "old job" or giving her the option of creating or selecting a new job rather than being arbitrarily assigned a job during the reapplication process. Second, she must conduct a deal making negotiation (DMN) and focus the discussion on her status in the newspaper's reorganization. Here, she wants to come to an understanding with the *AJC* that will secure her position that will benefit the interests of both sides: job satisfaction for Anna and effective use of personnel and resources for the *AJC*. If Anna and Julia come to an agreement that's not quite what Anna had hoped for – or even if it is – she wants Julia's assurances that she will be shielded from finding herself in a similar position if the paper decides more cutbacks and reorganizations are necessary.

Anna's Interests and Alternatives

Anna wants her old job back, but she knows that may not be an option since her current job has already been combined with another job she has absolutely no interest in. Her goal

⁵ Frank E. Sander and Jeffery Z. Rubin, *The Janus Quality of Negotiation: Dealmaking and Dispute Settlement* 4. *Negot. J.* 109-13 (1988), reprinted in *Negotiation and Settlement Advocacy: A Book of Readings*, 2nd Ed. Charles B. Wiggins and L. Randolph Lowry eds. 2005, pp 8-10.

is to persuade Julia that keeping her old job or letting her design a new one is very much in line with the paper's objectives.

Although many of Anna's peers at the newspaper with similar credentials and experience have left the paper to pursue other interests rather than risk the "Russian Roulette" of the job-reapplication process, but Anna has decided to stay. She loves journalism, it's the only career she's ever wanted and she's not going to let the corporate politics drive her away. Another reason is she is newly engaged to Jonathan, her boyfriend of 3 years. Jonathan is an Atlanta native with a thriving construction and renovation business and a large, close-knit family. Understandably, he doesn't want to relocate and Anna would never ask him to uproot his life for even greater uncertainties at another newspaper in another state. Since relocation is not an option, Anna can only continue her journalism career away from the *AJC* if she took a job at a small weekly paper or wire service (if there are any available positions) that would pay only half of her current salary and would be a huge step backward.

She has connections in the Atlanta public relations community and has had several invitations to come in for an interview. The pay would be much better than her current salary at the newspaper but she doesn't think she could be happy writing one page press releases. Jonathan is encouraging her to quit. He doesn't see why she should have to put up with all the politics and humiliations when he can afford to support her while she looks for work or focuses on planning their wedding. Although it sounds romantic, Anna has been working since she was 16 and she's afraid that if she stops working and she'll never be able to find another job, in journalism or any other field. Anna and Jonathan have agreed that Anna would continue working after they get married. She won't consider a freelance career

because she doesn't like the uncertainty of not knowing where her next paycheck is coming from.

She briefly considered going back to school and studying art and interior design, but she feels she has invested too much in her career as a journalist to make a career change that would put her back at the bottom of the totem pole paying dues all over again. None of these options are appealing to Anna. She wants to stay at the *AJC* and her best and possible her only alternative to negotiating a job would be to see if she could find a job at one of the city's smaller more niche-specific newspapers or wire services and perhaps do some freelance work to make up the wage differential. Even though Anna doesn't like these alternatives, she needs to consider these alternatives in the event she can't negotiate a new position at the *AJC*.

Anna's Negotiation Strategy: Ask for What She Wants; "Turn" the Conversation

A successful negotiation with the newspaper is critical because Anna's BATNA is not very appealing or lucrative. She knows she has to make it clear that she wants a part in determining her own future at the paper. However, she doesn't trust Julia in her capacity as the face of Cox Enterprises, a multi-billion dollar corporation, to negotiate on a level playing field. She concerned that Julia will control the discussion and its outcome by virtue of her position. Primarily, she is wary of asking for too much and is concerned that if she is too straightforward in asking for what she wants, branded as a malcontent, her proposals will be ignored. She also wonders if Julia will retaliate because Anna chose to negotiate and will assign her to an extremely undesirable job or laying her off.

Anna's attitude to negotiation is typical of many women, who don't ask for things directly as often as men do. Women often worry more than men do about the impact their

actions will have on their relationships. This can prompt them to change their behavior to protect their personal connections, sometimes by asking for things indirectly or asking for less than they really want and sometimes simply by trying to be more deserving of what they want (for example, by promising to work harder or declaring how much she loves working at the newspaper) so they'll be given what they want without having to ask.⁶

In "Negotiation *Through a Gender Lens*,"⁷ Deborah M. Kolb and Linda L. Putnam write that when a woman is negotiating on her own behalf the opposing party's strategic moves are often experienced by the woman as an attack that undermines not only her negotiating position but her sense of self.⁸ If Anna feels attacked and disrespected, it's less likely that she'll be able to reach an agreement that will benefit both herself and the *AJC*. One way Anna can respond to tactics that make her feel "small" are "turns." Kolb and Putnam suggest that Anna should have a "repertoire of turns" including interrupting the action, naming a challenge, reframing the question, correcting impressions, diverting attention from problems and refocusing on the underlying issue. If Anna feels that the *AJC* is trying to control the negotiation process, she should use these "turning back" moves to challenge that position and re-establish her own footing.⁹ For example, if Julia's response to Anna's suggestion is to insist she can't depart from the corporate directive, rather than feeling powerless and giving up, Anna could "turn" the conversation by naming the challenge (the unchangeable company plan) and reframe the problem in such a way that Julia (who is also

⁶ Linda L. Babcock & Sara Laschever, *Women Don't Ask: Negotiation and the Gender Divide*, Pp. 1-16, Princeton NJ: Princeton University Press (2003). Reprinted in *Negotiation and Settlement Advocacy: A Book of Readings*, 2nd Ed. Charles B. Wiggins and L. Randolph Lowry eds. (2005). pp.473-479.

⁷ Deborah M. Kolb and Linda L. Putnam, *Negotiation Through a Gender Lens* (La négociation: une question de genre?) 2 *Negotiation* 59-75 (2004). (In French) English Translation reprinted in *Negotiation and Settlement Advocacy: A Book of Readings*, 2nd Ed. Charles B. Wiggins and L. Randolph Lowry eds. (2005), pp. 468-474.

⁸ Kolb and Putnam, *supra*, at 472.

⁹ *Id.*, at 472.

an employee, just like Anna) can see the mutual benefit of changing the "unchangeable" plan.

The Interests and Alternatives for the AJC

However, before Anna can even begin negotiations, she needs to determine as accurately as possible the interests of the *AJC* and their alternatives to individual negotiations with its newly "jobless" employees.

The *AJC*, along with many other major newspapers, including *The New York Times* has decided to retool its publication for the digital age.¹⁰ More staff and resources will be shifting to the papers online counterpart, *AJC.com*, while cost cutting measures will be implemented in the traditional print newsroom. In an e-mail memo to the staff in February, 2007, Wallace explained that drastic times called for drastic measures:

"We must organize ourselves to meet these goals [of increasing print and online readership]. That means a major shift in the way we work. Our current structure is fine for the pace and demands of a printed newspaper, but isn't structured for online's immediacy and evolving needs ... Rather than tinkering with the old newsroom, we need to start over."¹¹ She didn't whitewash the harsh realities for the newsroom staff writing "... [Neither I nor] other newsroom leaders can say anything about what the future will hold for anyone individually. We will talk more specifically in the weeks ahead about the future we see and share that with everyone. Clearly we will lose some very talented and veteran folks. It's hard, but it's necessary for our economic realities."¹²

¹⁰ In 2006, the Audit Bureau of Circulation reported the *AJC's* circulation had dropped 6.7 per cent from the previous year. Only the *Boston Globe* and the *San Francisco Chronicle* lost more readers last year.

¹¹ Julia Wallace, *Memo from Journal-Constitution Editor Wallace 2/15/2007*, reprinted at Poynter Online http://poynter.org/forum/view_post.asp?id=12314 (last visited 4/15/07). The memo was also issued as a press release and circulated to newspapers, magazines and wire services across the country as well as on the *AJC's* website.

¹² Wallace memo, *supra*.

The AJC may have initially thought that this impersonal approach to the cutbacks and reorganization was the best approach to show employees that no one has been singled out and "it's not personal," it's possible that the AJC did not anticipate the anger, resentment and eventually the mass exodus from what is perceived as callous corporate bean counting. Having lost so many experienced staffers, including a nationally known film critic and a Pulitzer Prize-winning science writer, the might want to hang on to the senior reporters they still have including Anna. Julia and the other top editors may view Anna's plan to create her own job shows her professional flexibility which management may find appealing compared her former colleagues who chose to leave rather than adapt. The alternatives to negotiating with employees are the possibility that more employees will reject the new and extremely unpopular reorganization and the *AJC* may not have the money to hire anyone with the right mix of skills and experience. The anger and morale problems in the newsroom created by Wallace's new plan have become a mini-scandal within the industry and an example of how to botch the transition from print to digital. Julia or her bosses may be looking for ways to stop senior staff defections, boost morale and repair the paper's image in the industry and with its readership.

The Negotiation

The newspaper probably doesn't want to lose Anna but they probably do want to "shoehorn" her into one of the new jobs they've created. Because the *AJC* developed its reorganization plan with no input at all from its employees, opening a door for some negotiation and input from employees might actually help them achieve their objectives.

Both Anna and Julia need to determine how much power they bring to the table.¹³ Each of them has information that could alter the negotiation quickly. The more information a party has, the more likely he or she can see the context of a given situation clearly and respond accordingly. This is particularly critical where decisions must be made quickly and with limited resources.¹⁴ Both Anna and Julia set the tone of the negotiations in their initial meeting on April 16. Anna proposed creating a new role for herself within the paper's investigative unit. Julia responded by offering a less desirable but similar position in one of the suburban bureaus. Julia probably knew Anna wouldn't accept but she isn't quite ready to let Anna write her own ticket. She might also be aware that Anna has the moral power in this negotiation. Her position as one of the displaced employees after a decade of hard work and several prestigious national awards being sent to a suburban bureau looks like not only a callous but foolish decision. Even though the corporation could be unwilling to bend, if Anna works to gain Julia's empathy as one ambitious working woman to another, Julia may respond in a less corporate, more personal level and chose to work with Anna to develop a position or alter an existing position that would make the company and the employee happy.¹⁵

One of the *AJC's* stated objectives is to move rapidly toward digital publishing an area Anna knows nothing about and doesn't care to learn. Julia may insist that whether Anna's old job is revived or a new one created, she will have to participate in the online components of the job. This could be a deal breaker for Julia and if Anna seems unwilling,

¹³ Robert S. Adler and Elliot M. Silverstein, *When Jonathan Meets Goliath: Dealing with Power Differentials in Negotiations* 5 Harv. Negotiation L. Review 1-112 (2000) Reprinted in *Negotiation and Settlement Advocacy: A Book of Readings*, 2nd Ed. Charles B. Wiggins and L. Randolph Lowry eds. (2005), pp. 443-455.

¹⁴ Alder and Silverstein, *supra*, p. 444-445.

¹⁵ *Id.*, at 445.

it will paint her as someone unwilling to change with the times – exactly what both Julia and Anna want to avoid. Although she's not interested in Internet reporting, learning online techniques is a great way for her to increase her profile and acquire skills that will help her advance her career in the digital age.

The success of this will depends on Anna's ability to apply the principled negotiation model.¹⁶ She should clearly convey to Wallace that they are both pursuing a common goal: a newspaper known for its excellence, ability to change with the times and produce award winning reporting. The party with the most perceived power, such as Wallace will use the power of her position to avoid negotiation. Anna has to clearly show Julia there are many alternatives to the existing plan that don't change the objectives (streamlining, moving to digital publishing, cost cutting) but give them an added dimension neither Julia nor the company had considered.

Relationship and Commitment Going Forward

A good relationship will help Anna regain her enthusiasm for her work and restore her good feelings about the *AJC* if she and Wallace can find new position that suits Anna's skills and interests. Both Anna and Julia need to show they can be flexible and open to new ideas. The best outcome is one where Julia feels that giving Anna the job she wants is the best way to begin to solve the paper's organizational issues.

Anna might not be able to secure the job of her dreams, but she does have an opportunity to use negotiation to put her in a better position than the one she's in right now. They can also create a positive relationship going forward if they can devise a set of benchmarks that, if met, could prevent Anna from once again finding herself "a woman without a country."

¹⁶ *Id.*, at 450

