

Better Bargaining



Presented by Janet Gillman, State Conciliator
Oregon Employment Relations Board



Preparing for your
negotiation
will make all the
difference

Worksheet #1

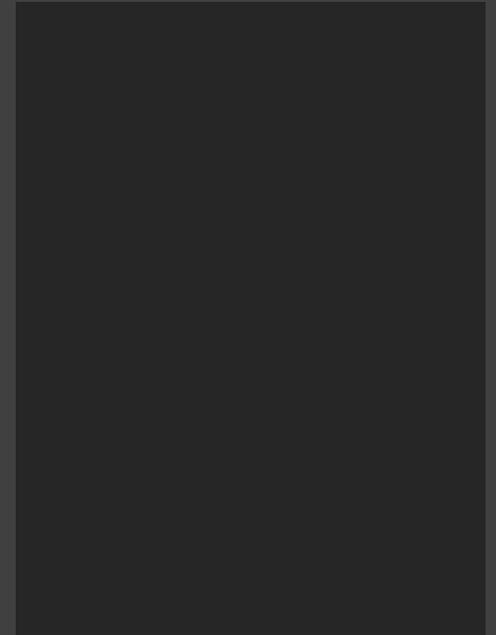
Challenging Negotiation

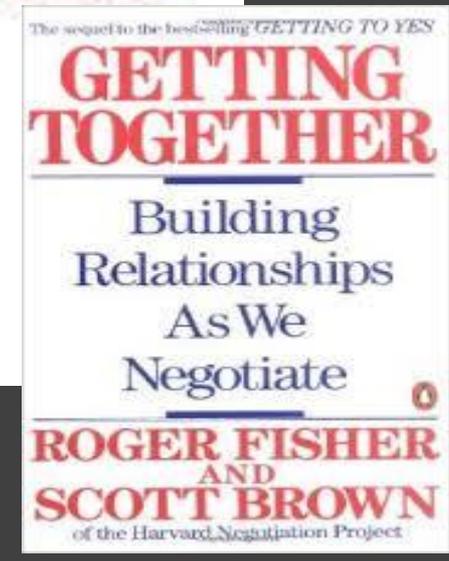
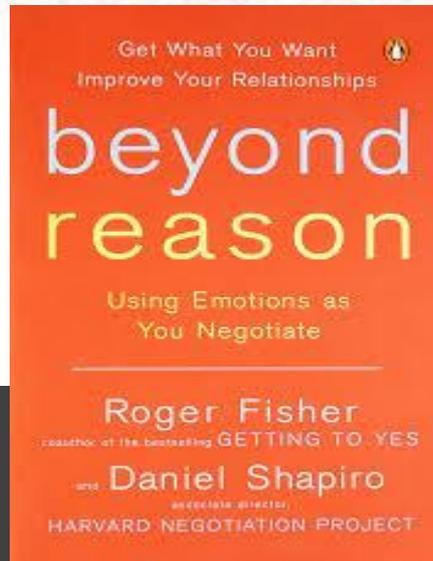
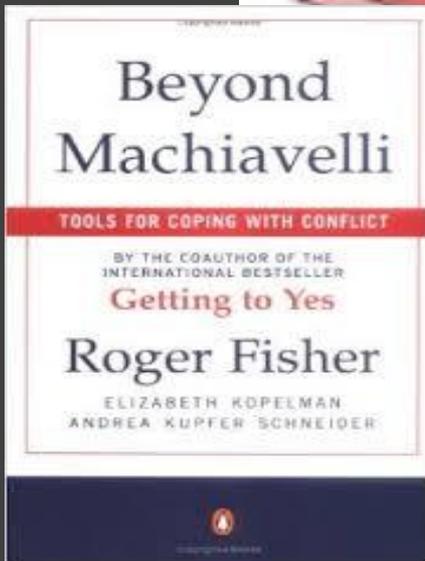
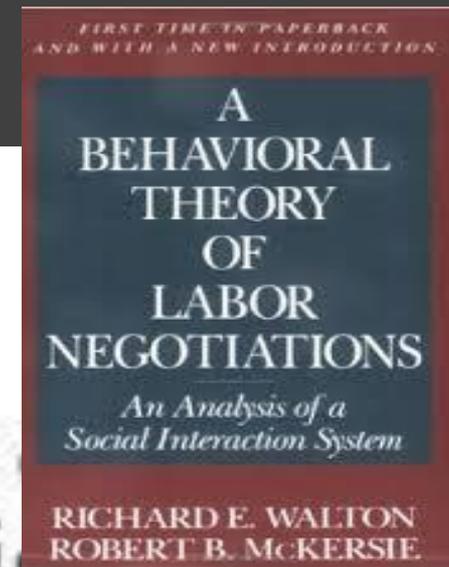
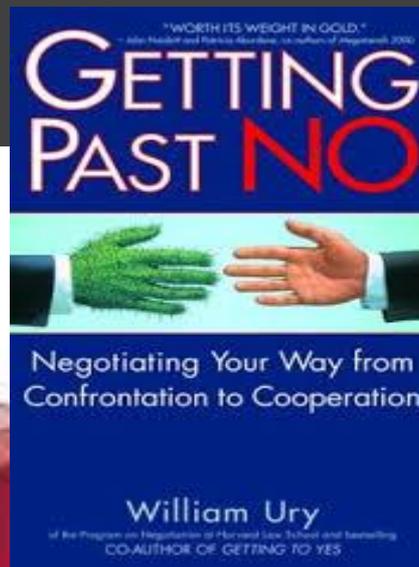
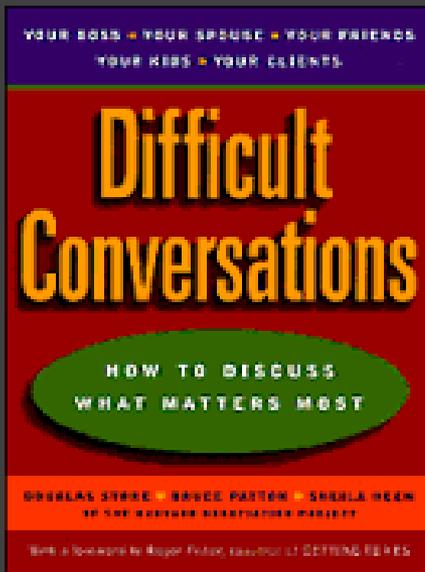


William Ury



Roger Fisher





getting to
yes



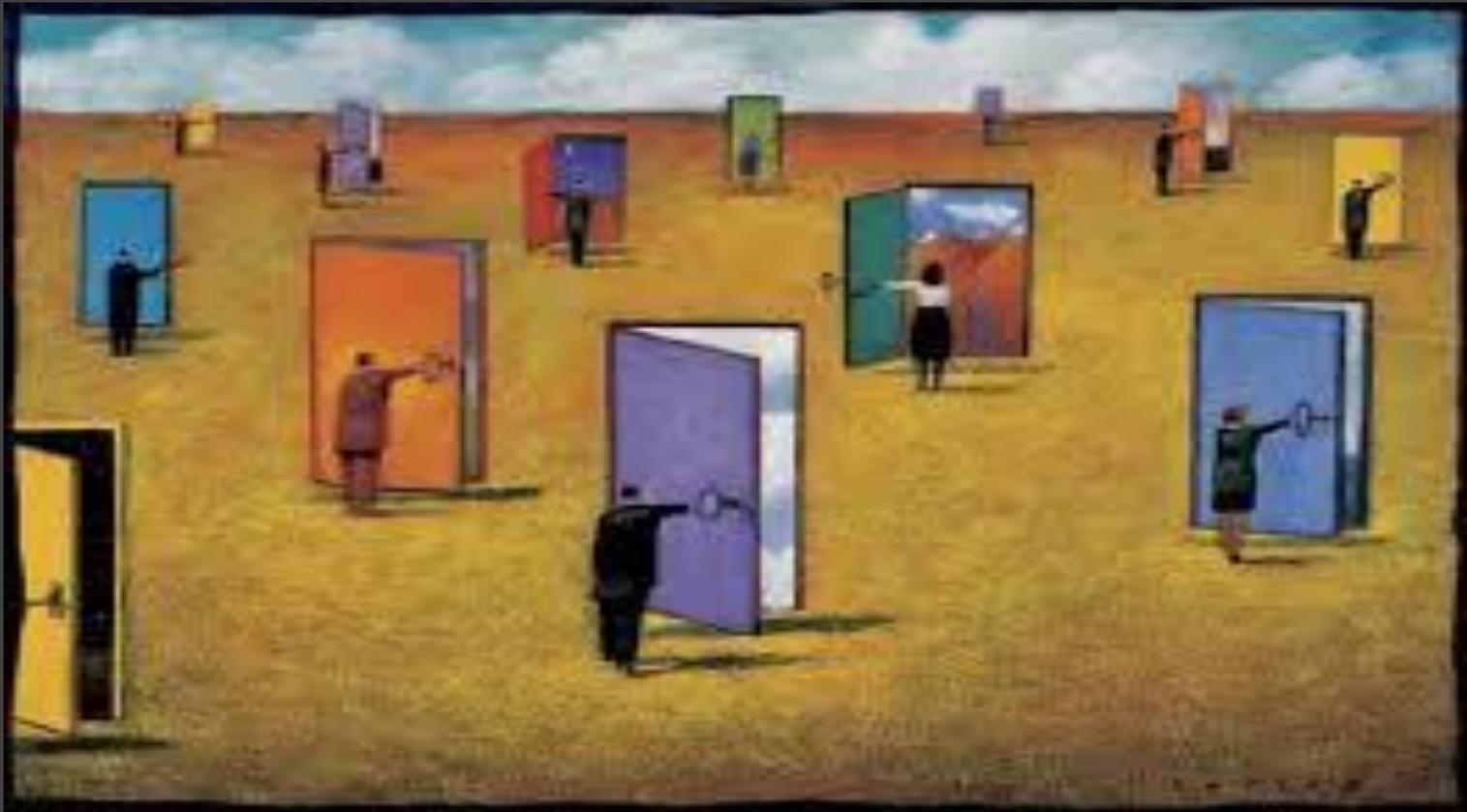
What's the best way of negotiating amicably without giving in?



Fisher and Ury asserted that any method of negotiation could be fairly judged by three criteria:

1. Does it produce agreements that meet the underlying needs of the parties and community?
2. Is the method efficient -- meaning time and energy and other resources are well spent?
3. Does the method improve, or at least not damage, the relationship?

Different Approaches Yield Different Results



Major features of the Principled approach

- Parties develop a joint understand BEFORE solving
- Parties jointly generate options that are MUTUALLY advantageous
- Parties strive to address differences constructively and fairly
- Parties reach GRADUAL CONSENSUS on terms that satisfy collective needs, while building and strengthening the relationship



You can take a
principled approach
regardless of what
the other side does

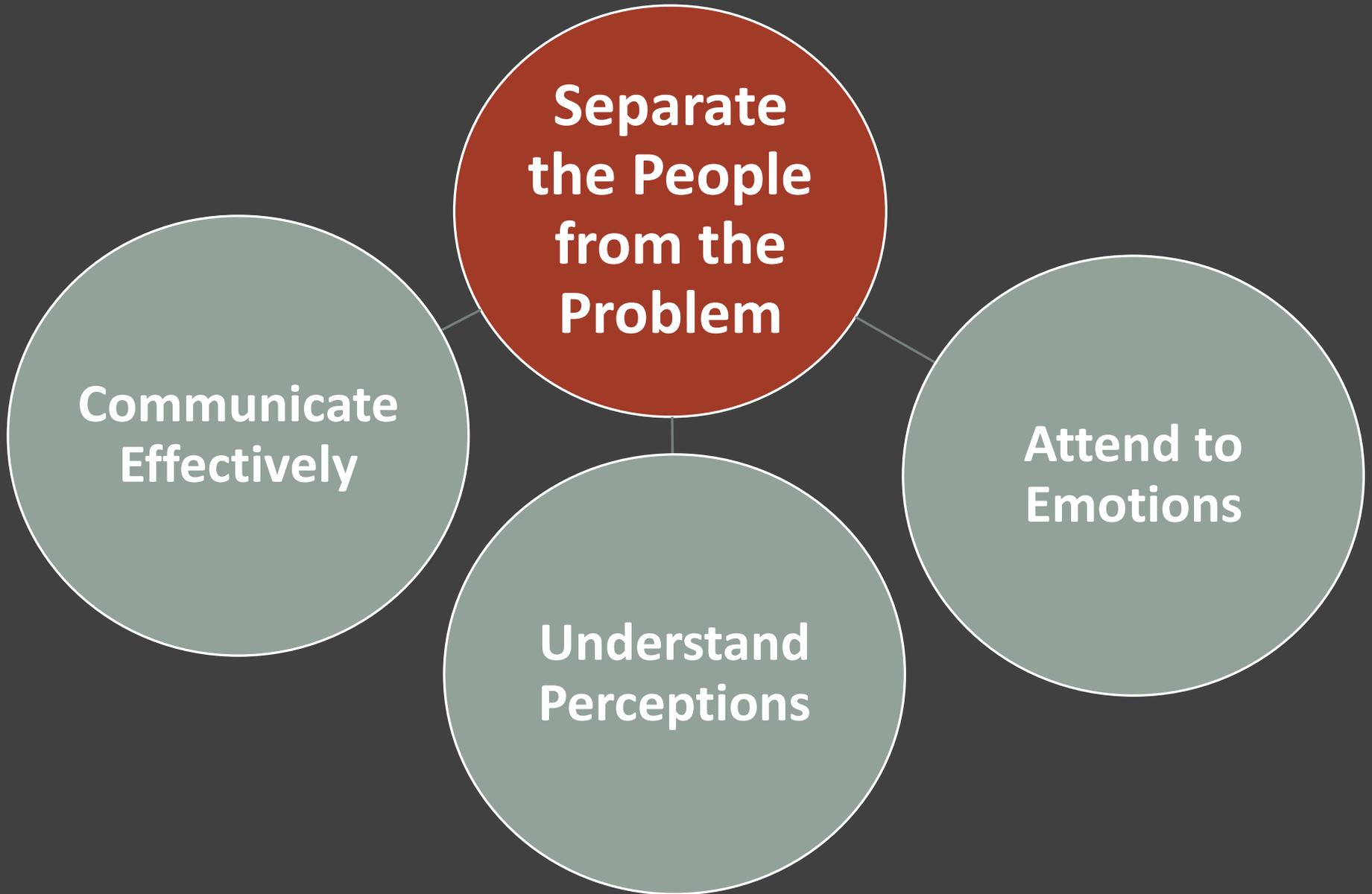
Principled Negotiation

1. Separate the PEOPLE from the problem
2. Focus on INTERESTS, not positions
3. Invent OPTIONS for mutual gain
4. Insist on using objective CRITERIA

Proposition 1: Separate the People from the Problem

Failing to deal with others sensitively as human beings . . . can be disastrous for a negotiation. Whatever else you are doing at any point during a negotiation . . . it is worth asking yourself, 'Am I paying enough attention to the people problem?'

-Fisher and Ury, Getting to Yes





Perception



How you see the world depends on
where you sit.



What's your vantage point?

**AS THE FATHER
SEES**



**AS THE CHILD
SEES**



**AS THE MOTHER
SEES**



THE
LOLBRARY.com/post/32381/

Tips for exploring perceptions



- Don't present your perspective as THE truth
- Share where your views come from
- Put yourself in others' shoes
- Ask questions to clarify rather than inferring intent
- Ask how they see it differently and why?

Different Stories



“It may be that as you share them, your stories change in response to new information or perspectives.

But they still may not end up the same, and that’s all right.

Sometimes people have honest disagreements, but even so, the most useful question is not “Who’s right?” but *“Now that we really understand each other, what’s a good way to manage this problem?”*

From Difficult Conversations, Stone, Patton, Heen

Effective Communication

- Why is it important?
- When is it difficult? Why?
- What have you learned?
- How can you improve?



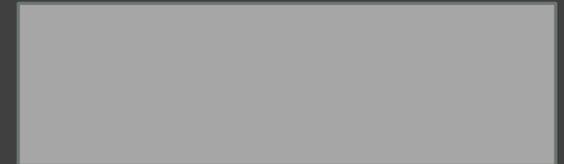
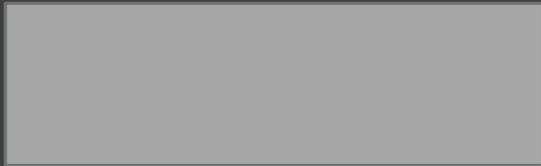
Studies indicate that people who believe the bargaining process has been fair and they have been treated respectfully are more satisfied with objectively less beneficial final terms than those with objectively more beneficial terms achieved through a process considered less fair and less respectful.

Charles Craver, *The Impact of Negotiator Styles on Bargaining Interactions*,
American Journal of Trial Advocacy





Common Conflict Responses



Communication Tips

- Listen. Allow others time to talk without interrupting, opposing, or fixing.
- Ask questions. Bring curiosity. Check for understanding. Convey interest. Listen.
- Talk to promote understanding and positive engagement, not to impress your team.

- Describe problems in terms of impact on you, not in terms of what they did or why.
- Speak in first person, talking about what you have observed, what you think and what you fear.
- Don't put words in their mouth or make assumptions about their intentions.
- Ask them how they see it and then listen.

- Reframe to neutralize the emotion/accusation and return to the core interest/need
- Call for a time out
- Anticipate communication challenges and prepare individually, and as a team, in advance.

When faced with demands or positions, ask interest questions

Other party's stated position: *We won't agree unless it's a three year deal.*

Interest questions you might ask:

- Why three years?
- Can you tell me why less than 3 years won't work?
- How does a longer number of years provide value to you?

Possible interests:

- Wants to win
- Wants to be treated equitably (they heard another employee group received 3 years)
- Wants stability/predictability

Adapted from The Negotiation Fieldbook, 2011, Grande Lum



When emotions run high,
stop negotiating and attend
to the people



Behavior of Skilled Negotiators (Rackham and Carlisle)

- Uses fewer “irritators” – less likely to describe their offers in gratuitously favorable terms
- Significantly more testing for understanding and summarizing of points made in the discussion
- Asks more questions, seeks significantly more information during a negotiation

Adapted from N. Rackham and J. Carlisle, “The Effective Negotiator” Part 1 and Part 2, 1978, *Journal of European Industrial Training*, Vol 2 Issue 7

- Twice as likely to give information about internal considerations such as feelings and motives.
- Considers more options for issues being discussed
- Spends more time looking for areas of common ground
- Takes time to review what they learned from the negotiation

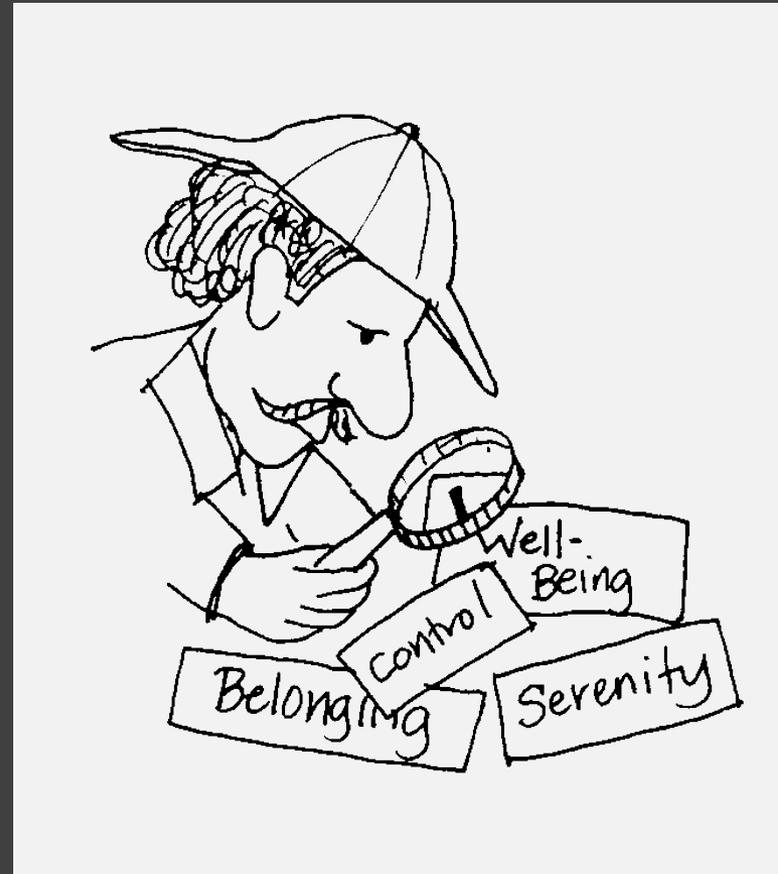
Adapted from N. Rackham and J. Carlisle, "The Effective Negotiator" Part 1 and Part 2, 1978, Journal of European Industrial Training, Vol 2 Issue 7

Worksheet #2

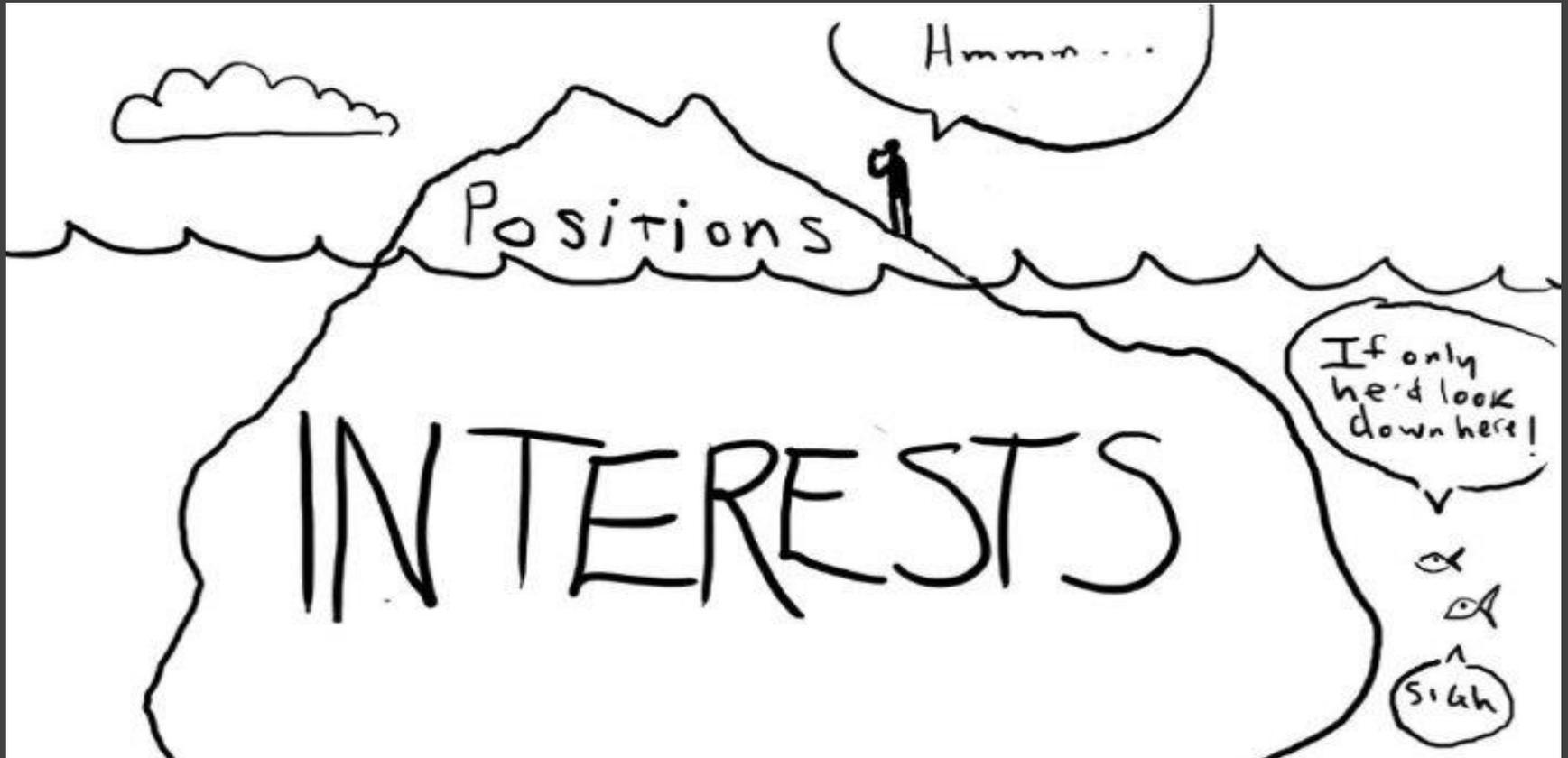
Communication Challenges

Proposition 2: Focus on Interests, Not Positions

- **A POSITION** is the concrete result we want
- **Our INTERESTS** are the intangible motivations that lead us to a position. They are our underlying hopes, concerns, and needs.

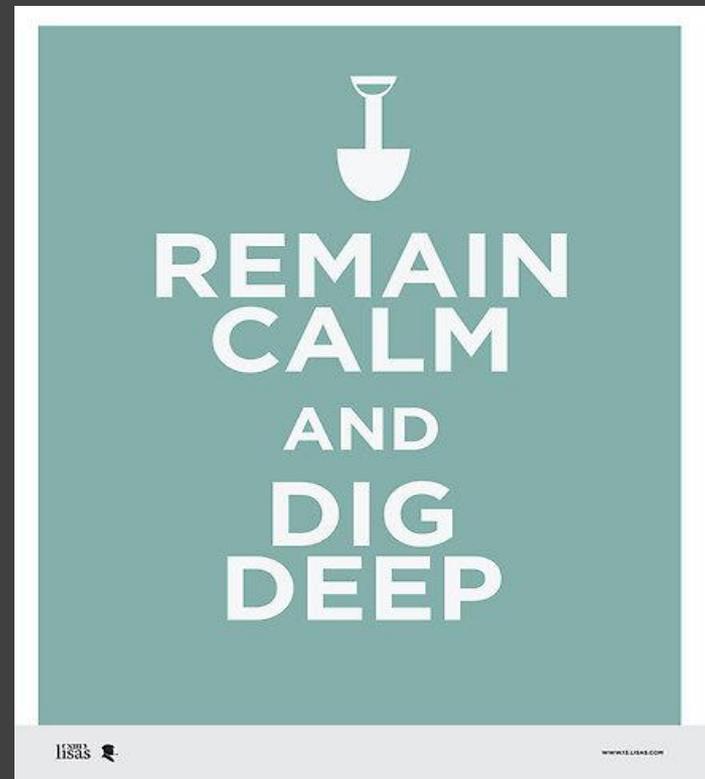
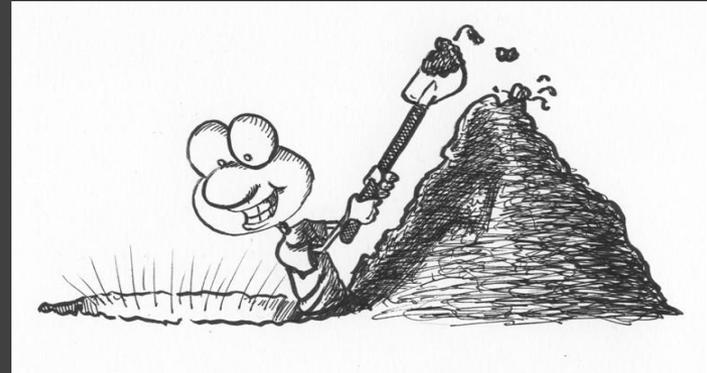


Underneath opposed positions lie shared and compatible interests.



Discovering Interests

- Why do you want that?
- Why is that important to you?
- What concerns/fears do you have?
- What do you hope to accomplish?
- How would that help you?



Why do you want that? How would that help?

Position

**I must have work hours
8:30 – 3:00**

Interests

**Concern about
son/daughter
home alone
after school**

**Want greater
overlap with
supervisor**

Interests

**Homework
support**

Safety

**Project
Support**

Interests expand the solution set



Proposition 3: Invent Options for Mutual Gain

- Creative options expand the pie and create higher likelihood of achieving agreement.
- Negotiators position themselves side-by-side against the problem



As valuable as it is to have many options, people involved in a negotiation rarely sense a need for them.

In a dispute, people usually believe that they know the right answer – their view should prevail.

In a contract negotiation they are equally likely to believe that their offer is reasonable and should be adopted.

Often the only creative thinking shown is to suggest splitting the difference.

-The Negotiation Fieldbook, 2011, Grande Lum

5 obstacles that inhibit the inventing of an abundance of options.

1. Premature judgement or criticism
2. Searching for the single answer – premature closure
3. The assumption of a fixed pie
4. Thinking that “solving their problem is their problem”
5. Conflicting interests – real or perceived

When Interests Conflict



Proposition 4: Insist on Using Objective Criteria



Examples

- Market data
- Professional Standards
- Precedent
- Cost
- Scientific judgment
- Third party evaluation
- Statutory Criteria
- Efficiency

Adapted from Fisher and Ury, Getting to Yes

Developing and Using Objective Criteria

- Begin early. Jointly ask: what standards might be most relevant in this case?
- Standards should be legitimate, practical, and applicable to both sides.

Fisher and Ury, Getting to Yes

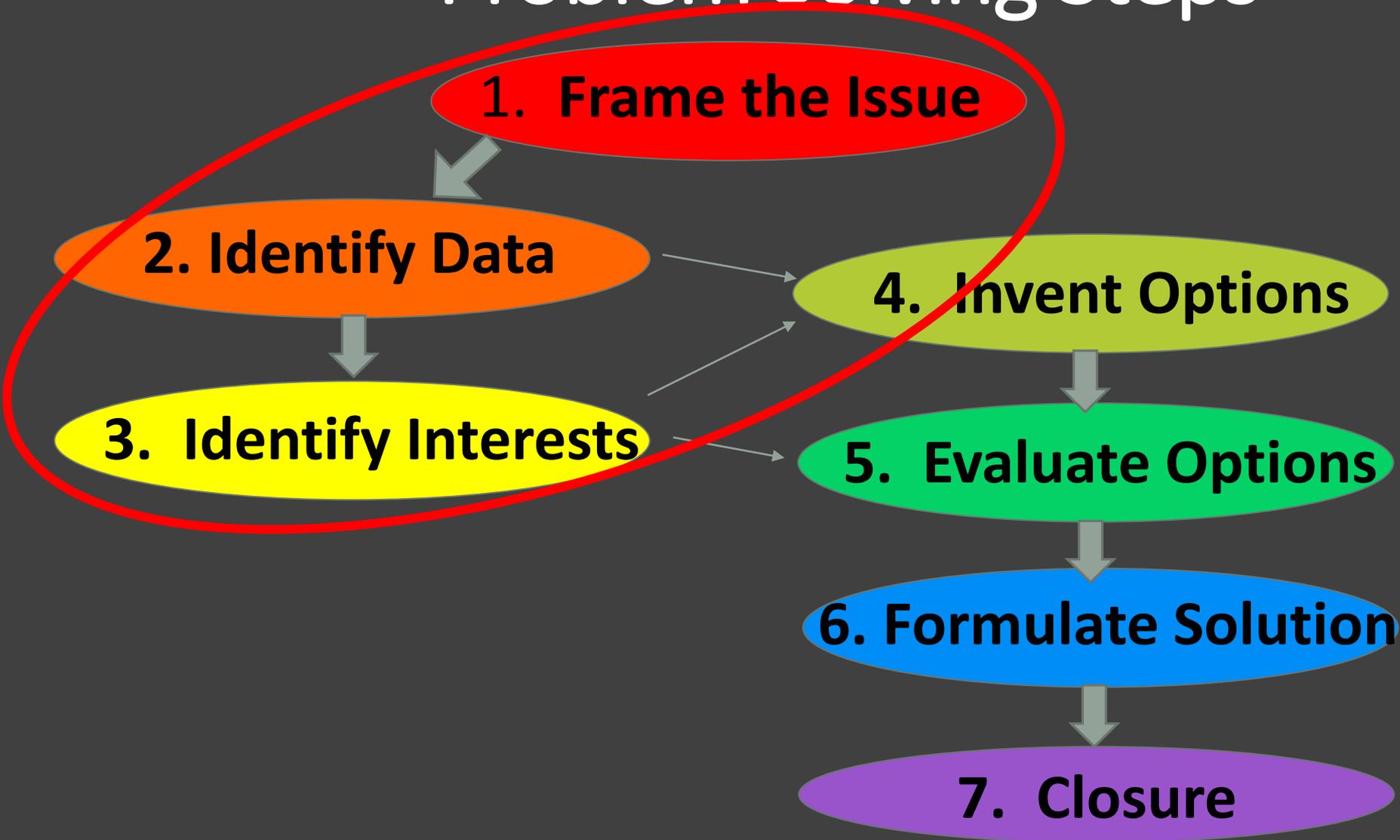
- Reason and be open to reason
- Don't use objective criteria simply as an argument in support of a position.
- One standard does not preclude the existence of others.
- Never yield to pressure, only to principle!

Fisher and Ury, Getting to Yes

7-Step Problem Solving Process



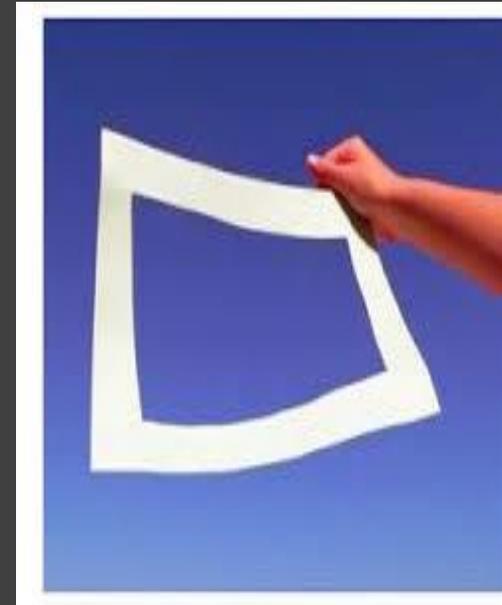
Problem Solving Steps



Step 1: Frame the Issue

Objectives:

- 1. Develop a joint understanding of the issue.**
- 2. Create a problem question that both sides agree to be guided by.**

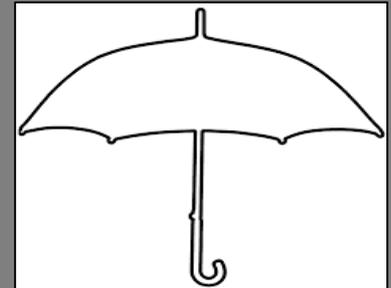


How to Frame an Issue

- Work toward a joint understanding of the problem by sharing perspectives. *Understanding does not require agreement.*
- What is the current state? Why is it a problem? What needs to be addressed?
- Make note of data and interests that emerge during story telling. *You'll address these more thoroughly later.*
- Form a problem-question. *This is a joint process.*
- Get consensus on the problem question before moving on.

Forming the Problem Question

1. Open ended – “How will we . . .”
“What will we”
2. Neutral -- free of interests
3. Not Leading -- free of solutions
4. Focused – right size for the discussion
5. Easily understood
6. May be expressed as multiple questions



Worksheet #3

Preliminary Problem Analysis

Step 2: Identify Data

- Facts known to both parties
- Unknown facts essential to the problem and need to be known
- Facts known by one party that will eventually be known to the other party
- Facts that may assist the parties in evaluating acceptability/fairness of solutions (objective criteria)



Consider objective criteria



- ✓ Market data
- ✓ Precedent
- ✓ Cost
- ✓ Efficiency
- ✓ Third Party Evaluation
- ✓ Scientific Judgement

Worksheet #4

Data and Objective Criteria

Step 3: Discovering Interests

- Why do you want that?
- Why is that important to you?
- What concerns/fears do you have?
- What do you hope to accomplish?
- How would that help you?



Interest Step Pointers. . . .

- Realize each side has multiple interests.
- Make your interests come alive – be specific. Concrete details not only make your description credible, they add impact.
- Strong advocacy for your interests is ok. This is the place to spend your aggressive energies.
- Acknowledge their interests are part of the equation. Successful negotiation requires being both firm AND open.

Worksheet #5

Interests

Step 4: Generate Options



How can we solve this problem and satisfy as many of our interests as possible?



**COMPUTER
MIND MAPPING®**
FOR HIGHER EFFICIENCY AND EFFECTIVENESS

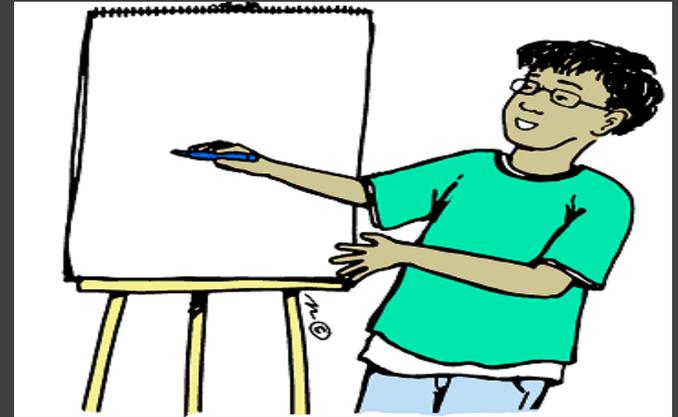
Tips for Inventing Options

- ✓ Ask for a range of ideas – Be freewheeling
- ✓ Start with general concepts before getting into specifics
- ✓ Don't evaluate

Remember:
Options are
ideas,
not offers or
proposals

Step 5: Evaluate Options

1. Rank/Combine options, if desired
2. Discuss how options meet the interests
3. Record Result



Step 6: Develop/Select Solution

- Aim for best possible agreement, building on most highly rated options
- Offer friendly and “yes-able” amendments as you go
- Circle back to interests and data as needed
- Test for Consensus

To Make the Process Work

Commit to using the process – walk the talk

Commit necessary time and resources

Establish guidelines/protocols and follow them

Where trust is low or broken, make mutual commitment to take risks toward a trusting relationship

Obtain support from high level managers and union leaders

Garner sufficient confidence and credibility with constituents to gain their support for trying something new

Understand that this process will not solve all of your problems or eliminate conflict

You risk breaking the process if you

Are not honest and forthcoming with information

Violate the trust

Don't respect the validity of everyone's interests

Hold the process or relationship hostage to the resolution of another issue

Jump to conclusions and assumptions without checking them out

Fail to attend to process and communication concerns

OK, maybe, but what about the money?



Getting to Yes on Economics in 4 Hours

ADAPTED FROM FMCS AFFINITY BARGAINING
MODEL

Road Map

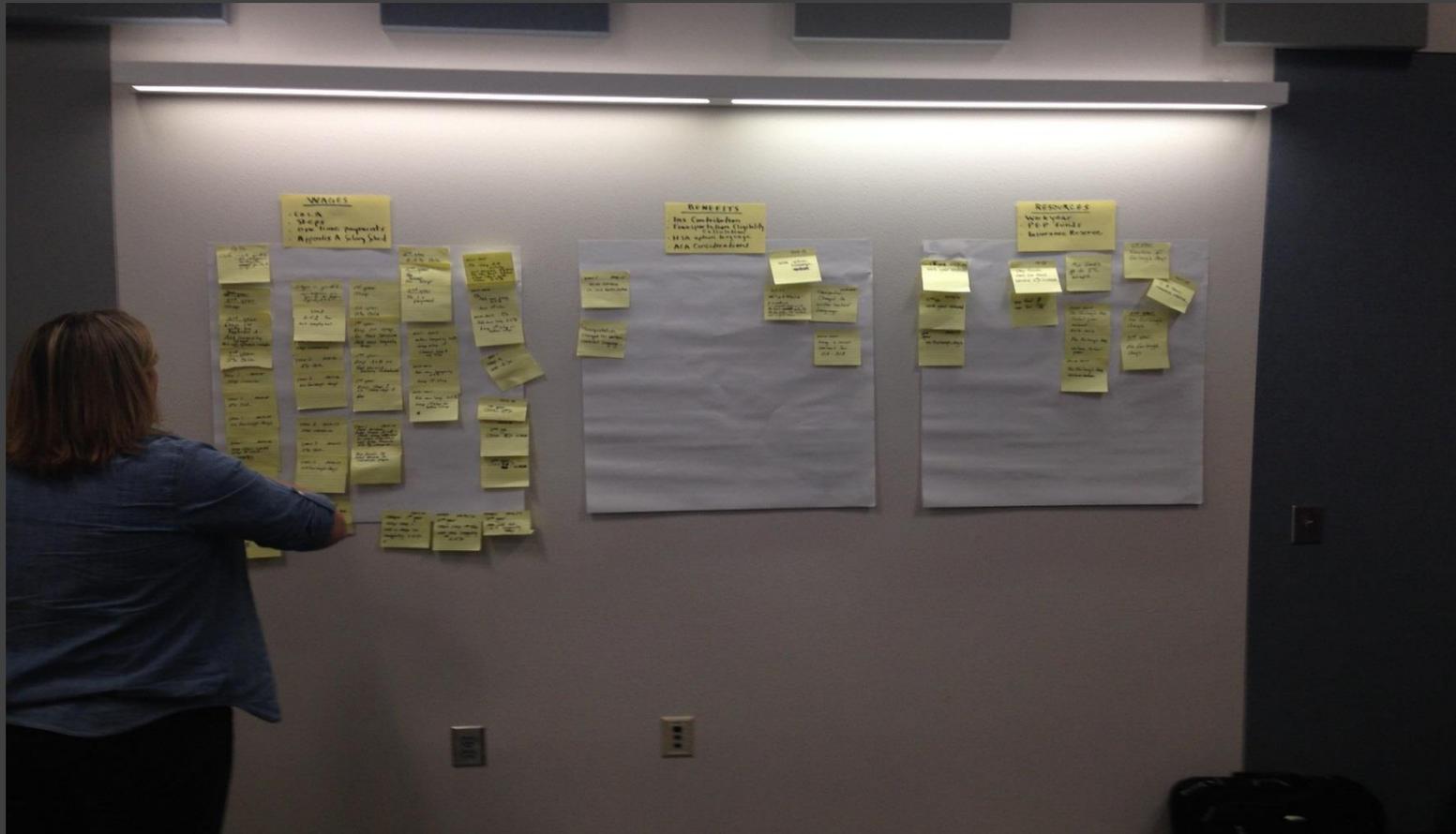
Identify Economic Issues

Exchange data, calculate baselines

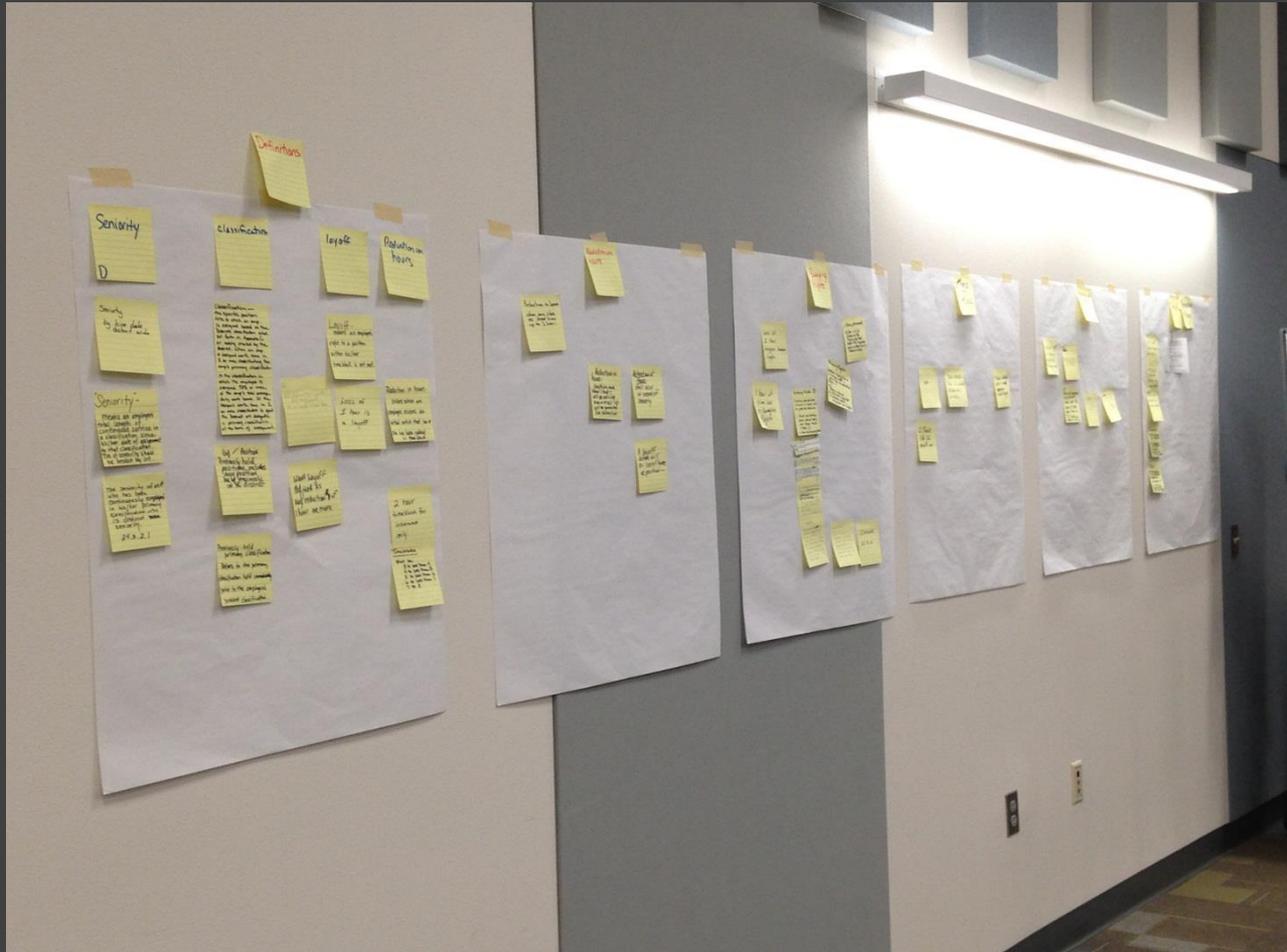
Identify and clarify interests

Schedule a four hour bargaining session

List Issues



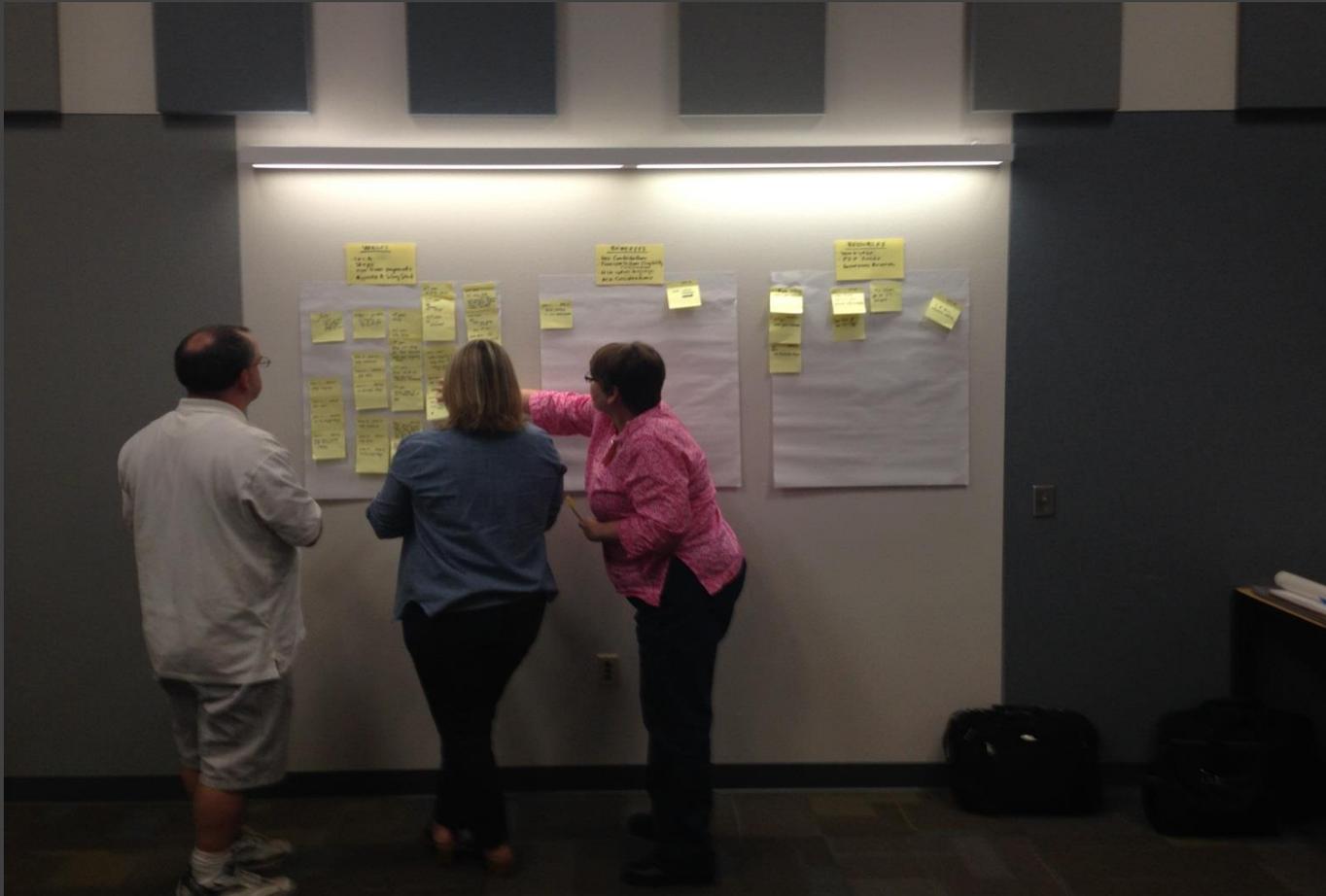
Generate and Post Options



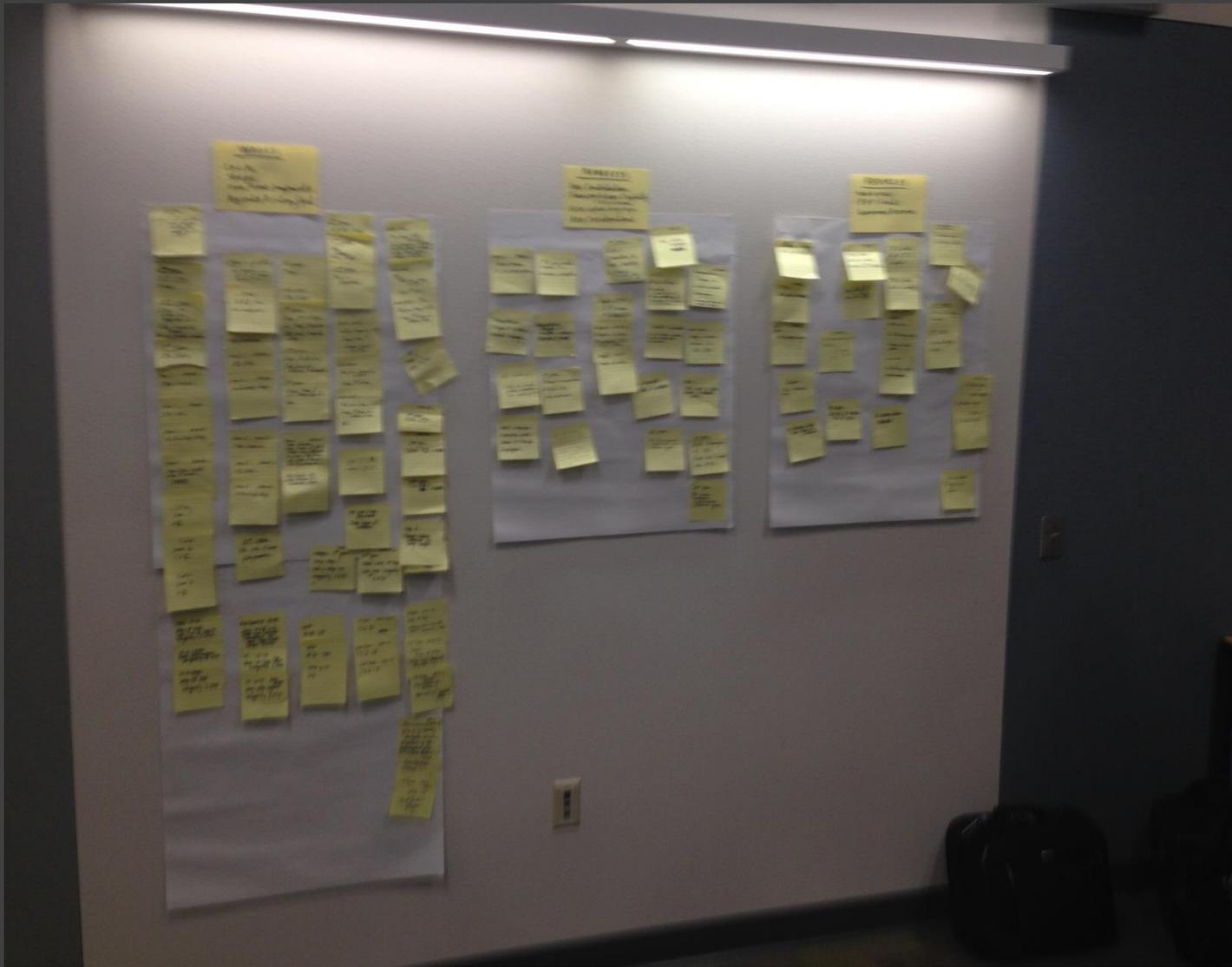
Individuals and groups work simultaneously



Continue posting options







Clarify, Discuss, and Evaluate Options



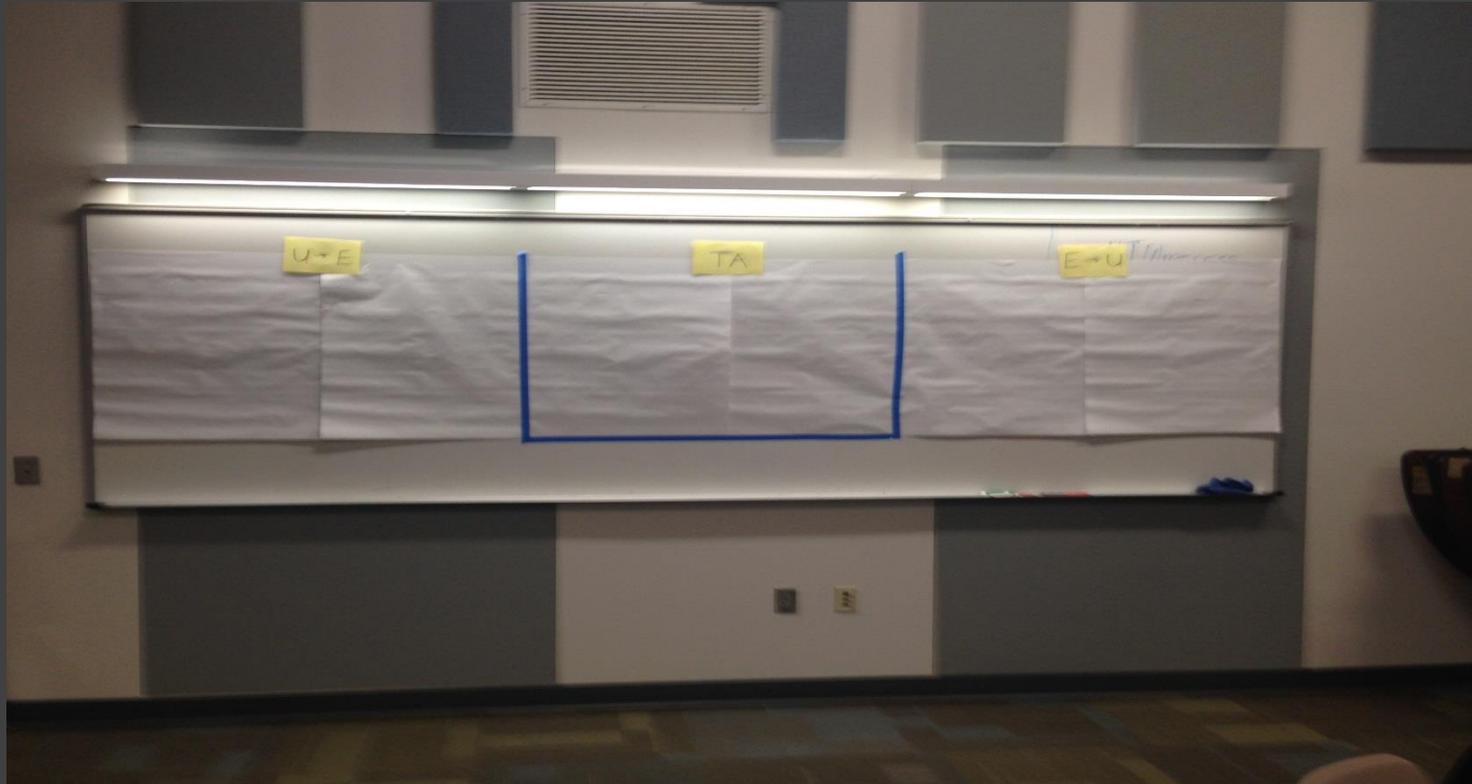
Guided by interests

How well do these options meet our stated interests?



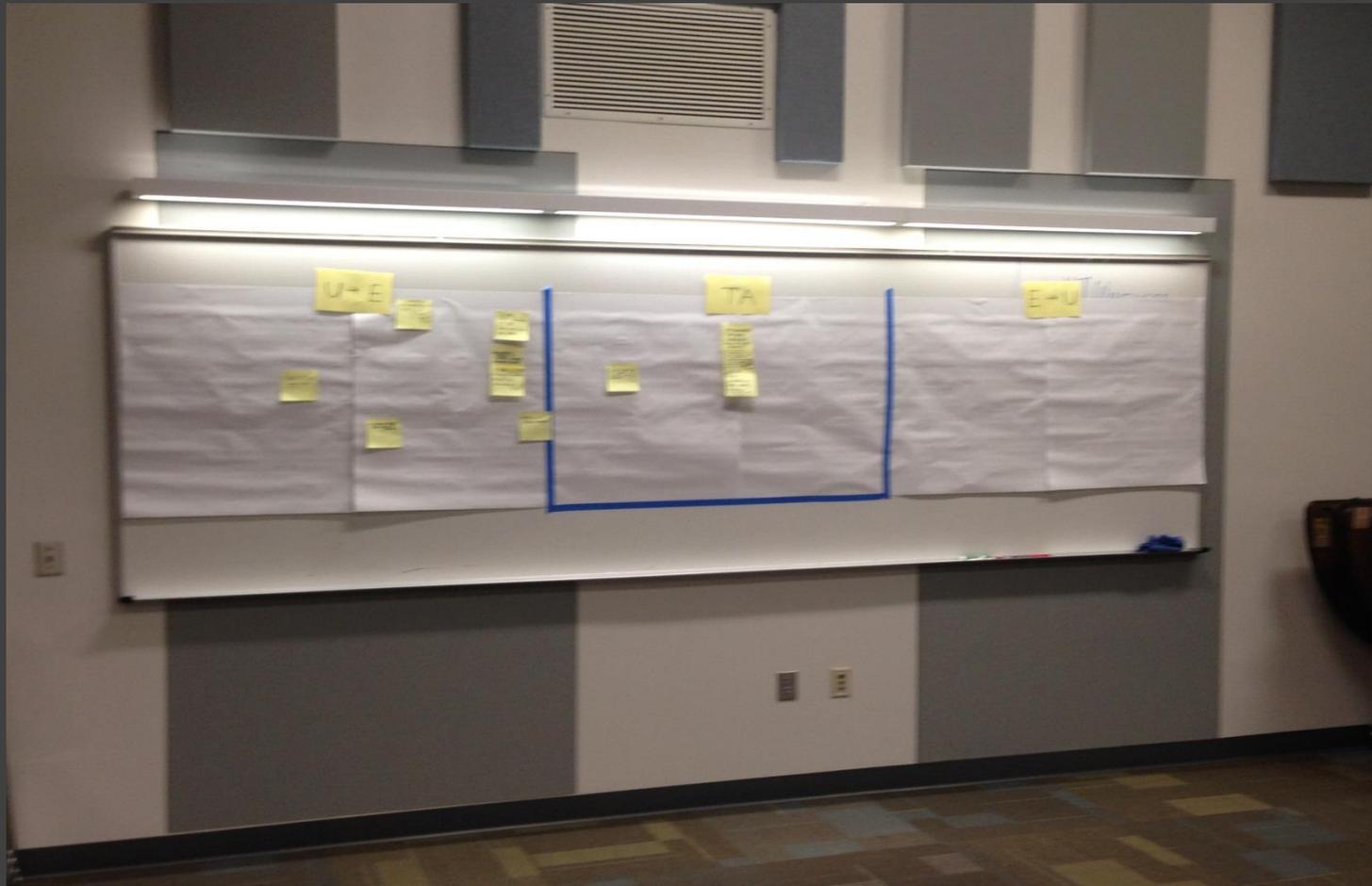


Move yes-able options to Z.O.P.A. board



Zone of Potential Agreement

Build Tentative Agreements



Technology to support collaborative processes

- Mapping and tracking group work: XMind and Mindmapper
- Storing and accessing group work: Google docs/google drive
- Data gathering: Surveymonkey and Typeform
- Connecting remotely: Adobe Connect

ERB Training and Facilitation

2-day experiential training, for bargaining or labor management committees, includes two additional days of facilitation/follow up – cost \$2500

Ongoing facilitation \$60/hour - availability subject to mediation caseload

- **Process immersion**
- **Skill building in communication, group process, and consensus decision making**
- **Team Building**
- **Ground rule development**
- **Tailored approach to meet the needs and culture of the specific institution**

Questions and Discussion

Thank you!

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www.oregon.gov/ERB