



ROLE-PLAY SIMULATION ON BASIC SANITATION SERVICES CONTRACT NEGOTIATION

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ABSTRACT

This article addressed a business negotiation case, presenting teaching material on contract negotiation in Brazil. We present a two-party, multiple-issue role-play simulation. The case involved a private company and the local government, who celebrated a 30-year contract on basic sanitation services, supervised by the sector's Regulatory Agency. After being fined five times in the last five years, the public service concessionaire filed lawsuits against the local government. Key findings pointed out the necessity of improving integrative strategies, such as understanding the other party's underlying interests. Also, the necessity of implementing problem-solving approaches through joint fact-findings, where both parties involved perceive the issues at hand and devise suitable solutions for them. A complete set of case mechanics and instructions is presented. Further implications suggest the case replication to other business scenarios. Discussion and future research recommendations complete the present study.

Keywords: Negotiation, Basic Sanitation Services Contract, Teaching materials

INTRODUCTION: -

This article addressed a single case study on the basic sanitation services negotiation contract between a private company, and the local government, as the unit of analysis (Yin, 1988).

The Negotiation took place at Tubarão, Municipality of Santa Catarina State, southern Brazil. The names of the companies were altered for compliance issues, including the names of the participants, omitted to preserve the case confidentiality. The negotiations started in 2018. In real life, the contract is foreseen by the Federal Constitution, Art. 37 (Brasil, 1988).

The case also explored the following issues: (i) contract renegotiation; (ii) contract litigation; (iii) asymmetry of power; (iv) Terms for the Adjustment of Conduct (TAC); (v) alternative dispute resolution (ADR).

The article compiled a complete set of instructions, case mechanics, and teaching notes (see Appendixes I and II). The role-play has the merit of being a unique and unprecedented negotiation case in the region. The case is steady to educators, researchers, attorneys, teachers, educators, mediators, chiefs, and other professionals.

A great deal of attention on teaching materials has been the object of current studies (Dias & Navarro, 2017; Dias, Lopes, Teles, Pereira and Castro, 2020; Dias, 2019, 2020; Dias & Lopes, 2019; Dias & Teles, 2018; Dias & Duzert, 2017).

In this article, Negotiation is defined as "a process of combining conflicting positions into a common position under a

decision rule of unanimity, a phenomenon in which the process determines the outcome" (Zartman, 1988, p.31). It also "involves several key components including two or more parties to a negotiation, their interests, their alternatives, the process and the negotiated outcomes (Neale & Northcraft, 1991, p. 232), as well as "discussion between the parties to reach an agreement." (Carnevale & Pruitt, 1992, p.532).

At long last, we followed the Four-Type negotiation matrix (Dias, 2020). In sum, this is a contract negotiation between two parties and multiple issues, or Type II negotiation, as demonstrated in Figure 1, as follows:



Figure 1: The Four-Type Negotiation Matrix. Source: Dias, 2020. Reprinted under permission.

The Four-Type negotiation matrix helps address types of negotiations according to (i) the number of participants and (ii) the number of issues in a given negotiation (Dias, 2020). In this particular case, the Negotiation is an integrative one because it involved more than one issue at hand (Raiffa, 1982; Fisher, Ury and Patton, 1981; Sebenius, 1992; Ury, 2015; Susskind & Field, 1996; Salacuse, 2008; Rinehart & Page, 1992; Pruitt & Rubin, 1986). Finally, methods and research limitations are disclosed in the next section.

METHODS AND RESEARCH LIMITATIONS: -

This case is a single contract negotiation case between a Brazilian concessionaire of public services, a private company, and the local government, represented by the Regulatory Agency on the sector, as the unit of analysis (Yin, 1988). We followed the interpretive approach and inductive rationale. The study is limited to the Brazilian Legislation in force, depicted in Table 1, as follows:

Table 1
Brazilian Legislation in force

Legal Device	description
Art. 37, Federal Constitution, 1988	Principle of Administrative Purpose.
Art. 2 of Federal Law No. 9,784/1999	It deals with the administrative process within the Federal Public Administration and provides for the principle of Consensuality.
Art. 5., § 6 of Federal Law No. 7,347/1985	(Law of Public Civil Action), which determines that legitimate public agencies may make the commitment of interested parties to adjust their conduct to legal requirements through combinations, which will have the effectiveness of extrajudicial enforcement (Included by Law No. 8,078/1990).

The current investigation is limited to Brazil. Other countries and legal devices may differ in their applications. Finally, the study is upheld by Goffman's dramaturgical theory (1959, 1961). In the next section, the contract negotiation case is presented and ultimately discussed.

ROLE PLAY SIMULATION: BASIC SANITATION SERVICES CONTRACT NEGOTIATION: -

The role-play simulation starts with the director of the private company, hereafter Sanitation Inc. (the real name withheld for compliance purposes), a primary sanitation services provider. Five years ago, Sanitation Inc.'s board of directors signed a basic sanitation services contract with the local government for 30 years.

On the other hand, the Regulatory Agency oversees the Concession Agreement to provide water supply and sewage services to the Municipality population. The contract has quality and investment targets set for each concession year. At the end of the fiscal year¹, the Regulatory Agency analyses the data and applies the appropriate contractual fines if there is non-compliance with the proposed targets. Sanitation Inc. has been fined annually and wants to renegotiate the terms with the Regulatory Agency. Therefore, the role-play simulation involves two parties: (i) the Sanitation Inc. Director, representing the private company (Concessionaire), and (ii) the Regulatory Agency Superintendent, representing the Regulatory Agency. The fines imposed by the Regulatory Agency in the last five years are illustrated in Table 2, as follows:

Table 2
Value of contractual fees collected by the Regulatory Agency in the last five years

YEAR OF CONCESSION	UPDATED FINE (BRL)
YEAR 1	171.803,68
YEAR 2	379.882,95
YEAR 3	424.801,86
YEAR 4	184.584,52
YEAR 5	137.513,16
total	1.298.586,17

¹ In Brazil, the fiscal year starts on January 1st and ends on December 31st.

After due administrative proceedings for the collection of fines imposed by the Regulatory Agency, Sanitation Inc. did not make the payments and filed lawsuits requiring the nullity of penalties, with requests for injunctions. The current status of lawsuits (fines from years 1 to 4) and administrative proceedings (year five fine) is shown in Table 3, as follows:

Table 3
Lawsuits and Administrative Proceedings filed by Sanitation Inc. against the Regulatory Agency

Type	Fine/Period	Status
lawsuit	Year 1	Judgment of merit in The First Degree favorable to the Regulatory Agency and injunction granted by the Court of Justice, giving suspensive effect to the Concessionaire's Appeal.
lawsuit	Year 2	Injunction denied in First Degree and then granted by the Court of Justice, suspending the enforceability of the fine. No sentence.
lawsuit	Years 3 and 4	Injunction denied in First Degree and then granted by the Court of Justice, suspending the enforceability of fines. No sentence.
administrative process	Year 5	Administrative Process completed. Notified to the Concessionaire. Fine suspended by the Regulatory Agency until the conclusion of the agreement.

Sanitation Inc. was facing problems with mandatory insurance renewals (due to fines imposed) and receives criticism from the population for non-compliance with some goals, especially concerning the construction of the ETE - Sewage Treatment Plant.

The General Superintendent from the Regulatory Agency devised three options to be negotiated with the Director of Sanitation Inc., in return for the cessation of all lawsuits filed as well as the administrative process, as follows:

Option1: Sanitation Inc. would pay the fines indicated by the Regulatory Agency and approved by the Municipal Council of Basic Sanitation through compensatory measures, such as the revitalization of squares, construction of parks and walkways over the river that cuts through the city, in amounts equivalent to debt, with an estimated value of BRL 1.5 million.

Option2: Termination of lawsuits and administrative proceedings against the Regulatory Agency with the subsequent approval of the agreement.

Option 3: The contractual targets for constructing the Sewage Treatment Plant (ETE) and the sewage system for the next 5 (five) years would be reagreed in 90% of the goals initially proposed, as they prove unfeasible to date.

The Board of Directors of the Sanitation Inc. reached a deal. A Term for the Adjustment of Conduct (TAC) was signed between the parties.

DISCUSSION: -

This case is a particular case of contract negotiation, designed for face-to-face or remote classroom interactions or training sessions.

The case has implications with a great deal of research fields, not limited to: (a) Non-governmental organizations (Paradela, Dias, M. O.; Assis; Oliveira, J.; Fonseca, R. (2019); (b) carmaker industry (Dias, M. O., Navarro and Valle, 2013, Dias, M. O., et al., 2014; Dias, M. O., et al., 2013); (c) aircraft manufacturer industry (Dias, M., Teles, and Duzert, 2018; Dias, M.O. and Duzert, 2018); (iii) public agents (Dias, M. O., 2018); (d) copier manufacturer industry (Dias, M.O., 2012); (e) non-market forces (Dias & Navarro, 2018); (f) retail business (Dias, M. O., et al., 2015; Dias, M. O. et al., 2015, 2014); (g) Craft beer industries (Dias, M.O. and Falconi, 2018; Dias, M. O., 2018); (h) social mediation (Dias, M. O. & Teles, 2018); (i) governmental business relations (Dias, M. O. & Navarro, 2017); (j) generational interactions (Aylmer & Dias, M. O., 2018); (k) e-business negotiation (Dias & Duzert, 2017); (l) streaming video industry, such as Netflix (Dias, M. O., & Navarro, 2018); (m) mining industry (Dias, M. O., & Davila, 2018); (n) civil construction (Dias, M.O., 2016), finally (o) debt collection negotiations (Dias, M.O., 2019, 2019b; Dias, M.O. and Albergarias, 2019).

The case is limited to the Brazilian legislation in force. Other countries with their respective legislations should be investigated in separate studies.

FUTURE RESEARCH AND CASE LIMITATIONS

This teaching material researched a concessionaire service contract between two gatherings in the Brazilian situation. Different scenarios, societies, and nations are urged to be researched in future examinations. At last, techniques to better the understanding concerning the Four-Types negotiation grid ought to likewise be examined in future studies.

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APPENDIX I

Teaching notes

Scenario: case illustrates the difficulties faced by the parties to avoid a loss of basic sanitation services to the local population. Different laws and particular issues, such as different negotiation processes, should be considered for other countries.

Mechanics: parties should take 30 min to 1 hour to read the case and to prepare themselves to negotiate. Negotiation planning is strongly encouraged to be used additionally to help planning the negotiation—30 min to 1 hour of negotiation plus 30 to one-hour debriefing session. In total, one hour and a half to three hours total time for this exercise.

Major Lessons: to map and focus on underlying interests; to practice empathy towards each other; to develop promptness in creating mutual value to be later distributed.

Objectives: This exercise intends to discuss the role of lawyers in an integrative, Type III negotiation (See Figure 1). The Negotiation should be seen not as an intrusion devoted to promoting disruption but one aid to promote consensus between two different parties. One crucial objective is related to process control.

MAIN FEATURES	
Time required	1 hour – 2 hours
Number of participants	Two parties, the Regulatory Agency and the Director of the Sanitation Inc. (Concessionaire)
Groups involved	No
Agent present	No
Third part present	No

APPENDIX II - PARTIES' ROLES

PART 1

◆◆ REGULATORY AGENCY LEGAL SUPERINTENDENT ◆◆

GENERAL INFORMATION

You are the Legal Superintendent of the Sanitation Regulatory Agency of your region. The Regulatory Agency oversees the Concession Agreement for the provision of water supply and sewage services to the population of its municipality, signed between the municipality and Sanitation Inc., for 30 (thirty) years, and 5 (five) years have passed.

The contract has quality and investment targets set for each concession year. At the end of the period, the Regulatory Agency analyses the data and applies the appropriate contractual fines if there is non-compliance with the proposed targets. Sanitation Inc. has been fined annually and wants to renegotiate the terms with the Regulatory Agency. You are responsible for negotiating with the director ii of the Concessionaire. The fines imposed by the Regulatory Agency in the last five years are illustrated in Table 1, as follows:

Table 1
Value of contractual fees collected by the Regulatory Agency in the last five years

YEAR OF CONCESSION	UPDATED VALUE (BRL)
YEAR 1	171.803,68
YEAR 2	379.882,95
YEAR 3	424.801,86
YEAR 4	184.584,52
YEAR 5	137.513,16
total	1.298.586,17

After due administrative proceedings for the collection of fines imposed by the Regulatory Agency, Sanitation Inc. did not make the payments and filed lawsuits requiring the nullity of penalties, with requests for injunctions. The situation of lawsuits (fines from years 1 to 4) and administrative proceedings (year 5 fine) is shown in Table 2, as follows:

Table 2
Lawsuits and Administrative Proceedings brought by Sanitation Inc. against the Regulatory Agency

kind	Fine/Period	situation
lawsuit	Year 1	Judgment of merit in The First Degree favorable to the Regulatory

		Agency and injunction granted by the TJ, giving suspensive effect to the Concessionaire's Appeal.
lawsuit	Year 2	Injunction denied in First Degree and then granted by the TJ, suspending the enforceability of the fine. No sentence.
lawsuit	Years 3 and 4	Injunction denied in First Degree and then granted by the TJ, suspending the enforceability of fines. No sentence.
ADMINISTRATIVE PROCESS	Year 5	Administrative Process completed. Notified to the Concessionaire. Fine suspended by the Regulatory Agency until the conclusion of the agreement.

You know that Sanitation Inc. faces problems with mandatory insurance renewals (due to fines imposed) and receives criticism from the population for non-compliance with some goals, especially in relation to the construction of the ETE - Sewage Treatment Plant, besides knowing that there are another 25 (twenty-five) years of concession, until the end of the contract.

Therefore, Sanitation Inc., dissatisfied with the fines imposed, filed lawsuits requiring the annulment of these fines by the Judiciary.

In this context, you have submitted a proposal to make an agreement, to pay fines in the form of improvements to the population (instead of payment to the Regulatory Agency), through compensatory measures and exchange of the withdrawal of lawsuits in the process.

The current legislation provides that the amounts of fines imposed must be paid to the Regulatory Agency and are also part of the regulatory agency's revenue. The legislation applicable to the case is presented in Table 3, as follows:

Table 3
Legislation applicable to the case

Legal Device	description
Art. 37, da CF/88	Principle of Administrative Purpose.
Art. 2 of Federal Law No. 9,784/1999	It deals with the administrative process within the Federal Public Administration and provides for the principle of Consensually.
Art. 5., § 6 of Federal Law No. 7,347/1985	(Law of Public Civil Action), which determines that legitimate public agencies may make the commitment of interested parties to adjust their conduct to legal requirements, through conations, which will have effectiveness of extrajudicial enforcement (Included by Law No. 8,078/1990).

CONFIDENTIAL INFORMATION

In order to solve the problem with the Concessionaire, the General Superintendence instructed it to negotiate a new agreement with Sanitation Inc., in exchange for the extinction of lawsuits and administrative proceedings.

Alternatives in case of on-agreement: (i) legal dispute; (ii) intervention of the City Hall; (iii) end of concession, new bidding process and new concession contract with a third party; (iv) a combination of the previous alternatives.

However, the General Superintendence (its direct leadership) was afraid that the new agreement would be broken by Saneamento S/A. At the same time, the General Superintendence understood that the population would be the largest harmed by the case and decided to invest in the agreement with the Concessionaire, in the following terms:

Option1: Saneamento S/A will be obliged to pay the full and corrected amount of all fines (BRL1,3 million reais),and may: (i) be paid in full by installment or , (ii) through the performance of works indicated by the Regulatory Council and approved by the Municipal Council of Basic Sanitation, such as revitalization of squares, construction of parks and walkways over the river that cuts through the city, in amounts equivalent to debt, with an estimated value of BRL 1.5 million.

Option2: Termination of legal proceedings and administrative proceedings against the Regulatory Agency with the subsequent approval of the agreement.

Option 3: The contractual targets for the construction of the Sewage Treatment Plant (ETE) and the sewage system for the next 5 (five) years would be reagreed in 90% of the goals initially proposed, as they prove unfeasible to date.

Therefore, the terms of the new agreement can be summarized as well:

Option 1: ZOPA from 1.3 million (due amount corrected) to 1.5 million reais (in works).

Option 2: Sanitation S/A withdraws the processes immediately.

Option 3: contractual targets: ZOPA from 90% (ideal) to 80%(acceptable)

You sent a week ago the draft of the new agreement to the board of Sanitation S/A, containing Options 1 to 3, for analysis. The negotiation has been scheduled for tomorrow.

In view of: (i) the instructions received by the General Superintendence, (ii) the good of the Public Administration, (iii) the remaining contract time (25 years) and (iv) the quality of the provision of sanitation and sewage services of the municipality of your residence, prepare yourself to the final negotiation with the director of The Sanitation Concessionaire S/A.



PART 2

◆◆ Director of SANITATION S/A ◆◆

GENERAL INFORMATION

You are Director of Sanitation Inc., which has a contract for the concession of water supply and sewage services to the population of your municipality for 30 (thirty) years of the concession contract.

Your company is supervised by the Sanitation Regulatory Agency of your region. The Agency has, among its various attributions, the supervision of the Concession Agreement signed between the Municipality and Sanitation S/A for the provision of water supply and sewage services to the population of its municipality, and 5 (five) years have passed.

The contract has quality and investment targets set for each concession year. At the end orthoperiodic, the Regulatory Agency analyses the data and applies the appropriate contractual fines if there is non-compliance with the proposed targets. Sanitation Inc. has been fined annually and the company's shareholders have appointed it responsible for renegotiating the terms with the Regulatory Agency. The fines imposed by the Regulatory Agency in the last five years are illustrated in Table 1, as follows:

Table 4
Value of contractual fees collected by the Regulatory Agency in the last five years

YEAR OF CONCESSION	UPDATED VALUE (BRL)
YEAR 1	171.803,68
YEAR 2	379.882,95
YEAR 3	424.801,86
YEAR 4	184.584,52
YEAR 5	137.513,16
total	1.298.586,17

After due administrative proceedings for the collection of fines imposed by the Regulatory Agency, Sanitation Inc. did not make the payments and filed lawsuits requiring the nullity of penalties, with requests for injunctions. The situation of lawsuits (fines from years 1 to 4) and administrative proceedings (year 5 fine) is shown in Table 2, as follows:

Table 5
Lawsuits and Administrative Proceedings brought by Sanitation Inc. against the Regulatory Agency

kind	Fine/Period	situation
lawsuit	Year 1	Judgment of merit in The First Degree favorable to the Regulatory Agency and injunction granted by the TJ, giving suspensive effect to the Concessionaire's Appeal.
lawsuit	Year 2	Injunction denied in First Degree and then granted by the TJ, suspending the enforceability of the fine. No sentence.
lawsuit	Years 3 and 4	Injunction denied in First Degree and then granted by the TJ, suspending the enforceability of fines. No sentence.
ADMINISTRATIVE PROCESS	Year 5	Administrative Process completed. Notified to the Concessionaire. Fine suspended by the Regulatory Agency until the conclusion of the agreement.

Sanitation Inc. faces problems with mandatory insurance renewals (due to fines imposed) and receives criticism from the population for non-compliance with some goals, especially in relation to the construction of the ETE – Sewage Treatment Plant, besides having another 25 (twenty-five) years of concession, until the end of the contract.

For this reason, Sanitation Inc., then dissatisfied with the fines imposed in the last 5 (five) years, filed lawsuits requesting the annulment of these fines by the Judiciary.

In this context, Sanitation Inc. presented a proposal to reach an agreement, to pay fines in the form of improvements to the population (instead of payment to the Regulatory Agency), through compensatory measures and the consequent withdrawal of lawsuits pending.

The current legislation provides that the amounts of fines imposed must be paid to the Regulatory Agency and are also part of the regulatory agency's revenue. The legislation applicable to the case is presented in Table 3, as follows:

Table 6
Legislation applicable to the case

Legal Device	description
Art. 37, da CF/88	Principle of Administrative Purpose.
Art. 2 of Federal Law No. 9,784/1999	It deals with the administrative process within the Federal Public

Art. 5., § 6 of Federal Law No. 7,347/1985 Administration and provides for the principle of Consensually. (Law of Public Civil Action), which determines that legitimate public agencies may make the commitment of interested parties to adjust their conduct to legal requirements, through conations, which will have effectiveness of extrajudicial enforcement (Included by Law No. 8,078/1990).

CONFIDENTIAL INFORMATION

In order to resolve the problem with the Regulatory Agency, the Presidency instructed it to negotiate a new agreement with Sanitation Inc. Legal proceedings and administrative proceedings against the Regulatory Agency would be withdrawn and replaced by the new agreement.

Alternatives in case of non-agreement: (i) Proceed in the lawsuits, establishing its thesis of not fit the fine for the annual investment targets and try to set precedent in the courts; (ii) to contract compulsory insurance with other insurers, which accepted the condition of contractual fines; (iii) trying to negotiate directly with the Municipality (contractor), without the intervention of the Regulatory Council; (iv) to accomplish the payment of fines, in kind, through direct installment with the Regulatory Agency.

However, you and the other directors who review the case are afraid to make larger commitments than those stipulated and authorized by the company's shareholders. A week ago, you received the draft of the new agreement with the Regulatory Agency, summarized as soon as:

Option 1: Saneamento S/A will be obliged to pay the full and corrected amount of all fines (BRL 1.3millionreais),and may: (i) be paid in full by installment or, (ii) through the realization of works indicated by the Regulatory Council and approved by the Municipal Council of Basic Sanitation, such as revitalization of squares, construction of parks and walkways over the river that cuts through the city, in amounts equivalent to the debt, with an estimated value of\$ 1.5 million reais.

Option2: Termination of legal proceedings and administrative proceedings against the Regulatory Agency with the subsequent approval of the agreement.

Option 3: The contractual targets for the construction of the Sewage Treatment Plant (ETE) and the sewage system for the next 5 (five) years would be reagreed in 90% of the goals initially proposed, as they prove unfeasible to date.

After analyzing the terms, the shareholders decided on the following options:

Option 1: ZOPA from 1 million (amount due corrected) to 1.3 million reais (in works).

Option 2: Sanitation S/A withdraws the processes immediately.

Option 3: contractual targets: ZOPA from 70% (ideal) to 90% (acceptable)

In view of: (i) the instructions received by the shareholders, (ii) the importance of the contract, the largest and longest of Sanitation Inc., (iii) the remaining contract time (25 years) and (iv) the quality of the provision of sanitation and sewage services of the municipality of your residence, prepare for the final negotiation with the Legal Superintendent of the Regulatory Agency.



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