Negotiating For Property Managers

A workshop for professional Management Company Owners and Brokers

Tom Sedlack, RMP®
General Manager / Owner
33rd Company, Inc. CRMC®

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NARPM: Negotiating For Property Managers
A workshop for professional Management Company Owners and Brokers

"In business as in life, you don't get what you deserve you get what you negotiate“

Dr. Chester L. Karrass
(Who is dead by the way)
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• DISCLAIMER – The information presented in this workshop represent negotiation concepts and ideas that can help individual BROKER and OWNER practitioners gain insight into better methods and techniques for successful negotiations. The information is provided in a conceptual and illustrative format in support of academic freedom where new and sometimes controversial perspectives are presented in the interest of furthering debate on key issues. The ideas and methods discussed are for ACADEMIC discussion and are not NARPM endorsed.
“Grant graciously what you cannot refuse safely and conciliate those you cannot conquer.”

Charles Caleb Colton

“My father said: “You must never try to make all the money that’s in a deal. Let the other fellow make some money too, because if you have a reputation for always making all the money, you won’t have many deals.”

J. Paul Getty
Why is negotiating so hard?

https://www.youtube.com/watch?v=2qsa66AqXT0
link
Why people hate negotiating...

• It can be adversarial
• They think there has to be a winner and a loser. They don’t want to be the loser.
• Fear of failure or embarrassment
• It can feel dishonest
• Threats / Escalation
• Court / Gov’t Agency
• Yelp!

“I don’t like confrontation!!”
Do Property Managers need to be good at negotiation?

- Owner Contracts
- Leases, Renewals
- Damage Deposit Disputes
- On-line reviews (BBB/Yelp! Reviews)
- Complaints / Disputes
- EPA LBP, HUD Complaints, ETC!
- Maintenance Vendor Quality Issues
- Business to Business
- Employee Salaries
- Dealing with Attorneys
- Get Better Deals FOR your Clients
- The list goes on and on... (and on, and on, and on, and on!) and on!

OMG... YES, Negotiation is a required core competency!
Grains of sand add up over time

• Brokers & Owners negotiate multiple things every day. The sum of these negotiations add up over time and make one company significantly more competitive than another.

• There are one-time negotiations for specific issues; and there are negotiations for recurring services.

• Identifying which negotiations are the most important to your bottom line (NPV of future Cash flows) is important. Pick battles, maximize returns.

• Successful negotiation is an EVERY DAY event and a critical Core Competency.

YOU NEED TO BE GOOD AT NEGOTIATING!
What makes a good negotiator?

• Negotiation competency is a combination of experience, knowledge of the law and the industry, your own contracts and processes, an ability to communicate, and a good understanding of PEOPLE.

• Good negotiators use this knowledge & experience to create **legitimacy and leverage to shape outcomes with others.**

• Make good negotiation a **HABIT.**

• Create a foundation that supports effective negotiation. Use a Disciplined & Process orientation.
Negotiation Picard Style.

https://www.youtube.com/watch?v=iYCjqmbsmYA
link
Success in Negotiations – Establishing a Framework

“SAVVY negotiators not only play their cards well, they design the game in their favor even before they get to the table.”

Anonymous

Successful negotiators manage people, processes, and sequence.
Design the game in your favor! Start with a SOLID Foundation.

- Good Contracts, Policies. Know them cold.
  - Better to have a Customer service issue than a Contract issue.
- Good Owners, Good Tenants, Good Properties
  - Retainer fee example to weed out bad owners
  - Published Screening Criteria
  - Avoiding Bad Properties
- Good Communication
- Good Reputation in the Industry.
Building a Solid Foundation

Build a Reputation of **Trust** in the industry

33rd Company® is just another name for TRUST.

**Integrity**

The essence of all things successful is **Integrity**.

Through integrity, trust, reliability and open communication we will establish a foundation of service, and performance that form life-long partnerships. We will provide the knowledge and skill for your unique, individual needs, or will refer you to someone that has those skills. We are dedicated to helping you find your mark in Real Estate, whether it is helping you buy a home, provide rental/way home...

33rd Company® prides itself on staying abreast of technology to provide the resources necessary for our loyal customers. We know what it takes to help you in the home buying and selling process.

DID YOU KNOW?
Renting from a professional property manager provides more protection for you and your security deposit.

Not only do we support the **Landlord-Tenant Laws of the State of Minnesota**, we also are members of a number of professional Property Management organizations, and adhere to the Ethical standards of these associations.

» **Renting Can Be A Smart Investment!**

» **For many, Renting makes sense.**

» **View Our Associations**
### Building a Solid Foundation

**Management Agreement Footer / Adding legitimacy**

<table>
<thead>
<tr>
<th>OWNER’S NAME:</th>
<th>E-MAIL ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOC. SEC. NO. :</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ADDRESS:</th>
<th>PHONE:</th>
<th>CELL PHONE:</th>
</tr>
</thead>
</table>

**PROPERTY MANAGER:** 33rd COMPANY INC. (A Minnesota Corporation), OFFICE (651) 777-5500 1800 Wooddale Drive, Suite 100, Woodbury, MN 55125

**25. ACKNOWLEDGEMENT, RECEIPT OF DOCUMENTS:** This Agreement shall become binding upon the heirs, successors and assigns of the parties hereto. OWNER hereby acknowledges that they have FULLY read the Agreement. OWNER’S, by their signatures below, acknowledging that they have read and received a complete copy of this REAL ESTATE PROPERTY MANAGEMENT SERVICE AGREEMENT. IN WITNESS WHEREOF, the said parties have executed this Agreement the day and year as set forth below:

**OWNER(S)**

<table>
<thead>
<tr>
<th>Print Name</th>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Print Name</td>
<td>Signature</td>
<td>Date</td>
</tr>
</tbody>
</table>

**33rd COMPANY, INC.:**

<table>
<thead>
<tr>
<th>Print Name</th>
<th>By: Its President / Broker / Agent</th>
<th>Date</th>
</tr>
</thead>
</table>

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*Standard Form Property Management Service Agreement. Revised 06/22/2012 © 2006-2012 33rd Company, Inc.*

Owner Initials ____________________  Page 6 of 7
# Building a Solid Foundation

**Lease Agreement Header / Adding legitimacy**

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**RESIDENTIAL LEASE**

**THE MINNESOTA ATTORNEY GENERAL’S OFFICE HAS CERTIFIED THAT THIS LEASE COMPLIES WITH THE MINNESOTA PLAIN LANGUAGE CONTRACT ACT.**

(Minnesota Statutes, Sections 325G.29-325G.36). Certification of a contract by the Attorney General under the plain language contract act is not otherwise an approval of the contract’s legality or legal effect.

**RESIDENT**: (list all persons, and their dates of birth, who will live in the apartment)

<table>
<thead>
<tr>
<th>MANAGEMENT: (enter company name if applicable) 33rd Company inc. / <a href="http://www.33rdcompany.com">www.33rdcompany.com</a></th>
</tr>
</thead>
<tbody>
<tr>
<td>1800 Wooddale Drive, Suite 100, Woodbury, MN 55125  Office: (651) 777-5500  Fax: (651) 777-5501</td>
</tr>
</tbody>
</table>

**STREET ADDRESS OF PREMISES (“Apartment”)**

**APARTMENT NO.**

**DURATION OF LEASE** (enter number of months or month-to-month)

**STARTING DATE OF LEASE**

**DATE THIS LEASE ENDS** (if appropriate)

**NOTICE PERIOD**

**Two (2) months**

**MONTHLY APARTMENT RENT**

**SERVICE CHARGE** 8% of Late Rent / $50 (NSF)

**OTHER MONTHLY RENT CHARGES** (e.g. garage)

**TOTAL MONTHLY RENT**

**SECURITY DEPOSIT**

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Building a Solid Foundation

Professional Credentials / Adding legitimacy
Reality is Perception
Building a Solid Foundation

Good Communications – Setting proper expectations

60 Day Lease Expiration notice
Next – Think Collaboration

• Stop thinking of Negotiation as a contest with a winner and a loser, or that it is adversarial.
• Think of Negotiation as a Collaboration (Win Win). There is no loser, only winners.
• This approach takes the stress and dread out of negotiation, and makes it more fun.
• The only behavior you can control in a negotiation is your behavior – be gracious and understanding.
• Your opponent will be surprised and appreciate the approach, and hopefully will find solutions for your side as well, helping to create a larger pie.

Takeaway: Negotiation is a collaboration, not a contest
Game Theory in Negotiation – Mutual Gain

Game theory is a distinct and interdisciplinary approach to the study of human behavior. The disciplines most involved in game theory are mathematics, economics and the other social and behavioral sciences.

In "games" that allow mutual gain (or mutual loss) is it "rational" to:
• cooperate to realize the mutual gain (avoid mutual loss)
• or to act aggressively seeking individual gain regardless of mutual gain or loss?
## Game Theory in Negotiation

The impact of Taking a Hard Strategy in Negotiations

<table>
<thead>
<tr>
<th>Player #1 Negotiation Strategy</th>
<th>Player #2 Negotiation Strategy</th>
<th>Hard</th>
<th>Medium</th>
<th>Soft</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hard</td>
<td>-2, -5</td>
<td>3, 1</td>
<td>2, 0</td>
<td></td>
</tr>
<tr>
<td>Medium</td>
<td>1, 3</td>
<td>2, 2</td>
<td>1, 0</td>
<td></td>
</tr>
<tr>
<td>Soft</td>
<td>0, 2</td>
<td>0, 1</td>
<td>0, 0</td>
<td></td>
</tr>
</tbody>
</table>

Taking a hard line is a losers game.
Honesty does NOT mean full disclosure

• Part of what makes negotiating hard is knowing that you have your own interests or motives that you may or may not want to disclose.
• It can feel like you are being dishonest.
• Ex. You don’t tell the other party that you have to get the sale to meet your end of quarter sales quota. Or, that you have already printed 3 Million Pamphlets.
• You should never lie about your interests, needs, or priorities, but you also do not have to disclose them either.

Example – Office suite purchase / Assignment at closing.
It’s not just “What” you say, but “How” you say it…
Breaking the ice on your Opponents Interests, Needs & Priorities... versus their position

Don’t Guess...

Find out your opponents interests by asking for directions:

“What is it that you are looking for?”

If only he would look down here!!
Interests, Needs & Priorities

- **Owners** – Risk Aversion (Damage to Home), Cost of Repairs, Monthly Cash flow, Quality of Repairs, Pictures, Trust.

- **Tenants** – Safe, Clean, Good Working Order, Trust with Security Deposit, Fast Maintenance, No reason to leave.

- **Vendors** – Constant flow of work, no advertising or marketing hassle, ability to fit work in between other jobs (Flexibility), fast payment of invoices.

- **Service Providers** – Steady business, reliable partner, cross-referral potential.

- **Competitors** – Some honest, some not. Some want to contribute to the industry, some just want to take from the industry. Watch you back. Famous Quote “*Entrepreneurs tend to lie occasionally, Entrepreneurs in trouble tend to lie a lot!*”

Owners & Tenants

The Positions they take

- **Property Owners are CLIENTS.** Service based Customers – patch defects in service with credits, free month of management etc., or additional services.

- **Tenants are CUSTOMERS.** Product & Rights based - Is home clean, working, good color, good location, etc. They have laws that protect them as renters. Most renters know the laws better than the average Attorney. Deficiencies in the product should be addressed by fixing the product, not so much with fee or rent concessions. Disputes can and should be taken to court as required (Eviction, Small Claims, Collections, etc.)

Negotiate differently with Owners and Tenants – they have different INTERESTS, PRIORITIES, and NEEDS.
Creating Overlap

Examples
• Monthly Rent (Use a Range or “Market” in Owner Contract)
• Move-in Date flexibility
• Rent Ready authorization / solicit conditional improvements authorization
• Owner Handbook / Lease – “subject to reasonable changes”
• Owner Contract – PM authorized to settle “disputes”
• POA to perform more as a Principle in Lease, not just Agent.
Working with Attorneys

- Attorneys sometimes tend to ESCALATE and EXPAND issues. (i.e. Divorce Attorney Strategy – Throwing Stones at the other Attorneys Client.)
- Attorneys have strengths and weaknesses both personally, and professionally. It is not wise to delegate completely to an attorney. (HUD Example)
- Think of your Attorney as another employee on the team, not the leader of the team.
- A Win-Win approach should REDUCE Fees and IMPROVE outcomes.

Takeaway: A good Attorney should be ON your bus, But not DRIVING the bus.
Negotiation in Court

- Conciliation Court – You may NOT want the Judge to decide.
- An agreement made just before the court hearing outside the courtroom has advantages:
  - Lower amount due - offers tenant an incentive to agree and pay. – Settles dispute.
  - Payment schedule that tenant can accommodate. Don’t have money now, but can pay over time.
  - Tenant will AVOID getting judgment on record (if they pay on schedule).
  - Agreement should say the entire claim amount would be due if tenant misses payment schedule. (Then judgment can be obtained on court request).

Tenant has INCENTIVE to pay off agreed amount. If they don’t pay – you are no worse off.
Negotiation in Court

Conciliation Court Example. Tenant missed Payment

Sent copy of judgment and demand letter to co-signer – Co-signer paid in full immediately.
5 Steps to Successful Negotiation

1. Good Planning / Good Foundation
2. Make the pie BIGGER
3. Understand your opponent
4. USE an established PROCESS
5. Lock down the Deal in writing
STEP 1 – Good Planning

Good Planning –
• Successful negotiators make detailed plans. They know their priorities — and alternatives, should they fail to reach an agreement.
• Review your position, strengths, weaknesses, leverage, and goals.
• Analyze your opponent: What are their interests, needs and priorities? (money, principle, time, etc.). Look for Win – Win strategies.
• Understand time constraints and the potential for diminishing returns.
• Create a negotiation plan / process that will move you closer to your goal.
### Example #1 – Trademark Dispute Negotiation / Tom Sedlack

<table>
<thead>
<tr>
<th>Possible Course of Action</th>
<th>Likely Response</th>
<th>Cost</th>
<th>Possible Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consent Agreement</td>
<td>Lots of Back&amp; forth</td>
<td>Probably $10K in Attorneys Fees</td>
<td>A consent agreement would dilute our Trademark</td>
</tr>
<tr>
<td>Accept Offer</td>
<td>Agreement</td>
<td>$8500 (ouch!)</td>
<td>TM withdrawn, $$$</td>
</tr>
<tr>
<td>Counter</td>
<td>They could Accept or Reject</td>
<td>?</td>
<td>TM Withdrawn, or Alternate mark is used, application is continued</td>
</tr>
<tr>
<td>Reject Offer</td>
<td>Counter or Continue with Registration</td>
<td>Deposition, Opposition Costs. TTAB Trial</td>
<td>TTAB Decides, Loss of control and outcome. Still lose $1500 in Admin.</td>
</tr>
</tbody>
</table>

**What did I do? **...  See next page
Thank you so much for your note below. We hope you had a pleasant holiday as well.

We were surprised to learn that actual use of your client’s mark has occurred and that there is additionally a planned marketing campaign scheduled as well. As such, attached please find our response.

With regards to our opposition proceeding, we remain fully committed to seeing this issue go to the TTAB.

If you wish to discuss alternate or modified proposals associated with your client’s rebranding, feel free to give me a ring.

Warmest Regards,

Tom

Tom Sedlack, MBA, RMP
email: tomsedlack@33rdcompany.com
phone: 651-777-5560 x115 fax: 651-777-5501

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STEP 1 – Good Planning

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To: [Redacted]

Subject: RE: Answers to Notice of Opposition 91206460 HANDY-QUICK | CONFIDENTIAL SETTLEMENT COMMUNICATION

Tom,
I’ve talked to my client and they are agreeable to your proposal. I will draft a short settlement agreement consistent with your email and send to you ASAP.

Thanks,
[Redacted]

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To: [Redacted]

Subject: RE: Answer to Notice of Opposition 91206460 HANDY-QUICK | CONFIDENTIAL SETTLEMENT COMMUNICATION

CONFIDENTIAL SETTLEMENT COMMUNICATION

Thank you for your call yesterday regarding the trademark issue. As we discussed, rebranding seems certain to us to be the logical path forward. While you indicated that there is a cost to rebranding, our view is that your client’s use of the mark in advance of registration was a risk undertaken by your client. As such we do not feel an inclination to address this cost directly.

As you know, the matter is being handled pro se, so our real cost to proceed to the TTAB with this matter is pretty low (I estimate $1500 in my time). Since you requested a counter proposal, we would be willing to offer this amount to your client as a courtesy in conjunction with the withdraw of their application.

So if your client can agree to the below, we would be willing to move forward in closing out this dispute if:

- Oberfields will withdraw their TM Application for “HANDY-QUICK”, and provide PTO confirmation.
- 33rd Company will provide estimated opposition costs of $1500 to Oberfields that they can use to support their rebranding.
- 33rd Company will agree to sign a mutual general release, that is mutually agreed to, and such agreement will also contain a
STEP 2 – Make the pie BIGGER

Make the pie BIGGER –

• Think win-win, how can the pie be made BIGGER.
  • It may not be just about money, or service.
  • Tenants in a SD dispute are usually ONLY looking at the money. Property Manager is looking at wasted time in court, a bad YELP review, or a BBB complaint. Could we use a positive testimonial if we agree... Could we use it on-line?
• Negotiators who pay attention exclusively to price or their own priority can turn potentially cooperative deals into adversarial ones. Hard ball negotiations often leave potential joint gains unrealized.
STEP 2 – Make the pie BIGGER

Example #2 – Tenant prospect wants to negotiate lower rent

• Screened / Qualified
• Completed Application
• Would the tenant accept: longer lease with escalation in 1 year? Win-Win.
• Is it January in Minnesota?? How about a 6 month fixed term lease at a discount. Renegotiate everything in June.
• Ask them specifically, “What are you looking for, what is it that you want, or need?”.
• Improvements needed or desired – Short/Long Term ROI
STEP 3 – Understand your Opponent

Understand your opponent –

• Neglecting the Other Side’s Problem can prevent you from a successful outcome.
• Since the other side will say yes for its reasons, not yours, agreement requires understanding and addressing your counterpart’s problem as a means to solving your own. LISTEN! Hear them out.
• Ask them specifically, “What are you looking for, what is it that you want”. You would be surprised to find out their needs (beyond a simple price or term request...)

Know their INTERESTS, NEEDS & PRIORITIES.
STEP 3 – Understand your Opponent

Example #3 – Lead Paint Claim & Resolution / Tom Sedlack

Understand your Opponent –
• Sometimes “This” isn’t about “That”.
• Review your position, strengths, weaknesses, and goals.
• Communicate your strengths so it is clear why you have the position.
  • Legitimacy (Signed EPA disclosure, Move-in checklist, no reports)
  • MDH notice, LBP Inspection report obtained by company
  • Offer to end lease early
• Then ask your opponent what are you looking for. What is it that you want. What documents do you have... What is the legal basis for claim. Surprisingly, they just want to move, and have moving expenses covered, but had “consulted” with Attorney.
• Understand the marginal return for investing in a dispute or negotiation effort & the implications of a failed negotiation. Lock in a deal (Even if it is an agreement in principal).
• Create a negotiation plan / process that will get you to your goal.
STEP 4 – Use an established PROCESS

USE an established PROCESS –

- Know & Leverage your Foundation (contracts, law, communications, etc.).
- Anchors are good for establishing initial positions. Let the opponent be the first to state a “number”.
- Be disciplined and methodical in your negotiations, have a strategy.
- Know when you need to walk away.
- Don’t disclose your cards all at once, or accept a deal too quickly.
- Set a BATNA Best Alternative to Negotiated Agreement (i.e. worst case outcome... It can only get better from there, helps put the issue in perspective).
STEP 4 – Use an established PROCESS

Case Study #4 – Security Deposit Dispute Resolution / Tom Sedlack

1. Good Communication – i.e. Cleaning checklist sent 60 days prior to lease expiration. (Includes discounts for scheduled cleaning & handyman services.)
2. At Move-out – send disposition summary, note detailed documentation, disclose a dispute process to follow. (Legitimacy)
3. Dispute Meeting: Provide tenant the invoices, pictures, disposition summaries. Honest and Ethical. Let’s take a look together, and make sure this was done fairly. (More Legitimacy).
4. Don’t ask or attempt to negotiate anything until all the FACTS are on the table. (You want the tenant to set a low initial anchor based upon their new realization of their “weak” position)
5. “Unfortunately the documentation does not support your position... But, as a courtesy, we can offer a $50 credit as a courtesy just for stopping by... (have them sign a settlement form - includes non-disparagement clause).
6. Charge Owner for Settlement amount, then negotiate with owner the same way if required.
Principled Concessions are better

A concession without reason is of no value.

When a Principled Concession not only has a business rationale, but also is tied to a business value change, it becomes a more powerful motivator.

When an opponent asks for a concession, ask for a Rationale.

A principled concession should be tied to a value change.

Takeaway: Provide a rationale when offering concessions.
STEP 5 – Lock it down in writing

Lock down the Deal in writing after it is negotiated-

• All too often people spend time hammering out a great deal, only to fail to write it down into an executable agreement. Agreements can back-fire if the other party has remorse. Verbal agreements can be difficult or impossible to enforce.

• Get a settlement form, contract, or other amendment signed immediately once an agreement is reached.

• Use Docusign. *(Strike while the iron is hot!)*

• Use a standard form that also has pre-packaged extra terms and conditions (i.e. liability release, non-disparagement clause, etc.).
STEP 5 – Lock it down in writing

Case Study #5 – Self Help for YELP! / Tom Sedlack
### 33rd Company, Inc. 2013 Negotiation Tracker

<table>
<thead>
<tr>
<th>Issue</th>
<th>Description</th>
<th>Initial Offer from Other Party</th>
<th>My Counter</th>
<th>Cash Settlement Amount</th>
<th>Non Cash Terms</th>
<th>Net Improvement from Negotiation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trademark</td>
<td>HANDEYQUICK TM Opposition - USPTO (33rd Company v. Oberfields)</td>
<td>$8500 or consent agreement</td>
<td>Cease and Desist Letter (A good one!)</td>
<td>-1500</td>
<td>Application withdrawn (Trademark Strength)</td>
<td>$7000 + ® Value</td>
</tr>
<tr>
<td>MN UMNIRate</td>
<td>DEEDS gave new company a default Contractor Rate (10.43%). NAICS Codes in system wrong - Called Census B.</td>
<td>10.43%</td>
<td>NAICS Codes in system wrong - Called Census B.</td>
<td>N/A</td>
<td>7.43% * $100K 3.00%(firsty year savings)</td>
<td></td>
</tr>
<tr>
<td>Office Lease</td>
<td>Expires in Sept - Need to renew at 6 month minimum left or loss of leverage.</td>
<td>TBD</td>
<td>To include extra space, 3rd Party Sublease</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*It all adds up...*
The Biggest Negotiation Mistakes

- Not being prepared
- Rushing the process
- Ultimatums
- Getting emotional / adversarial
- Offering the first number
- Breaking the silence
- Focusing on “What” instead of “Why”
- Looking for only 1 solution
- Failing to document the agreement
- Failing to listen to the other party
- Not be willing to walk away from a negotiation.
- Addressing the opponents position instead of their interests or needs. Ask them what they want !
- Lack of use or understanding of Leverage
If an 8th Grader can do it...
So can YOU!

https://www.youtube.com/watch?v=898OUCyBuIM
link
Take Away’s

**Good Negotiation Skills will:**

- Improve your net return
- Provide better conflict resolution
- Improve your reputation
- Reduce Liability
- Reduce the time and effort needed to resolve issues
- Demonstrate effective management in front of employees
- Help you understand that when it is best to walk away from a negotiation.
- Make EVERYONE Happier! **MORE SUCCESSFUL!**
Thanks!

Tom Sedlack, RMP®
33rd Company, Inc., CRMC®

"Don't let it throw you — it's just a negotiating tactic."