FACULTY COLLECTIVE BARGAINING:
PAST, PRESENT AND FUTURE

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Faculty Collective Bargaining - Past, Present and Future

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Interest based bargaining ("IBB") is an attempt to move labor and management away from traditional confrontational and positional bargaining to problem solving bargaining, by identifying issues and exploring the different possible solutions. The parties are encouraged to find solutions to each others' problems. They do not come to the bargaining table with proposals as in traditional bargaining. Instead, they present problems to be solved, and together they will seek solutions.

Where the parties have used this process, they have been successful in my experience. They have been enthusiastic and stimulated in ways they have not been by the traditional process, which has lead to greater creativity, and the beginning of a new and better relationship between labor and management.

Characteristics of Traditional Bargaining

Traditional bargaining is based upon power. The group with the information or the political clout will most likely prevail. Negotiators become advocates for their positions, defending them aggressively. Each party will bluff, threaten and mislead the other regarding its true positions and the lengths it will go to obtain them.

They will mislead the other regarding their 'bottom lines' on their positions. They will
threaten to resort to power tactics, such as striking, contracting out work or filing unfair labor practice charges, to enforce their positions. In many instances they will delay until their positions are accepted. Sometimes they will 'package' their proposals together, making the acceptance of one proposal contingent upon others. Rudeness, aggression and tension are the hallmarks of the bargaining atmosphere. The parties place great importance upon winning at all costs.

The traditional process has evolved over the years. It is based upon the principal that there is only so much in the pie to be distributed; therefore, it is important to acquire as much as possible, and leave little or nothing behind for your opponent. "[T]he more pie the other side gets, the less your side walks away with . . . [I]t can produce both winners and losers. Losing is not career enhancing. [Your opponents] will be only too happy to make you a loser."¹

Collective bargaining laws, particularly in the public sectors, encourage the traditional process. Negotiators will not be honest, because they don't want to divulge their bottom lines for fear of compromising their positions, before submitting their impasse to fact finding or interest arbitration. Holding back, however, encourages impasses, and prolongs the dispute.

For some parties, there is a better way. Interest based bargaining may be that way.

Characteristics of Interest Based Bargaining

Interest based bargaining is more like playing poker with your hand totally exposed. Techniques, such as bluffing, rudeness, posturing, withholding information and packaging proposals are not used. The parties do not submit initial proposals. Instead, they develop and submit clearly defined problems that they will solve together.


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In traditional bargaining the parties submit proposals, which are their solutions to problems that they identified and 'solved' independently of the other. The proposals, however, do not represent their true solutions to the problems. Rather, they are inflated to provide the parties with room to negotiate. All the preparation is done before the parties have met with each other. After exchanging proposals, they argue for their positions with little interest in finding mutual solutions to the problem. Solving the problem becomes secondary to having their proposals accepted.

Through interest based bargaining the parties identify problems that need to be resolved. They present those problems to each other to be solved together. Together they will offer many possible solutions. From those solutions, they will select the best acceptable solution to each problem. That solution will give both parties something. Instead of advocating for the acceptance of their own proposed solutions, they are working together to solve their problems. In this way, both parties can be winners.

Definitions

Interest based bargaining has a vocabulary different from traditional bargaining. We don't speak in confrontational terms such as 'demands', 'proposals', 'positions', 'offers' and 'counteroffers'. Rather, we refer to 'issues', 'interests', 'options' and 'standards'.

'Issues' are problems to be solved by the parties in the IBB meetings. They are presented as questions rather than answers. The questions are refined to find the root cause of the problem. For example, the problem may be that chronically ill faculty members who exceed their accumulated sick leave must take sick time unpaid. When this problem is presented in IBB, the
correct issue is, 'How may we maintain the income of chronically ill employees who exceed accumulated sick leave?' If we were thinking traditionally, we may present it differently, 'Can we provide additional sick leave to employees?' Phrased this way, it is incorrect for IBB.

The correct issue tells us the root cause of the problem and defines a specific set of employees. It also encourages the negotiators to explore different solutions. The second question, however, neither defines the issue nor specifies the group or situation. Instead, the question provides a specific solution, more sick leave for everyone, instead of asking the parties to explore all solutions. It does not encourage discussion, instead it encourages confrontation, especially if the initial response is 'no'.

'Interests' are the reasons why each party wants to solve the problem. They may want to solve it for different reasons, but there individual need is the motivation for them to act and for IBB to work. For example, the union's interest in providing the additional sick leave may be to protect the income of employees, a basic union purpose. The employer's interest may be to retain effective employees, whose only option may be to take disability retirement. They may find that they share some or all of the interests. By sharing their interests, the parties develop common ground and establish mutual need to solve the problem, even when the problem was presented by only one party.

'Options' are the possible solutions to each problem. For example, employees may donate some of their personal accumulated sick leave to the chronically ill employees. The employer may provide short term disability insurance. They may implement a sick leave bank. Employees may borrow sick leave in advance of earning it. Employees may receive partial pay.
while on leave beyond accumulated sick leave. The negotiators begin to explore different solutions rather than arguing for one single solution, more sick leave, which may not be the best solution.

'Solutions' to the issue are found by evaluating each of the options to determine which best solves the parties' needs. The solution is adopted as the tentative agreement in writing and signed as in traditional bargaining.

'Standards' are used to select the solution from the list of options. They are the rules for measuring or evaluating each option; the one that satisfies most of the standards is accepted. Standards, such as, improves labor/management relations, increases productivity, affordable, ratifiable, equitable and fair, though commonly used, may be subjective. In labor relations, however, objective standards are difficult to develop. Whether the standards are objective or not, it is important that the participants discuss them in detail to arrive at a consensus about their meaning in their negotiation context.

Interest Based Bargaining Procedures

Interest based bargaining follows a set of procedures that is designed to keep the negotiators focused. The Maine Technical College System and Maine Education Association used the following steps:

1. Preparing for IBB. 2. Preparing with the constituents. 3. Preparing opening statements. 4. Identifying issues. 5. Developing a list of standards. 6. Identifying interests on each issue. 7. Identifying options for each issue. 6. Identifying the acceptable option. 8. Accepting the option as a tentative agreement. *(Steps 6 to 8 is repeated as each issue is discussed)*

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Preparing for IBB

There are certain general preparations that the parties must make to ensure that the procedure will be successful. They should appoint a facilitator. How they will share costs. How they will handle an impasse. They need to develop a meeting schedule and agree to a meeting place. Someone should be designated to keep a record of the meetings. Lastly, they must prepare statistical data.

The facilitator should be acquainted with collective bargaining and have an understanding of labor relations issues. A knowledgeable facilitator may help to avoid an impasse by suggesting different solutions.

The parties should each pay for the facilitator, regardless of how they may have agreed to split the fee, even when one party is paying the full cost. In this way the facilitator is the neutral employee of both parties.

Next, they should determine how they will deal with an impasse if they are not able to solve all the issues before them. The parties in the Maine Technical College bargaining agreed to submit the remaining issues to the traditional state provided mediation, using a state mediator.

Meetings should be scheduled in advance on consecutive days, whenever possible, rather than randomly over weeks or months. Regular consecutive meetings encourage the participants to develop into a single working unit, sensitive to each other’s needs and concerns. When they meet randomly on single meeting dates, they have to reestablish themselves as a group each time, which increases the total number of days it will take to complete the bargaining. The meetings should be scheduled during the workday so that the participants will be fresh and well rested.
Meetings should be held away from the normal work site, so that the participants will not be distracted. They want to be totally immersed in the process. Refreshments and meals onsite should be available to avoid distraction.

The meeting room should be comfortable and large enough to accommodate the participants. There may be chairs and tables or comfortable easy chairs. They will also need at least two easels with newsprint, markers and masking tape.

Note-taking is as necessary to IBB as it is in traditional negotiations. Each party may take its own notes or they may designate a single person to take official notes for both.

Accurate data is indispensable. Representatives from both parties should meet together to prepare the data that they anticipate will be needed at the meetings. They should develop current wage and longevity costs so that they will be able to evaluate each option relative to wages.

Benefits costs also should be computed, including any anticipated increases in insurance rates and changes in procedures. If changes are anticipated in other contract benefits, such as sick leave, data related to those issues should be prepared for the meetings.

They should agree in advance to the market area and universe they will use to compare wage and benefits. All relevant data must be shared and validated by both parties before the meetings to avoid wasting valuable negotiations time. Presentations from competing benefits providers such as those for health, dental and other insurance, should be made prior to the meetings, if a change in insurance benefits or carriers may be an issue.

Preparing with the Constituents

The parties must prepare extensively with its members, because most people are
comfortable with the traditional process. Changing to IBB may cause the members of the union, in particular, to become wary of their leaders, believing that non adversarial negotiations is equivalent to selling out. It is important that the leaders of both parties educate their constituents to the change, and what may be expected. Everyone is heavily invested in the traditional methods and relationships that they will become suspicious of a contract that comes from IBB if they are not educated in advance.

Most important, in actual preparation for IBB, the leaders must work closely to help their members identify and define the issues. They should be discouraged from preparing a 'wish list', as in traditional negotiations. Instead they should think in terms of problems that need to be solved, rather than proposals (solutions) to be made. Those problems may be identified from situations that have arisen since the last negotiations. They must be developed in terms that will define the problems clearly.

Preparing Opening Statements

Before the first meeting each party should prepare opening statements to be made at the beginning of their first joint bargaining session. The statements may be made by a spokesperson for each or by all or any participants. The statements may contain their expectations for the meetings, why they have agreed to participate in the process, and their expectations regarding the outcome and their future relationships. The opening statements set the tone for the IBB.

Preparing a List of Standards

The parties will develop a list of standards that they will use to evaluate each of the proposed solutions, to eliminate the unacceptable, and to find the final acceptable solution.
Developing the list serves many purposes. By sharing their beliefs, they better understand each other. It is a brainstorming exercise; brainstorming is basic to IBB. Consolidating each other's standards into the final list is training for reaching a consensus.

Some standards that commonly appear on a list are, 'meets employee expectations', 'meets employer expectations', 'equitable', 'improves labor/management relations', 'fair', 'affordable', 'reasonable', 'legal', and 'ratable'.

The list of standards is placed on newsprint and kept on the wall for reference for all the meetings. As each issue is discussed, options will be listed from which a solution will be accepted as the tentative agreement. The solution is determined by measuring each of the options against the standards. The option or group of options that satisfy most of the standards should be the solution.

How that measurement may be made is different for each group. Sometimes the solution is obvious. Some may use a numerical rating system, the one receiving the highest number of points is accepted. Others may use consensus. Some groups work so well together that they intuitively select the solution from the list. Most important, the method that works best is the one that is suitable to them.

Identifying the Issues

The parties need to develop a joint list of issues to be resolved. The list is compiled from those items collected from each party's members during preparation for IBB. At the first IBB meeting they present their issues, one at a time, alternating between union and management. There is no debate over their validity. Rather, they are accepted as presented.

As the process continues, each item is discussed and defined, and as interests are offered,
the need for resolution of each issue will surface. The proposing party, however, may remove any issue from discussion at any time.

One issue at a time is selected from the list. Usually, it is important that the non-controversial one is selected first, to help the parties to become familiar with the process. That issue is taken through the IBB process before another is brought forth for solution.

The selected issue is phrased in question form. A properly expressed question will be easier to solve. The parties should be patient, and not rush at this point. They should define the issue clearly to get to the essence of the problem. In the Maine Technical College negotiations, the parties were better able to solve a problem that had been clearly defined and discussed. The solution is sometimes obvious after the parties have clearly and accurately defined the issue.

Identifying the Interests on Each Issue

Interests are what each party wants to obtain from solving the problem and their concerns for doing it. They share their interests with each other by listing them on the flip chart for each issue. For example, the union's interest in solving the sick pay problem of employees with chronic illnesses may be to maintain reasonable income for them. The union may want to provide the benefit to any employee, regardless of length of employment or provide it to more senior employees. On the other hand, the employer may believe it is the proper thing to do for otherwise-reliable and productive employees. The employer may want to provide the benefit to more senior employees also, and limit the number of days each employee may receive the benefit. The parties, however, will be better able to find solutions after they have made their interests known to each other. They will be more successful because they have shared their needs, expectations and

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limitations.

Developing a List of Options for Each Issue

The parties suggest possible solutions to each issue using brainstorming techniques. Each person offers ideas until there are no more. All suggestions are accepted and listed without comment. "A brainstorming session is designed to produce as many ideas as possible to solve the problem at hand. The key ground rule is to postpone all criticism and evaluation of ideas. The group simply invents ideas without pausing to consider whether they are good or bad, realistic or unrealistic. With those inhibitions removed, one idea should stimulate another, like firecrackers setting off another."\(^2\)

Identifying the Acceptable Option.

Each option is measured against the list of standards. The measuring method varies with each group. In any case, the option which meets most of the standards may be the acceptable solution. Sometimes the parties may find the acceptable solution intuitively, because they understand each other after having shared their standards, interests and concerns earlier. The parties, however, should be free to adopt any method that works for them.

Accepting an Option as a Tentative Agreement.

The accepted option is written as a tentative agreement, either in concept or in final contract form, and signed by the parties. All tentative agreements are set aside until all issues are completed before they are presented for ratification.

Sometimes, the parties may not reach agreement on some issues. They should be set aside

to be discussed later. If they remain unresolved, those issues will be submitted to the traditional impasse procedures. The agreed issues will remain as tentative agreements as in traditional negotiations.

Skills Needed

There are no special skills and characteristics needed that are exclusive to IBB. Those such as a strong sense of advocacy, experience, creativity, risk taking, and verbal skills, will help.

Strong advocacy skills are essential. While the process may be seductive, the participants must never forget that they are representatives of their constituents, and that the tentative agreements must be accepted by their members. Strong advocates usually can accurately anticipate their members' needs.

Experience in negotiations is not necessary. Teams made up of experienced and inexperienced members will be more successful than those with all inexperienced participants. I have worked with one inexperienced group which successfully negotiated a contract in three days. They were ready for IBB because they had no traditional methods and attitudes to change, but they were not experienced advocates. Their members rejected the contract though they developed a creative and excellent contract.

Creativity is one of the primary characteristics of good negotiators, no matter what process they use. It is essential for IBB, because innovation distinguishes it from traditional bargaining. IBB provides the opportunity to explore different solutions to problems, by relying on the imagination and creativity of all participants.

The teams should have some risk takers. They are willing and able to consider non
traditional solutions to common and unique collective bargaining problems. Creative risk takers who are strong advocates are ideal IBB participants.

Good verbal skills are essential. Those who can express themselves clearly and effectively enhance the process.

Common Questions

Where do we find training for IBB? Some union representatives and employer advocates are trained in IBB techniques. State labor relations agencies and the Federal Mediation and Conciliation Service have IBB trained mediators. They will provide someone to meet with the parties to discuss the process, and train the participants.

Will IBB work if the parties' bargaining history has been contentious or hostile? If they are willing to attempt IBB techniques in good faith, they will successfully negotiate a contract. Their relationship will most likely be improved. The negotiations history with the Maine Technical College System and the Maine Technical College Faculty Association had been hostile. The first contract was negotiated after a bitter dispute which involved job actions and a threatened strike which was averted with a last minute agreement. The relationship had not improved much when they agreed to bargain the 1998 contract using IBB.

The negotiation between the Massabesic Teachers Association, MEA/NEA and School Administrative District No. 57 has always been contentious. "Bargaining was positional and confrontational, and there was no binding resolution of the economic items . . . They applied major elements of collaborative bargaining . . . The contract was settled in much less time than
before. Both parties agreed it was a better agreement . . . \textsuperscript{3} They used IBB for the second time to negotiate the current contract.

Will the process fail with a strong union? A strong union is usually trusted by its members. Usually strong unions have considerable influence over the members' willingness to accept tentatively agreed contracts. The membership, therefore, will be less suspicious of IBB, and the agreements made with it if they believe they trust their union.

Do we need a facilitator? An outside facilitator is recommended for the first time the parties use IBB. The facilitator will help them prepare, advise them, and keep them on-task. Unless the participants are disciplined, they will have a difficult time keeping themselves focused. It is easy for them to be sidetracked because everyone is encouraged to participate in the meetings. A facilitator will discourage side conversations and irrelevant discussions. If the parties are well trained or they have become skilled in the process, they may designate a facilitator from the group to lead the discussion, alternating the task for each issue among the participants.

How do the parties find a facilitator? Various agencies, such as the Federal Mediation and Conciliation Service, and state labor relations agencies have mediators trained in IBB. If the facilitator is not selected from a labor relations agency, choose one who has experience in labor relations. A good facilitator permits the parties to discuss the issues fully, while keeping them on-task. A better facilitator has experience in labor relations.

What is the role of paid advocates and union business agents? Paid advocates and union


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business agents may participate in IBB without threatening the process. In contrast with traditional bargaining, they are not the chief spokespersons for their team. Their expertise in defining issues and solving problems is beneficial.

Should the parties receive training before the IBB meetings begin? It is important that participants become aware of IBB techniques before the meetings begin. They may need training to help them identify issues, assistance at membership meetings to describe the process, and help to develop the data and statistics that they will need. Employer advocates and union representatives, trained in IBB and its techniques, may provide the training, even if they will not be active participants in the IBB meetings. Alternately, facilitators may provide training and other assistance.

What is the role of advocacy organizations? Employer organizations and unions can provide the preliminary training and statistical data, and help prepare the members for IBB.

Checklist for Preparing for IBB

1. Employer and Union representatives meet to agree to use IBB.
2. They meet with their members to inform them about IBB.
3. They select a facilitator.
4. They each obtain training from their advocacy organizations if no facilitator is available.
5. They meet with their members to discuss issues for bargaining.
6. They mutually prepare the statistical data that they anticipate they will need.
7. They select a meeting place, and schedule meeting dates.
8. They arrange for refreshments and meals to be provided at the meeting site.
9. They arrange for two easels, markers, masking tape, and newsprint.

10. They decide who will be responsible for each arrangement.

11. They decide who will be the note takers at the meetings, and who will prepare the tentative agreements for signatures.

12. They agree to the impasse procedures.