

The Shadow Negotiation and the Interest-Based Approach at Kaiser Permanente

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As interesting and significant as the Kaiser Permanente case is in and of itself, there were many parallel negotiations that took place just below the surface of the overt negotiations. The author focuses on this “shadow negotiation,” exploring a series of strategic moves that took place in the case, enabling the parties to craft their negotiation process. These shadow negotiations involved positioning moves, process moves, power moves, and appreciative moves. The parallel shadow negotiation was a significant factor in the success of the Kaiser Permanente negotiations.

In 2000, Kaiser Permanente (KP) and a coalition of twenty-six local unions negotiated a truly historic, precedent-setting collective bargaining agreement. This agreement, and the process of getting there, represents one of the largest and most complex applications of an interest-based negotiation (IBN) model to labor relations (McKersie, Eaton, and Kochan 2002). As such, the story has much to teach us about how this interest-based model can work in other labor-management contexts.² The IBN model, inspired by the work of Fisher, Ury, and Patton (1991), and described in the case, involved five steps: defining the problem, determining interests, developing options, agreeing on criteria, and selecting a solution. Certainly, adopting these principles and implementing them marked a major departure from how the parties had bargained with each other in the past. For example, the working groups charged with different subject areas decided not to use proposals as they had in the past, but rather to identify key issues and interests around these (McKersie, Eaton, and Kochan 2002: 15).

What is particularly interesting about the case is not only how these steps translated into practice, but also the complex structures and processes that were put in place to enable this new approach to work. Among other factors, these structures and processes included: getting buy-in, the role of leaders, the structure of committees, training, and the use of facilitators.

Although many interesting insights are contained in the case, the IBN approach does not automatically provide a framework for thinking about or planning for these kinds of concerns. I want to suggest that the concept of the “shadow negotiation” and its framework of strategic moves offers the beginning of such a framework, that can be expanded to encompass much of what is reported in the case (Kolb and Williams 2001, 2003).

Each time people bargain over issues, a parallel negotiation unfolds below the surface of the overt negotiation. Yes, people bargain over issues and interests; but they also negotiate how they are going to negotiate. All the time they are working on the issues, they are engaged in a shadow negotiation in which they work out the terms of their relationship and the expectations they have of each other (Kolb and Williams 2000, 2003).

To focus on the shadow negotiation is to look at how parties get themselves into a good position to negotiate, how they structure the process, how they foster interdependence, and how they promote participation and buy-in. These were the kinds of challenges that the parties at KP faced.

The notion of the shadow negotiation, particularly its typology of strategic moves, is a promising complement to the story of IBN. In applying the strategic moves framework, it is important to note that there are necessary limitations to the data I draw on because the case was written from the perspective of IBN. What I have tried to do is describe the basics of strategic moves from my ongoing work on negotiations in the workplace, highlight some examples from the case, and indicate where future descriptions and analysis would be useful.

Strategic Negotiating Moves and the Kaiser Permanente Case

Strategic moves are actions that negotiators take to structure a role for themselves and for the other party. Positioning moves, both before and during the negotiations, make it possible for negotiators to advocate successfully for themselves. Where the dynamics and complexity of the process threaten to overwhelm decision making and make it difficult for different voices to be heard, process moves can be used to structure the situation.

In situations where the other party threatens to quit the process or where it is in danger of breaking down, power moves bolster perceptions of interdependence and need. In situations where talks stall because the other party feels pushed or misunderstandings cloud the real issues, appreciative moves foster participation and relationship building necessary for IBN.

Positioning Moves

It is often the case that negotiators undermine themselves in negotiation. In the workplace negotiations that I study, negotiators get in their own way when they let opportunities for negotiation slip by or when they are so focused on their weak situation that they accommodate rather than negotiate, or when they confuse toughness with effectiveness and drive the other party away.

Whatever the reason, merely recognizing how we get in our own way can lead to steps to position ourselves more effectively. These positioning moves include recognizing how one is undermining oneself, assessing alternatives to agreement, and getting the help and support you need to carry out the role. Although we often think of these positioning moves as occurring as parties prepare for a case, getting into and staying in position is an ongoing challenge in negotiation (Kolb 2003).

Getting out of one's own way takes on a different meaning in the context of the kind of change undertaken at KP. In initiating the partnership, the parties got out of their own way by explicitly rejecting the approaches of the past. On the union side, it began with a recognition that they were caught in a spiral doing things that seemed contrary to their objectives. From this stance, they knew they wanted to do something differently.

For example, Peter diCicco persuaded the involved international union presidents that an all-out corporate campaign would be a short-term gain but a long-term loss. At the private meeting at the Dallas–Fort Worth Airport, both sides recognized that to move ahead, they needed to abandon past approaches. Dr. David Lawrence, former CEO of the Kaiser Foundation Health Plans and Hospitals, described the need to do things differently:

At some point Al Bolden [a labor relations official at KP] and Pete talked about the need to get together and try something different. And I was willing to try anything at that point because it was clear that the path we were on . . . was a dead end. (McKersie, Eaton, and Kochan 2002: 5)

In order to build commitment to a new process, then, the parties needed to explore the ways in which old approaches would not work. Negotiators caught up in difficult bargaining situations often have trouble figuring out what to do. The advice and support of outsiders can be critical to a negotiator who is stuck seeing the situation from only his/her limited perspective. Other voices can help open up the possibilities. In developing the partnership and then all the way through, the parties jointly recognized that they would need help and support. From John Wells's convening the initial meeting in Dallas, to the hiring of John Stepp and Tom Schneider of RAI to the involvement of William Hobgood on specific issues, the parties enlisted the support they needed to go forth.

We have found in our work that not all help is equally useful. What was important here was not only did the outsiders have considerable experience in doing this kind of work, they also knew the parties well. Their judgment could be trusted and the parties could count on them offering advice that would be workable. In addition, the leaders, particularly on the union side, had the key support of leadership of the various unions. Peter diCicco called it his "steering committee." Obviously, such support helps mitigate the risks each leader takes on in this kind of endeavor.

The third positioning move concerns identification and exploration of alternatives (Fisher, Ury, and Patton 1991). Although not original with the strategic moves framework, we have seen how critical it is for people to explore their alternatives. It empowers them in a negotiation and becomes a force that promotes interdependence — they are more willing to stay in the process and look for good agreements. One important example of how this process worked at KP was the establishment of "gates":

fashion[ed] an alternative approach with various "gates" that the parties would move through before negotiating a national agreement. Either side could exit the process as it passed through these gates if they felt it was not moving in a constructive fashion. (McKersie, Eaton, and Kochan 2002: 7)

The presence of these gates means that parties thought they had a choice, and so had little to lose in continuing with the process. For example:

Each side could opt out and return to the existing schedule for negotiating the many contracts. This fallback induced those with doubts to try the interest-based approach for, as one put it, "What do we have to lose?" Of course, once into the process it was not easy to terminate the effort. Hundreds of participants had invested countless hours, and as bargaining proceeded and momentum developed, most wanted to go the full route. (McKersie, Eaton, and Kochan 2002: 23)

So having the alternative via the gates encouraged parties to try the process. Once invested, the sunk costs make it increasingly more difficult to abandon the process (see Kolb et al. 1994).

In positioning for the negotiation, the parties used the kinds of positioning moves I have observed elsewhere. But this kind of negotiation reveals other dimensions to positioning. The first is the design of the teams, particularly, getting the right people.

The selection of members for the BTGs was done carefully, and individuals were recruited who were already champions of the partnership or who might be converted as a result of participating in the intense process of negotiations. In addition, some individuals with content expertise were also brought on board . . . On the management side the decision was made to designate a number of operating heads, in addition to the human resource and labor relations professionals. (McKersie, Eaton, and Kochan 2002: 12)

A second dimension that this case raises is how cohesion was built on the teams so they would be positioned to work effectively. We don't know much about this, except that leadership was critical as was the use of caucuses. From a positioning perspective, it would be important, going forward, to identify the systematic ways that leaders and others engage in intraorganizational bargaining to build a cohesive team (Walton and McKersie 1965).

Process Moves

In my work, process moves are used when negotiators feel that the existing structure and process is likely to put them at a disadvantage. These moves include seeding negotiating sessions so the process can go more smoothly, framing the process, and building support outside the meetings. In the KP negotiations, these process moves can be observed but in somewhat different, and more extensive, forms.

One of the most critical of process moves was the investment in education and training. Not only does training familiarize people with IBN principles, but it also builds cohesion and prepares negotiators. They know more or less what to expect. Right from the start, education and training was a basic part of the process in the KP case.

There is a great deal of description of the process and how it unfolded. Using the lens of process moves, it is clear that the leaders framed the process by developing some clear rules of engagement to deal with a range of operational issues (Chesler 2000). First in developing the partnership, decision rules were adopted to deal with some of the most difficult issues— what they called walking through the steps. With the exception of Margolin and diCicco, Common Issues Committee (CIC) members were assigned to bargaining task groups (BTGs). Roles were clearly defined: “They are not to be cochairs; they will play a leadership role and model the IBN principles and behavior; they will help keep the BTG on task and on target; and they will serve as the eyes and ears of the CIC.” This role modeling was reinforced by the overlapping memberships across the structures.

Second, consistent with IBN, the process was framed differently, around issues not proposals. Finally, there was a process for cascading the BTG experience down to the local negotiations, where leaders on both sides were involved in setting up structures and processes that would promote the use of new processes and make it less likely that there would be a regression to old ways.

It is also important to mention how pacing was handled. With all the effort at education and training and the complexity of the process, there were complaints about the pace being too slow. However, the up-front investment of time enabled the teams to complete their work in marathon sessions at the end. This is a nice example of the old principle — you have to go slow to go fast. Going forward, it would be important to document clearly the rules of engagement at various stages in the process.

Power Moves

Power moves are actions negotiators take to get and keep parties at the table. In my own work, these moves include raising the costs of the status quo — that is, helping the other understand the consequences of not going forward, and the use of strategic allies in these endeavors. Power moves are intended to engender interdependence so that parties keep the dialogue going when forces might otherwise compel them to stop. There are many examples of power moves used at critical moments in these negotiations.

“Arm twisting” is the term used in the case to describe some of the power moves used by Margolin, diCicco, and their allies. As described by McKersie, Eaton, and Kochan (2002: 18), diCicco “knew how to spell out the advantages of working together and when a leader went the other way (‘let’s shake the trees and see if we can get something better’), Pete stepped back and let some of the other leaders who were committed to going forward apply a little collegial arm-twisting.”

So diCicco used power moves himself and relied on allies to do it as well. Likewise Margolin had to take on similar challenges on her side. Often when she would return from a union meeting, she would find her teammates embroiled in tense discussion and in the process of backing away from positions that they had put on the table. She really had her work cut out for her in managing closure and achieving consensus on the part of the management group.

The case also documents how Margolin and diCicco used each other as allies in using effective power moves especially on the wage issue. According to the case, "at a critical stage the union representatives accepted the reality (and the assertion) that management had 'cleaned out its pockets' and that there was no more money to spend." This statement was accepted as credible when it came from Leslie Margolin, KP's chief negotiator, because she had built a high level of trust with her union counterparts. Several union leaders still wanted to, as they put it, "shake the trees" to test this statement. It took considerable arm-twisting within the union team to blunt the use of this tactic. Likewise, Margolin had to deter her management colleagues from making new demands or backtracking on prior agreements.

Given the importance of arm-twisting — it is mentioned many times in the case — it would be interesting, going forward, to unpack this power move. For example, we know Margolin used time, the time of the Board meeting, as an indirect threat (Kolb and Williams 2003):

The timeline is driven by the need for me to present the final package to the Board on September 13. I need to be able to tell the Board that all local tables have reached agreement, that the union bargaining committees are prepared to recommend ratification to their members, and that ratification is highly likely. If I cannot report this status to the Board, they may decide to redirect funding to other projects. (McKersie, Eaton, and Kochan 2002: 25)

It is also clear from the case that power moves are required at critical moments in the process. In these highly charged moments, the risks that the process will fall apart are great. In the KP case, these included the terms of the partnership, the relationship between national and local negotiations, and the end game around the wage issue. Going forward, it would be important to catalogue these critical moments and analyze the kinds of power moves that encourage parties to keep going and those that are less successful.

Appreciative Moves

Appreciative moves are actions negotiators take to create a positive position for the other. Too often in negotiations, parties adopt an adversarial stance that creates defensiveness on both sides as each tries to protect its turf. Although IBN is intended to change that dynamic, it does not tell us much about the kinds of connections that need to be established for this kind of process to work. In my work, appreciative moves include recognizing and appreciating the legitimate concerns of the other, giving them

"space" to talk about themselves (often in the form of stories or histories), and doing the invisible work of connecting and trust building. We see examples of all these moves in the KP case.

Right from the outset, the parties created space for connection. At the early meeting in Dallas, both parties surprised each other by discovering that they both wanted to do things differently. This storytelling event became an important basis for the relationships and connections that carried the process through. The notion of storytelling itself was important later as well. As one of the discussants observed at the 2003 MIT-PON seminar, when you hear real stories, you can find ways to solve them. From these stories, both parties gained an appreciation for what each needed to have — their make-or-break issues. According to the case:

An important innovation that RAI brought to the effective pursuit of IBN was the notion that at the critical stage of focusing on agreement the parties needed to identify their "make or break" agenda items. . . . For management, the key issue was concern about the need to maintain the flexibility to pay local labor market rates as well as the possibility of a system-wide strike. Constructing a national negotiation structure without a strike deadline met this concern. For union leaders, agreeing to negotiate without

such a deadline left the role of the strike threat ambiguous at best. For them the key question, therefore, came down to whether the IBN principles would provide the information needed and the ability to address their members' critical concerns. (McKersie, Eaton, and Kochan 2002: 21)

Both parties needed to appreciate these make-or-break issues for buy-in to occur.

Another set of appreciative moves concerns the invisible work that negotiators do to create the conditions for IBN to be successful. This was particularly evident in this case in the description of the relationship building between Margolin and diCicco. We use the term "invisible work" to capture the idea that these relationships do not just happen, they need to be cultivated and worked on. That is apparently

what happened here. Margolin and diCicco had worked closely together from the time the partnership began. Further, each carried out invisible work continually, pushing and prodding their organizations:

In fact, their success in negotiating the first national agreement in large part was the fruition of a much longer journey in developing alignment across the disparate elements within their respective domains. On the union side, diCicco had been able to weld together twenty-six separate unions into a working coalition, a remarkable accomplishment given the diverse locations, sizes, and approaches to collective bargaining. On the management side, developing consensus was just as challenging, as witnessed by the initial turndown of the proposal by the KPPG to engage in national bargaining . . . Without the investment in internal organizational development that diCicco and Margolin had fostered, the national negotiations might never have gotten over these rough spots. (McKersie, Eaton, and Kochan 2002: 27)

In Conclusion

The case of IBN at KP is an important one. As many observed at the MITPON seminar, this kind of approach offers much promise for labor–management relations in this country and for the role of unions. Having ways to capture what happens in these leading-edge partnerships — looking at both what works and what needs more attention — is important if we are to learn from these experiences. We lack a systematic way to capture what happened and so we can miss some of the critical process factors. The strategic moves framework can begin to catalogue some of these critical dimensions.

An investigation of positioning moves would focus on how parties get themselves into position to negotiate in new ways. These moves could entail reviewing past approaches and committing to new ones more conducive to IBN, ensuring that the relevant stakeholder groups are represented by people who can work together, and initiating a team-building strategy to build team cohesion. Process moves would cover the education and training that typically accompanies such efforts. But these moves would also include: developing rules of engagement for how parties will interact; having overlapping membership at various levels to role model behaviors and to cascade the rules down in different committee configurations; managing the pace of the process; and keeping an eye on perceptions of the pace.

Parties need to be prepared to use power moves at critical moments when the process threatens to break down. Beyond recognizing these critical moments, leaders need to have a repertoire of direct and indirect “armtwisting” approaches, and to be prepared to enlist allies and surrogates when their own voices wear thin.

Finally, and perhaps most critically, appreciative moves signal the new relationship that is being developed. Appreciative moves involve making spaces where key actors can connect with each other and where much of the invisible work of trust building can occur. In these spaces, parties can begin to appreciate and legitimate the make-or-break issues that must be dealt with. These moves capture the kinds of connection and collaboration necessary to make IBN a reality.

NOTES

1. Here and throughout this essay, I have quoted from the draft case study (McKersie, Eaton, and Kochan 2002) presented at the 6 March 2003 conference at the Sloan School of Management at MIT, “Transforming Labor Management Relations: Interest-Based Negotiations (IBN) at Kaiser Permanente.” This conference was jointly sponsored by the Institute for Work and Employment Research, based at the Sloan School at MIT, and the Program on Negotiation at Harvard Law School. McKersie, Eaton, and Kochan have prepared an edited version of their draft, which appears as the preceding essay in this issue of *Negotiation Journal*. Those interested in the longer, earlier version should contact the Institute for Work and Employment Research at the Sloan School.

2. This paper exemplifies a problem — be careful what you wish for. In the fall of 2002, Robert McKersie asked me to look at the Kaiser Permanente case to see whether there were lessons that could extend beyond collective bargaining. When I read the case, I thought that my work on the shadow negotiation might be relevant. That concept came from my research on women (and more recently men) involved in dyadic, often informal negotiations in the workplace. So he invited me to try. This turned out to be a more difficult project than I initially thought it would be. As the case is written from the perspective of IBN, much of the kinds of data I would need were not really there. So, my observations here should be read as tentative, to say the least.

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