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## **Interest-based negotiation demonstrates its capacity to enhance bargaining outcomes without impairing the parties' relationships.**

Interest-Based Negotiation: An Engine-Driving Change

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Every year, 25,000 to 30,000 managers and union representatives negotiate collective bargaining agreements. These events are the most strategic opportunities they have to produce change, yet they often remain the last bastion of the status quo and old-style labor relations. Most negotiators still engage in old rituals that often result in leaving problems unsolved and potential solutions "on the table."

The inadequacies of traditional negotiations first surface in the preparation phase, which resembles a mobilization for war. Differences are accentuated, villains identified, weapons honed, war paint generously applied. The parties then arrive at the bargaining table in full battle dress. The focus tends to be on separate, or what are assumed to be, competing interests. The negotiations process resembles a strategic retreat from exaggerated positions. Collective bargaining, arguably the parties' most valuable tool, is reduced to an instrument of conflict.

In fairness to traditional bargaining, it works well when the parties control their markets, when they face little competition, when change is proceeding at a digestible pace, and when bargaining structures are centralized, thereby permitting coordinated or pattern bargaining to remove labor costs from the competitive equation.

A new bargaining tool Interest-based negotiation, on the other hand, has demonstrated its capacity to enhance bargaining outcomes without impairing the parties' relationship. Its essence is information-sharing, creative exploration, and working toward mutually beneficial solutions. There are six basic steps to the process.

- 1) The bargainers describe and define the issue, such as the topic to be discussed and/or the problem to be resolved.
- 2) An opportunity for each party is provided to identify its interests in regard to the issue—and to explore the interests of the other party. An interest is a reason why the issue is important to one or both of the parties.
- 3) With a shared understanding of all the interests, the parties engage in step three: the creation of options or potential solutions to satisfy as many of the interests as possible.
- 4) The parties agree on the criteria they will use to evaluate the options. Criteria are the characteristics of an acceptable solution.
- 5) The parties select the options that best meet the agreed-upon criteria.
- 6) The parties integrate or craft these options into a comprehensive solution, concluding the process.

### **Preparation**

A decade of experience in assisting managers and union representatives in conducting interest-based negotiations has convinced us that applying certain approaches and techniques to both the preparation and execution phases of the negotiation can make all the difference between success and failure.

Preparation, an essential key, should begin four to six months in advance of bargaining. An early start allows the bargaining committees sufficient time to be trained in the interest-based negotiation process. Interest-based negotiation training is comprised of three key parts:

- 1) an introduction to the interest-based negotiation model
- 2) skill(s) building
- 3) practice through simulations

Familiarization with the theoretical constructs of interest - based negotiation is the starting point.

Just as traditional bargaining requires a discernible set of skills, so does interest-based negotiation. Active listening, brainstorming, and consensus decision-making lead the list. After initial skill-building practice, participants deepen their understanding, and hone their skills during a series of increasingly complex and challenging simulations, accompanied by critical feedback from a skilled practitioner. Following the training, both parties can make an informed decision whether or not to utilize the interest-based negotiation process. If yes, their preparatory work must begin immediately with the constituents of each party. All constituents should be given an explanation of the process to include how it works, why the bargaining committees have elected to utilize it, and how both the preparation and conduct of bargaining will differ from the old rituals witnessed in previous negotiations.

In our experience, the traditional approach thrives on the perception of fervent advocacy. The only means of counteracting this perception is to inform one's constituents of the shortcomings of the traditional bargaining process in today's environment and to explain how interest-based negotiation is less likely to leave problems and potential solutions on the table.

In the end, it is results that matter. Interest-based negotiation yields superior outcomes and undamaged relationships.

#### **How to start off**

Before formal negotiations begin, the parties should identify the key issues and determine data needs. For complex issues, brainstorming during bargaining may not be an adequate tool. Imagine brainstorming wages, pensions, or a new work system. For these kinds of issues, joint task forces or subcommittees should be specifically chartered—well in advance of bargaining—to gather data, explore options, and/or benchmark best practices.

One large pharmaceutical firm and its union jointly studied a variety of pay-for-performance systems well before bargaining. Their recommendations were then presented to the bargaining committees for consideration and ultimately adopted. Likewise, a Great Lakes utility and one of its largest unions met jointly for nearly a year before bargaining, in an effort to gather information, benchmark best practices, and select the best pension plan for their particular age-mix of employees. Their efforts paid off with a newly negotiated, defined contribution pension plan that better met their needs.

If having the right data is important to expedite negotiations, having the right people present is equally important. The decision to utilize interest-based negotiation requires that careful attention be paid to the composition of the bargaining committees. This is particularly true for management participants in large organizations. In traditional bargaining—utilizing the procedure of proposal, caucus, counterproposal, caucus, and so on—all proposals can be carefully reviewed up and down the organizational hierarchy. In contrast, interest based negotiation is a more free-flowing, dynamic, and spontaneous process. Where traditional bargaining emphasizes control, interest-based negotiation accents creativity. Through the synergy resulting from the problem solving-process, unimaginable options are often generated. If every fledgling idea has to be first run up and down the hierarchical flagpole to see who salutes, this synergy and creativity would be stymied.

There are at least three solutions to this dilemma:

- 1) Make certain that the key players or decision-makers are on the bargaining committee. In one large (50,000 person) organization, the chief spokesperson for management was five layers down in the organization.
- 2) "Empower fully" those at the table to make most, if not all, of the decisions that must be made to reach an agreement. While most senior managers are not personally inclined to devote the time and attention required to be direct participants in the negotiations, neither are they prepared to delegate such critical issues to subordinates.
- 3) Establish wide, but clearly defined, parameters or boundaries around each issue. So long as the bargainers remain within this predetermined "field of play," they are licensed to do whatever they deem appropriate. Whenever negotiations take them near or perhaps beyond these boundaries, they must be permitted to pursue further guidance from their constituents.

A new set of norms is required for the successful utilization of interest-based negotiation. Reverting to traditional norms and behaviors is commonplace when interest-based negotiation is being attempted for the first time. Only by utilizing an experienced facilitator can this be avoided.

### **Setting the ground rules**

Both procedural and behavioral ground rules are critically important to the successful conduct of interest-based negotiation. A mutual understanding should develop around the timetable for bargaining. This timetable would include commencement of bargaining, frequency of meetings, dovetailing local negotiations with master negotiations, discussing any parameters around the field of play, and reviewing the ratification procedure.

A ground rule on information-sharing is needed to encourage free disclosure of information. Ground rules defining the role of spokespersons should be discussed. Participation should not be limited to or funneled through spokespersons. Another key to a successful negotiation is a clear understanding or a ground rule defining consensus decision making. What are individual's obligations when he or she provides consent?

In addition parties should adopt a ground rule that holds the solution to

### **Origin of Interest-Based**

Negotiations Instrumental in the genesis of interest-based negotiations was the publication of Getting to Yes: Negotiation Agreement Without Giving In by Roger Fisher and William Ury, both from Harvard. By the late 1980s, Harvard, Cornell, MIT, and the U.S. Department of Labor introduced early applications of the getting-to-yes model to union-management contract negotiations. By 1990, the Federal Mediation and Conciliation Service introduced the Department of Labor model into their tool kit, and many private consulting firms created their own refinements to the model. Although it is hard to estimate how many companies and unions have engaged in interest-based negotiations, it is safe to say that the vast majority still cling to the traditional win-lose model.

Any one issue to be a tentative agreement pending the solution of all issues. Solutions reached on issues important to one party have no permanent standing unless all issues are resolved to the satisfaction of both parties.

Ground rules addressing the issue of notes and official records are necessary. Bargaining in the interest-based negotiation format requires engaged participants, not passive stenographers. Flip charts and summary minutes should suffice as a "history" between meetings. There should be a clear understanding (ground rule), that nothing said or done during the interest-based negotiation process can or will be used later, by either party, in an adversarial setting.

The parties should also agree on how communications will be handled. At a minimum, there should be a ground rule prohibiting any revelation of the internal discussions, play-by-play attributions, and options developed during the interest-based negotiation process. It is vital that all participants be confident that they can speak freely and exchange creative, "out-of-the-box" ideas, without political or personal risk. Caucuses should not be discouraged. A ground rule should permit either side to caucus whenever either side feels a need or experiences discomfort.

Finally, a day of negotiations should not exceed eight hours. Interest-based negotiation is very demanding; therefore, marathon sessions should never be attempted.

### **Getting started**

We recommend that the first session begin with statements of commitment to the values supporting the interest-based negotiation process. The parties should next examine the issues and determine the relative importance of each to establish a "time budget" for the negotiations. Knowing which issue to tackle first can have a strong bearing on the success of the negotiations and set the tone. Parties do well to pick an easy, yet meaningful, issue first. It is important that the parties see that the time and energy they have applied to their first issue resulted in a satisfactory solution, one that has brought about meaningful gains for both parties.

Both parties should be encouraged to take risks and to let go of the desire to control the outcome. Exhibiting behaviors aimed at helping the other benefit goes a long way toward creating the positive climate that encourages both parties to find creative solutions.

Finally, alternating between each party's issues may minimize the perception that all of the focus and attention (and possibly the gain) is being given to one party.

## Tackling the issues

The negotiators must take each issue and work through the six-step interest-based negotiation process.

1) Describe and define the issue. Properly framing the issue is critically important. Issues can be defined too narrowly or too broadly. If defined too narrowly, the issue may allow little opportunity to develop an adequate option pool. Defined too broadly—ballooning an issue, or making a mountain out of a molehill—invariably leads to frustration or exasperation. The rule of thumb is to be as specific as possible in defining the issue, without becoming so specific that only part of the described problem can be resolved.

2) Identifying and exploring interests. This step must be done well. Interest-based negotiation, as the name implies, is an interest-driven process, and well-developed and clearly articulated interests are essential.

The parties must exhibit a genuine desire to understand the other's point of view. Interests, by their very nature, must be accepted as legitimate and not-to-be-debated. To ask clarifying questions and confirm understanding of the interests is desirable.

Next, it is useful to determine which of the interests are mutual. This is not a “matching” process requiring each interest to appear on both lists. It is simply a means of quickly surfacing common or shared interests, which in turn, reveals fertile opportunities for developing viable options. Interests not shared by both parties are referred to as separate interests and remain because they may be required to be satisfied in the final solution.

3) Creating options. The key to success in this step is to go for quantity. A technique to encourage brainstorming is to focus on the list of interests. Multiple options should be generated to cover every interest.

4) Agreeing on criteria. This is a difficult step. Criteria are the gauges by which we measure, compare, and judge options. There are few “objective criteria.” One of the best gauges for evaluating options is the respective interests of the parties. Generally, there are a few interests that must be satisfied for the solution to be viable or acceptable. In effect, these are criteria and should be treated as such. Coming to agreement on these and any other appropriate criteria determines the outcome of step four.

5) Testing the options against the criteria. Evaluating each option in light of the agreed-upon criteria can inhibit dialogue and become overly mechanical and cumbersome, especially when there is a long list of options and a number of criteria. We have discovered several techniques that enable the parties to avoid getting bogged down.

- Review the list of options and focus on those that present broad approaches to solving the problem. Each broad approach is thoroughly discussed and evaluated for its ability to satisfy the interests of the parties.
- Give each participant a marker and ask him or her to place a checkmark next to the five or six options that he or she believes best meet the criteria. One must make clear that this is not a voting process, but a way of testing for initial preferences. The heavily favored options then become the primary focal points. The remaining options are examined to see if they meet the criteria and can be incorporated into the favored options to enhance their utility. Frequently, many ideas are woven together in ways that meet as many interests as possible.
- In the case of large committees, utilize a “fishbowl.” The fishbowl is a table placed within the larger U-shaped table. Chief spokespersons are each asked to designate two or three people who are particularly knowledgeable about the issue being bargained. The designees are seated at the small table (fishbowl) and are tasked with weaving together the promising options identified by the full committees. Two empty chairs are placed at the small table. At any time, other participants observing the deliberations may occupy an empty chair to offer suggestions or make comments. Once made, they must return to the outer table thus making the seat available for others to do likewise.

Process difficulties are not the only obstacles that can arise at this stage. Substantive concerns can also surface. Groups frequently discover that the ultimate solution to the issue being worked is dependent upon what is being done on some closely related issue. When this situation is encountered, “parking” the unfinished solution and working on the related issues is the best course of action. Once the solutions to these related issues are more clearly focused, the parties can resume work on the parked issue.

Interest-based negotiation, however, does not utilize a “tit-for-tat” procedure. No one must give up something on one issue to realize a gain on another. “Horse trading” is discouraged. Each issue must be viewed as a joint problem to be solved.

6) Writing the contract language. The final step can be done by a drafting committee, union-management pair, or an individual. In drafting, confusion or gaps may appear requiring clarification from the full committee. The final written solution comes back to the group to ensure the group's consensus approval.

### **Common concerns**

One concern we have experienced regarding interest-based negotiation is the amount of time required. Arriving at the table with problems clearly identified, interests articulated, and a timeline developed expedites the flow of negotiations. As the parties become more experienced with interest-based negotiation, process efficiencies are realized. Some complex issues may be broken into several separate sub-issues to expedite resolution. An abbreviated process may also be used to resolve an issue where little is in dispute. Jointly developed data will focus the discussion.

Finally, by using subcommittees to explore complex issues well in advance of the beginning of negotiations, it is possible to have agreements in principle or jointly supported recommendations for the bargaining committee's consideration. In dozens of interest-based negotiations—and many more traditional negotiations—the time required for each is essentially the same.

Another concern frequently expressed by traditional negotiators is whether they should reveal their bottom line. Interest-based negotiation neither requires nor encourages disclosing one's bottom line. The process is designed to yield the most elegant or comprehensive solution possible.

There is, on the other hand, a requirement to reveal one's interests. The articulation of interests on a particular issue is an expression of the issue's importance. Interests must be articulated and data shared, but neither party should be expected to reveal the minimum level for satisfying its interests on an issue.

A third and closely related concern is the applicability of interest-based negotiations to economic issues, particularly wages. Applying interest-based negotiations to these issues may be difficult, but helpful. With an agreement on appropriate data, the parties can frequently create a salary or benefit range. Interest-based negotiations is helpful in focusing the parties away from extreme staked-out positions toward substantive discussion on the value associated with job elements, the interests of employees, the needs of the employer in attracting and retaining talent, and competitive requirements or market forces.

### **Cooperation is the best policy**

On many an occasion, the fledgling efforts of union and management representatives working together have been thwarted by the dynamics of traditional bargaining. Interest-based negotiations, on the other hand, employs the same behavior, norms, and problem-solving methodologies that are utilized when parties cooperate during the terms of agreement. Jekyll and Hyde personas are no longer required.

Interest-based negotiation's subtlety encourages the parties to expand the scope of bargaining. In one automotive-parts plant, the negotiators devoted half of their bargaining time to the issue of how to improve throughput in the operations. Interest-based negotiation fosters problem solving and encourages frank discussions of complex issues. Since strategic issues frequently are not mandatory subjects for bargaining under current labor law, management's willingness to negotiate policy issues is very limited when traditional bargaining prevails. In arriving at the decision to adopt an interest-based approach to negotiations, the parties need to recognize that interest-based negotiation is an art, not a science, and that flexibility is a must. Many issues lend themselves to an interest-based approach, but in particular circumstances, the use of a rigid step-by-step interest-based negotiation may not be appropriate. Openness, sharing of information, working to meet each other's interests, exploring new or creative ideas, and employing mutually agreed-upon criteria, rather than power, will be the ingredients of successful negotiations. Interest-based negotiation is not a magic potion, nor a religion or panacea. It is a tool that can help negotiators be more effective in achieving their aims.

Finally, interest-based negotiation need not be relegated to contract negotiations. Its methods are equally appropriate in resolving day-to-day conflicts in the workplace. Its reliance on a clinical analysis of the underlying interests is more likely to yield lasting solutions than the symptoms-focused, rights-based, litigious techniques employed in traditional grievance handling. The values embedded in interest based negotiations are consistent with those needed for a high-performance workplace.

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