

NONADVERSARIAL NEGOTIATIONS: THE FMCS INTEREST-BASED BARGAINING PROGRAM

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ABSTRACT

Interest-based bargaining (IBB) is a relatively new negotiating process developed by the Federal Mediation and Conciliation Service (FMCS) to facilitate nonadversarial negotiations. Based on the parties' discovery and resolution of mutual interests, rather than the resolve of specific bargaining demands, interest-based bargaining seeks to improve labor-management relations and contract negotiations through problem-solving and consensus decision making. This article describes four stages of the interest-based bargaining process, including the tools and techniques used to implement this unique negotiating approach. The article concludes with an analysis of interest-based bargaining between the Salt River Project and International Brotherhood of Electrical Workers (IBEW) Local 266, Phoenix, Arizona. FMCS regional offices can provide comprehensive information and training regarding IBB philosophy and techniques.

For more than fifty years the Federal Mediation and Conciliation Service (FMCS) has promoted sound and stable labor-management relationships while minimizing the effects of work disputes between unionized employees and employers. Established as an independent federal agency by the Labor-Management Relations Act of 1947, the service is mandated to use mediation and other forms of dispute resolution to promote labor relations peace and minimize conflict in both the private and public sectors of the American economy. With the growth of

public sector bargaining. FMCS mediators have been active in major federal sector disputes and in numerous state and municipal disputes, especially with school districts.

FMCS PREVENTIVE MEDIATION PROGRAMS

During its history, dispute mediation has been the agency's primary focus in the settlement of contract negotiations. FMCS mediation efforts are triggered by a formal notification process mandated by the Labor-Management Relations Act [1, p. 9]. In a typical year, the agency receives in excess of 60,000 bargaining notices from employers and unions, and mediators become active in about 7,000 cases annually [1, p. 8]. Apart from the formal notification process, FMCS mediation services are also directly requested by the parties, often as a result of the mediator's informal contacts within the labor relations community, membership in professional organizations, or position on various committees.

A hallmark of the service has been its ability to foster its mission by offering a variety of preventive dispute-resolution techniques in addition to normal mediation. For example, one preventive mediation program, Relationship-by-Objectives (RBO), is a highly structured agency program of pro-active mediation used most often when a collective bargaining relationship has deteriorated to a level of conflict unacceptable to both parties. Each RBO program is tailored to the specific needs of the parties and is executed in a way that will achieve agreed-upon objectives. Parties experiencing higher than normal levels of grievance activity, low productivity or quality levels, or excessive absenteeism may benefit from an RBO facilitation.

Other FMCS preventive training programs include Committee Effectiveness Training (CET), Labor-Management Committees (LMCs), Orientation to Labor-Management Initiatives (OLMI), and tailor-made FMCS programs designed to address the separate or joint needs of the parties to improve cooperative relationships. In response to workplace discrimination charges, FMCS has developed creative programs to assist equal employment opportunity (EEO) clients in designing systems for implementing appropriate alternative-dispute-resolution (ADR) processes [2].

Of particular interest to public sector practitioners is the use of various preventive mediation programs in the federal sector. Preventive mediation programs have grown significantly since the issuance of Executive Order 12871 by President Bill Clinton. This executive order created the National Partnership Council (NPC) charged with the development of labor-management partnerships throughout the executive branch. Since formation of the NPC, the FMCS has assisted several hundred agencies, departments and installations with the implementation of partnership agreements and the training of partnership councils [3].

INTEREST-BASED BARGAINING

Researchers of the labor movement have long noted that collective bargaining has historically been shaped by its environment. For example, in today's competitive and complex bargaining milieu, resolving differences and promoting mutual gains requires an analytically grounded bargaining process and high levels of problem-solving skill. Consequently, we are now in the midst of what may eventually be described as a technological shift in the skills and techniques required of labor and management negotiators. The FMCS has responded to today's dynamic collective bargaining relationship by creating its interest-based bargaining program. The FMCS reports this unique bargaining approach has become a growing segment of its training agenda [3].

Interest-Based Bargaining: Philosophy

What is interest-based bargaining (IBB)? As defined by the FMCS, interest-based bargaining is, "a problem-solving process conducted in a principled way that creates effective solutions while improving the bargaining relationship" [4, p. 11]. IBB is based on a philosophy of nonadversarial negotiations contingent on joint problem-solving techniques. The focus of IBB strategy is to discover mutual bargaining interests with the intent of formulating options and solutions for mutual gain. An underlying goal of IBB is to create a relationship for the future based on trust, understanding, and mutual respect. In contrast, traditional adversarial negotiations start with defined positions and through deferral, persuasion, trade, or power, the parties work toward the resolution of individual bargaining demands. With traditional bargaining, the result may or may not be to the complete satisfaction of one or both parties. Figure 1 highlights the different approaches used by adversarial negotiations and interest-based bargaining.

Interest-Based Bargaining: Process

Figure 2 shows the four stages of interest-based bargaining. While specific to IBB, these stages largely mirror the major steps in traditional negotiations. The difference between the two bargaining approaches revolves around their distinct philosophy and the varied negotiating techniques used to progress through each stage.

The following description of IBB draws heavily from IBB training manuals and mediator experiences.

Stage 1: Bargaining Preparations.

Because of its newness, IBB will largely be unknown to organizational members. Therefore, before actual negotiations begin, labor and management will need to 1) inform their constituents of IBB philosophy, 2) describe IBB bargaining stages and techniques, and 3) garner support for this novel negotiating

Adversarial	Interest-Based
<ul style="list-style-type: none"> • Discredit opponent's position. Attack individuals. 	<ul style="list-style-type: none"> • Address mutual problems and concerns. Focus on specific issues—not on individuals or past conflicts.
<ul style="list-style-type: none"> • Present and defend position. Provide supporting materials. 	<ul style="list-style-type: none"> • Explore interests of joint concern. Clearly define mutual issues.
<ul style="list-style-type: none"> • Continually insist on predetermined bargaining positions. 	<ul style="list-style-type: none"> • Be open-minded to possibilities and/or future opportunities. Satisfy others' interests as well as your own.
<ul style="list-style-type: none"> • Negotiate to obtain outcomes for your own best interest. 	<ul style="list-style-type: none"> • Work toward satisfying the interests of all concerned.
<ul style="list-style-type: none"> • Use power, pressure, deferral to obtain desired solutions. 	<ul style="list-style-type: none"> • Define acceptable solutions measured against jointly developed standards. Use consensus decision making to reach solutions.

Figure 1. Adversarial versus interest-based bargaining strategies.

Source: [4].

process. Emphasis should be placed on IBB's nonadversarial approach and the defining of issues and interest—rather than bargaining demands—as strategies to reach anticipated outcomes.

During bargaining preparations, negotiators gather all bargaining concerns of constituents. Information gathering is achieved through surveys, interviews, informational meetings, and/or informal discussions. A cornerstone of IBB is comprehensive data collection and analysis of specific issues (defined as a topic or subject for negotiations) and interests (defined as one party's concern about an issue) of both labor and management participants. Instead of presenting a single position on a bargaining demand, interest-based negotiators must accurately represent the issues of all constituents and support them, where appropriate, with concise and meaningful data. Complete data gathering additionally uncovers the diversity and relative intensity of issues while creating a "buy-in" mentality to the IBB strategic process.

To complete their bargaining preparations, negotiators exchange their respective lists of issues and interests for additional review and analysis. This exchange permits both sides the opportunity to develop interests in issues not on their origi-

Stage 1 Prepare for Negotiations	Stage 2 Open Negotiations	Stage 3 Negotiate Using IBB	Stage 4 Communicate Bargaining Results
<ul style="list-style-type: none"> • Educate constituents on IBB and its process • Seek information from constituents. • Compile a list of issues and interests. • Write an opening statement. • Agree on ground rules to guide negotiations. 	<ul style="list-style-type: none"> • Share opening statements. • Discuss issues and redefine issues where appropriate. • Combine issues if appropriate. 	<ul style="list-style-type: none"> • Select an issue. • Discuss all interests behind the issue. • Generate viable options. • Establish standards. • Evaluate each option against standards. • Develop solutions and capture them in writing. 	<ul style="list-style-type: none"> • Prepare a joint statement regarding the process and its results. • Widely communicate outcomes to constituents.

Figure 2. Four stages of interest-based bargaining.

Source: [4].

nal list. This cycle facilitates compilation of a complete list of issues and interests from which written opening statements are prepared. Opening statements articulate specific objectives and expectations for subsequent negotiations.

Prior to their first formal bargaining session, the parties meet to formulate logistical and behavioral ground rules to govern their bargaining conduct. The FMCS helps the parties establish “guiding principles” (e.g., guidelines of openness, candor, truthfulness, trust, etc.) as operating norms to promote a positive bargaining climate. Negotiators are encouraged to post their guiding principles during negotiations as a reminder, and commitment, to promote a supportive bargaining climate.

Stage 2: Opening Negotiations.

Negotiations begin with the exchange of opening statements. Additionally, further public commitment to the nonadversarial intent of IBB is encouraged. Discussion begins over respective issues and interests to further clarify the scope of bargaining concerns. At this point, each side posts its respective list of issues for easy reference and review throughout negotiations.

Stage 3: Negotiate Using IBB.

Of the four stages of IBB, Stage 3 deviates most readily from traditional adversarial bargaining. At the core of interest-based negotiating is a six-step, problem-solving cycle applied to each separate bargaining issue. All six steps are conducted jointly with full participation by all negotiating team members. Basically, the parties present an issue, then move toward mutually developed options to resolve the issue, evaluated against jointly agreed-upon standards. All options, standards, and final outcomes are decided by consensual decision-making. Specifically, for each issue the negotiators:

- discuss all interests behind the issue;
- brainstorm options to resolve interests;
- establish by consensus a set of standards to evaluate the options;
- discuss options relative to the agreed-upon standards;
- rework, combine, and edit options into a consensus solution that meets as many interests as possible; and
- reduce the solution to writing.

FMCS experience shows that bargaining teams will implement the six-step bargaining approach in one of two ways. Negotiators may begin bargaining by resolving a simple issue. This approach builds confidence in the IBB process while helping the parties learn to use novel bargaining tools and techniques. Alternatively, negotiators may choose a difficult issue believing that success on a complex issue will generate a positive climate for finalizing the balance of their agreement. However, regardless of the approach selected, the interest-based process is one of constant issue-and-interest clarification. Specifically, for each issue presented, negotiators hold a two-fold responsibility: to further champion and explain constituents' interests and to seek continued clarification and options to those expressed interests. Options are sought that serve to satisfy one or more mutual interests, or satisfy the individual interests of others. Options are generated through a structured FMCS brainstorming technique. It is through this continuous dialogue that negotiators craft their final agreement.

An important component of IBB is the development of standards used to evaluate options to issues. Standards are acceptable qualities of a solution that are used to narrow or prioritize options. This contrasts markedly with traditional negotiating, where the parties debate the merits of demands or resort to power to settle demands. Examples of standards might include items such as fairness, affordability, legality, flexibility, practicality, equitability, and/or ratifiability. FMCS facilitators insist that standards with ambiguous meaning be clearly defined before they are employed to evaluate multiple options. Options are evaluated against standards using matrix building and consensus decision making. The final choice is captured in writing.

Stage 4: Communicate Bargaining Results.

Interest-based bargaining concludes when the parties jointly communicate their bargaining outcomes to constituents. A jointly prepared statement summarizing the bargaining process, its results, and the benefits achieved serves as a confirmation of the positive consequences of the IBB process.

IBB TECHNIQUES

Interest-based bargaining is novel in both its philosophy and its bargaining process. Also distinct to IBB are the techniques used to expedite a successful bargaining experience. Participants use brainstorming, consensus decision making, active listening, process checking, recording, and matrix building to facilitate pro-active negotiations. Each of these bargaining techniques is explained in Figure 3.

Negotiators learn and assimilate each bargaining technique through FMCS group discussions and specially prepared exercises. For example, brainstorming follows a prescribed FMCS format designed to facilitate participant involvement, resulting in creative ideas. Once negotiators master each skill-building technique, actual bargaining begins.

IBB: THE SALT RIVER PROJECT EXPERIENCE

The Salt River Project (SRP) is a major utility serving the Phoenix metropolitan area. Approximately 2,200 employees are represented by IBEW Local 266 in a broad array of job classifications. The SRP and Local 266 have bargained two contracts (1994 and 1997) using IBB, although the bargaining unit has existed since the late 1940s. The decision to switch from traditional negotiations to IBB was based on three considerations: 1) a mutual desire to change the parties' bargaining relationship, which had become increasingly adversarial; 2) the need to embrace a new bargaining philosophy, allowing for innovative thinking and outcomes of mutual gain; and 3) the desire to use nontraditional bargaining techniques, allowing both parties to resolve increasingly complex bargaining issues.

After concluding two successful contracts using IBB, the parties report distinct changes in their labor negotiations. Six points are noteworthy.

Point 1: unyielding commitment. The IBB process requires an unyielding commitment, not a "let's try it and see" attitude. An attitude of experimentation is not advised. Both parties must demonstrate concrete signs of their commitment to IBB through personal statements, compliance with required training, and an honest desire for labor-management change. Because IBB requires both sides to share nontraditional bargaining information—while being very open and candid during the discussion of issues and interests—one side's lack of support for IBB

Brainstorming

Brainstorming is used to develop creative and innovative ideas. All team members contribute suggestions in a round-robin fashion while a recorder captures ideas without criticism. Brainstorming permits novel ideas to surface, enlarges the pool of ideas including unfamiliar ones, encourages synergy, and discourages evaluation. FMCS brainstorming escapes the boundaries of logical thinking and transcends tradition, precedent, time, staff, or resource constraints.

Consensus Decision Making

Consensus decision making involves finding a solution acceptable enough so that all negotiators can support the decision to some degree. Consensus decision making does not require unanimity nor does it invoke majority vote. Rather, the technique encourages total participation in a give-and-take exchange of thoughts and opinions. Differences are debated and compromises take place. Consensus decision-making can be used to establish ground rules, formulate standards, agree upon solutions, or develop a joint statement.

Active Listening

Active listening is the capacity to hear effectively and understand words, including the emotions and body language of the speaker. It also encourages the asking of questions to verify or expand on the information received. Active listening is particularly useful when selecting an issue, discussing interests, defining standards, or communicating results to constituents.

Process Checking

Process checking allows for monitoring adherence to the IBB process and the interactions of negotiators. This technique gives team members a structured opportunity to share thoughts and/or observations about negotiations. Importantly, process checking prevents negative behavior from becoming ingrained in the bargaining process. Process checking is employed when a team member perceives that ground rules are violated or when negotiators are not following the IBB process.

Recording

Recording is the writing of spoken ideas on a flip chart for all to view. It is used to capture ground rules, proposed options, standards, solutions, and/or issues and interests. Recording helps to preserve language and the meaning of oral statements while creating joint ownership of ideas.

Matrix Building

Matrix building facilitates the evaluation of options against standards. In a matrix formulation, columns represent standards and rows represent options. Negotiators place a "yes" or "no" in each matrix square depending on whether the option satisfies the standards under review.

Figure 3. Interest-based bargaining techniques.

could cause a “fear of exposure” on the other side. Such an exposure could cause bargaining disadvantages should one party revert to traditional negotiations.

Point 2: absence of attitudinal bargaining [5]. IBB negotiators begin bargaining by discussing issues of mutual concern rather than topics with hardened positions. With IBB there is a clear absence of posturing, boasting, bluffing, or other self-centered behavior common when presenting proposals using the traditional bargaining format. In fact, attitudinal bargaining is counterproductive to the rational and open discussions needed to resolve issues of interest to bargaining participants.

Point 3: IBB reduces the number of bargaining issues. Compared to traditional negotiations, the parties begin IBB negotiations with a shorter list of bargaining issues. For example, prior to IBB negotiations in 1994, Local 266 routinely submitted 125 to 150 proposals for discussion, management between forty to fifty. Using IBB, in 1994 approximately fifty issues were open for discussion, and in 1997 about thirty-five issues were resolved. Furthermore, since IBB issues are presented for mutual discussion rather than debate, there is no need for the parties to “psycho-out” the relative importance of another’s proposals, nor is there a need to “trade-off” proposals. Interestingly, SRP negotiators frequently suggested issues that under traditional bargaining would have been proposals common to the other side. This finding suggests a cooperative bargaining attitude based on a desire for win/win negotiated outcomes.

Point 4: physical setting differences. With IBB there is the absence of a formal bargaining table separating each side. Rather, SRP and IBEW negotiators intermingled and sat side-by-side during their discussions. This approach eliminated any hierarchical posturing and the “we” versus “them” atmosphere of traditional negotiations. Furthermore, during the discussion of an issue there was little need for lengthy outside caucuses, since discussions did not follow a proposal-counterproposal agenda but rather an open, roundtable format.

However, during negotiations, there was a significant increase in the number of different individuals directly involved in specific bargaining discussions. For example, if an issue was important to a defined group of employees, those individuals or their representatives were invited to bargaining sessions to share their views on the issue. At various times different groups of linemen, clerical employees, or carpenters presented concerns on issues of interest of them. At SRP/IBEW negotiations it was not uncommon to have forty to fifty people at a particular bargaining session.

Point 5: increased information sharing. With IBB the parties exhibited a greater willingness to be open and truthful during bargaining discussions. The result was an increase in the exchange of information needed for issue resolution. In fact, information sharing seemed to piggyback on itself (e.g., openness created more openness). In contrast, prior to 1994, the parties shared only information required by law or information needed to support a specific bargaining proposal.

Point 6: established common standards. Standards used to evaluate options were developed through brainstorming and consensus decision making. Standards were selected that were broad and, therefore, applicable to the evaluation of a wide array of issues and their respective options. Standards were not developed for each issue, since this would have unduly hampered the bargaining process (e.g., unnecessary cost, time, etc.). Figure 4 shows the core standards developed jointly by the parties.

The above six points illustrate the positive aspects of IBB. However, concerns about this bargaining approach were also experienced. For example:

- Compared to traditional bargaining, IBB negotiations took longer to complete and were more costly to conduct. The need to compile extensive information, pay wages for negotiators and outside participants invited to bargaining sessions, and the need to participate in brainstorming activities all contributed to higher resource utilization.
- Bargaining over wages was not as amenable to the IBB format as negotiating noneconomic concerns. The negotiators found themselves using the proposal-counterproposal approach to resolve wage concerns. However, the IBB format was still retained by the company's offer to provide a fixed pool of money to meet union issues. The responsibility for distributing money rested with the union as it attempted to meet the diverse needs of its membership.

1. Is it legal?
2. Does it fit within the financial plan?
3. Does it preserve or promote safety?
4. Is it acceptable to our board and union members?
5. Can it be understood and easily administered?
6. Is it in the best interest of our customers and business partners?
7. Is it relevant to the issue?
8. Is it consistent with a win-win philosophy?
9. Is it flexible enough to adapt to changing conditions?
10. Is it consistent with SRP and employee security?

Figure 4. Salt River Project, Local 266 core standards.

- Negotiators noted the need for continuous IBB training. It cannot be assumed that new bargaining participants will assimilate IBB theory or techniques through actual negotiations. Furthermore, should IBB bargaining skills become rusty, FMCS retraining is recommended.

CONCLUSION

Interest-based bargaining is unique since it introduces labor and management practitioners to a mutual gains approach to contract negotiations. Participants are taught to negotiate to satisfy the interests of the parties rather than their own pre-determined positions. With its emphasis on nonadversarial negotiations, it is essential that all parties understand how the IBB process differs from traditional bargaining and acknowledge these differences and their impact on the actual conduct of negotiations.

While IBB has proven effective for all bargaining relationships, in general, organizations for which IBB is most suitable have the following characteristics:

- their negotiators are willing to accept problem-solving techniques as a foundation for resolving mutual differences;
- both parties work to maintain open lines of communication between labor and management;
- those involved in labor relations strive for a partnership between labor and management on a day-to-day basis;
- their negotiators develop processes for shared decision making;
- both parties are pro-active in fostering mutual respect between labor and management.

Interestingly, while IBB is used almost exclusively for contract negotiations, the FMCS has used IBB techniques to resolve troublesome grievances. The object is to resolve these grievances at the earliest stage, thereby avoiding costly and time-consuming arbitration. IBB grievance resolution is particularly suited to a diverse workforce where there is need for sensitivity to individual values, positions, and beliefs.

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ENDNOTES

1. Testimony of John Calhoun Wells, Director, Federal Mediation and Conciliation Services in *Commission on the Future of Worker-Management Relations*, February 11, 1994, Houston, Texas. (Testimony available from Federal Mediation & Conciliation Service, Washington, DC.)
2. Information regarding all FMCS services is available from FMCS District offices. FMCS headquarters is located at 2100 K Street, N.W., Washington, D.C. 20427.
3. *Forty-Sixth and Forty-Seventh Annual Reports, Federal Mediation and Conciliation Service*, for fiscal years 1993 and 1994, Federal Mediation and Conciliation Service, Washington, D.C.
4. *Interest-Based Negotiation: Participants' Guidebook* (Federal Mediation and Conciliation Service, Washington, D.C.).
5. R. E. Walton and R. B. McKersie, *A Behavioral Theory of Labor Negotiations*, McGraw-Hill, New York, pp. 3-4, 1965.

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