

## **REVIEW OF TRADITIONAL AND COLLABORATIVE MODELS FOR NEGOTIATION**

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### **ABSTRACT**

The literature on collective bargaining in education distinguishes between traditional and collaborative models. The traditional model generally refers to an adversarial approach in which both parties conceal their true goals, each seeking to maximize its share. The collaborative model, on the other hand, is generally based on relationships characterized by mutual trust and open communication. The terms collaborative or traditional bargaining are used frequently, yet they refer to a wide array of different approaches to collective bargaining. This article seeks to develop a deeper understanding of both models by presenting an overview of the critical attributes of traditional and collaborative bargaining models identified in the literature.

### **REVIEW OF TRADITIONAL COLLECTIVE BARGAINING MODELS**

Teacher collective bargaining in the United States has its roots in an adversary process [1]. A number of models exist for traditional bargaining, which might also be known as conventional, adversarial, or distributive bargaining. A common theme across each is the idea that resources are limited and each party's task is to maximize its share. The concept of a zero-sum game is essential to the manner in which negotiations are conducted in traditional bargaining. The teams view each other as opposites, they conceal their true goals, and they ask for more than they expect to achieve. Each party prepares a set of proposals and tries to persuade the other side to accept it, although there is not necessarily any discussion about the

principles behind the positions that are taken [2]. Traditional collective bargaining is considered adversarial due to this fundamental opposition between both sides.

Wynn characterized traditional bargaining as an anti-intellectual process since it utilizes lying, hypocrisy, threats, and hidden agendas as strategies [3]. He described this as a “singular tragedy in educational institutions, which may be bastions of intellectual life” [3, p. 9]. An adversarial bargaining relationship may damage the relationship between teachers and administrators, reduce public confidence in education, and affect the quality of education in a district. In the school organization, the adversarial bargaining relationship can lead to loss of respect, low morale, distrust, and stagnation [4]. Sunderland cited the case of the school teacher who finds it difficult to teach students bargaining, especially the “collaborative” nature of this exercise, when in their experience they have seen teachers on strike shouting obscenities at substitutes and behaving poorly [5, p. 767].

Despite the drawbacks to traditional bargaining, some have argued that it plays an important role as one bargaining strategy. Rubin warned against disposing of traditional bargaining, noting that the judicious negotiator should rely on a mix of both adversarial and collaborative approaches [6]. He cited several occasions when adversarial bargaining would be appropriate, such as when the parties lack the time to engage in the more convoluted collaborative approach, or when the parties are meeting for one time only to address one issue.

### **Distributive Bargaining**

Traditional collective bargaining in education has several manifestations. One is distributive bargaining, which treats bargaining as a fixed-sum game in which the goals of both parties are in conflict with each other and the gain of one party is the loss of the other. Each side struggles to get as much as possible at the expense of the other [7-9]. An example of this is a scenario in which only wages are being discussed; the value of the wages is distributive, since one side will lose and the other will emerge a winner [10].

Distributive bargaining is an industrial bargaining model that has been characterized as creating or strengthening an “us versus them” mentality, along with sentiments of resentment from the loser in the struggle. The professional negotiators both sides might employ in the process, who do not necessarily have a background in education, can become important policy actors in this rush to win the negotiation [11].

### **Concession-Convergence**

Rubin described distributive bargaining in his concession-convergence model, which is based on the premise that the parties negotiating will reach convergence through a series of stepwise concessions [6]. The essential component of this approach is opposition, in which both sides negotiate with each other knowing

they will give something up in relation to their aspirations. Rubin articulated the mutual-gains model, in which both sides seek to fulfill their interests, as a cooperative alternative to the concession-convergence approach. But he warned against treating the cooperative approach as morally just and the oppositional one as evil [6].

Rubin cited five scenarios in which the concession-convergence model is appropriate. These include, first, a one-time exchange, such as a flea market, when one would not ask a vendor about interests. Second, when both sides do not have the time or resources to commit to a mutual-gains negotiation. Third, a negotiation in which each side reports to its constituencies at the end of the negotiation; those involved might feel extra pressure to show concrete results. Fourth, the negotiations may focus on a single issue, to be addressed only once; and fifth, he argued that the game-like quality of concession-convergence can be appealing to some [6].

The concession-convergence model might be just as appropriate under certain circumstances as a mutual-gains model. The issue is not to choose one approach, or eschew the concession-convergence model as primitive or pointless, but to employ the appropriate model, or mix of both models, according to the situation [6]. This has also been described as mixed bargaining, in which “the parties are motivated to act in a cooperative problem-solving way in order to create maximum values but are also motivated to take competitive steps in order to ensure themselves of high individual outcomes” [10, p. 12]. Mixed bargaining may be more successful than either a competitive or collaborative strategy by itself. But it is complex because the unique goals, styles, and techniques involved in distributive and integrative negotiations make it difficult to switch back and forth between the two [7, 8, 10].

### **Positional Model and Concession Game**

The positional model is another iteration of the distributive method. The two bargaining teams discuss their positions in isolation, spending considerable time developing what each sees as the only solution. The outcome consists of either no agreement with both sides walking away, or one side capitulating to the other. In the concession game, both teams know exactly either what they want or what they are willing to give, but they do not specify this at the beginning for fear the other team will bargain them down. The ensuing negotiation game is a dance [12], one that takes many months and often results in suboptimal agreements. In both models, the negotiations focus on positions and concessions rather than on the ultimate goal of reaching the best agreement for both.

### **Expedited and Progressive Bargaining**

In expedited bargaining, the local association and the school district restrict the time available for negotiations to reach an agreement more expeditiously. The

time frame might be limited to two to three weeks, with seven to ten items permitted for negotiation [10, 13]. Progressive bargaining, like expedited bargaining, resembles a mixture of collaborative and traditional bargaining, although the goal is not a quick settlement. The progressive approach seeks to permit full discussion of every issue that each party brings to the table. It separates economic and noneconomic issues, makes referrals to subcommittees, and uses early mediation [10, 13].

The National Education Association (NEA) literature, which presents discussions of the models of traditional bargaining cited above, as well as collaborative bargaining and commonalities across collaborative approaches to be discussed below, provides an interesting overview of key issues in this study. While the NEA does not have a nonpartisan perspective on collective bargaining, it has been cautiously optimistic about the potential of collaborative bargaining. Lieberman has been an outspoken critic of the NEA, accusing the association of pushing rhetoric on professional concerns while remaining beholden to traditional bread-and-butter issues [14, 15]. Lieberman did not focus on the National Education Association's role in collaborative bargaining but rather excoriated the association, along with the American Federal of Teachers (AFT), for opposing any competition in its labor market, ranging from vouchers to changes in teacher tenure to tuition tax credits. While the concept of teacher representation is valid, he asserted this should not be carried out in a way that blocks reform efforts.

### **REVIEW OF COLLABORATIVE COLLECTIVE BARGAINING MODELS**

The themes of trust and open communication resonate across the numerous collaborative models for collective bargaining. Ongoing problem solving, on the other hand, is not an explicit goal of all the collaborative strategies reviewed here. Negotiation based on interests, one manifestation of collaborative bargaining, is not particularly new; Follett discussed the concept in the 1920s. One illustration is her example of two individuals deciding whether a window would be open or shut. One wants the window open to cool the room down, while the other seeks to avoid a draft; the solution appears when a third party opens a window in the next room [6, 16, 17]. Follett argued against the use of power, force, or compromise, and instead called for integration, which "required the blending of desires to produce common goals that foster a more compassionate, creative, and patient resolution of issues so that all parties feel a sense of winning" [18, p. 121]. Although Follett's early work on collaboration was pioneering, it has long been ignored and many current collaborative models are based more heavily on Walton and McKersie's integrative model published in 1965 [7].

The term collaborative bargaining can create confusion. The NEA noted that the term collaborative bargaining can describe a variety of approaches that may bear little resemblance to one another [10]. For example, one school district might

embrace a “collaborative model” that may focus entirely on a trusting relationship, while another district’s model may focus on principles [10]. This article seeks to clarify the concept of collaborative bargaining by reviewing the critical attributes of several collaborative models. As states and school districts develop their own models of collaborative bargaining, they often draw from the approaches supported by these models.

### **Integrative Bargaining**

Integrative bargaining is a varying-sum game that seeks to find common interests and solve the problems confronting both sides. Both parties are able to gain something from the conflict because the resolution does not require both sides to sacrifice the same amount [10]. The three key steps in integrative bargaining involve: first, the maximum exchange of information about the problems perceived by each party; second, the generation of the maximum number and range of alternative solutions; and third, the assessment of those alternatives to see which best serve the interests of both parties. At least a minimal level of trust is an important theme throughout each step, although integrative bargaining might still be successful even if the relationship of both parties were not entirely amicable [7-9, 19].

### **Principled Negotiations**

The Principled Negotiation model of the Harvard Negotiation Project has played a seminal role in building on Walton and McKersie’s concept of integrative bargaining. Unlike other models of collaborative bargaining, the Principled Negotiation model does not outline a specific process. Rather, it centers around four principles: first, separate the people from the problem; second, focus on interests, not positions; third, invent options for mutual gain; and fourth, evaluate options with standards, not power. The model calls for negotiators to be hard on problems, but soft on people. Both parties should be open about their interests, which allow them to uncover areas of mutual interest [12].

The parties in Principled Negotiation begin by focusing not on their respective positions, but rather on the communicative process. They seek to establish a good working relationship based on trust [12]. Both parties must be creative, seeking to develop a variety of solutions through brainstorming and reframing. Fisher and Ury noted four areas that endanger this process—these include: premature judgment; searching for the single answer; assuming a fixed pie; each party’s concern only with its immediate interest [20]. The authors suggested the parties continually reframe problems and think of different ways to address them, and they reminded the parties to argue on merit and objective criteria, yielding to principle but not to pressure [10, 19, 20].

The goal in Principled Negotiation is not for one side to outmaneuver the other, but rather for both sides to participate as partners in devising a fair agreement

advantageous to both. Several aspects of teacher negotiations dovetail nicely with features of the Principled Negotiation model including: the large number of disputed issues; the parties' shared desire to maximize both their own and their opponents' gains; high power in each party to harm the other; and the existence of a long-term relationship. However, several researchers have observed a few drawbacks to the principled approach. Teacher negotiations, like other labor negotiations, consist of a mixture of zero-sum and nonzero-sum issues, and the Principled Negotiation model may not hold up as well to zero-sum issues such as wages [5, 20].

The unilateral application of Principled Negotiation may have other disadvantages as well. In one case studied by Mandelbaum, despite initial training which was regarded as an essential component of the move toward the new strategy, the process slowed the communication of priorities, raised the expectations of the practicing party, and promoted a sense of self-righteousness [21]. Nevertheless, the participants in that case felt they would maintain their commitment to Principled Negotiation, although they noted that this depended on two essential factors: the continuity of bargaining personnel and the stability of the environment [21].

### **Collective Gaining**

Another collaborative method is the collective gaining approach developed by Richard Wynn [3]. He lamented that teachers and boards often negotiate from positions of opposition rather than apposition, in which they are mutually dependent and seek common goals. Wynn seeks a more effectual resolution to conflict, as opposed to deadlocks or avoidance strategies, in which all participants gain through interaction in a collaborative transaction. His method is based on seven concepts, drawn from sociopsychological theory, that address the implementation of collective bargaining. These include: creating readiness, communicating, understanding, trusting, accepting, caring, and gaining. Creating readiness involves incentives for resolving and controlling conflict, such as when there is a high level of animosity and a concern on both sides that traditional bargaining will not resolve the issues. Communication involves listening to diverse opinions without making value judgments which are regarded as the major barrier to effective communication. The emphasis is on focusing on what is said rather than on the individual who is speaking [3].

Understanding and trust follow, once both sides have been able to evaluate and communicate openly about different alternatives. The open communication leads to a clearer understanding of the issues and positions of the participants in the negotiations. Both parties begin to accept diverse ideas as well as the individuals who express those ideas, and this mutual respect creates caring, a desire for solutions that are acceptable for both sides, and a process that does not defeat or humiliate anyone.

Finally, gaining occurs when the previous six steps have been accomplished; both sides have established a model and climate for mutual gain that can then be used with other problems that may arise. Wynn also noted the importance of willing participants, as well as a skilled facilitator who can aid in this process [3].

### **Win-Win Bargaining/The Goldaber Model**

While the term win/win may be used generally to classify a collaborative approach to collective bargaining [18, 22-24], the term is most often identified as the retreat-style, collaborative model developed by the late Irving Goldaber [25]. It involves local leaders taking a direct role in the bargaining process, rather than professional negotiators or other third parties, and it promises the parties involved will be able to reach a mutually acceptable agreement in 30 days. Goldaber stated that his model:

is based upon an understanding that adversaries should maintain their separate advocacies and proclivities, while engaging in a collaborative search for outcome in which each side gets what it seeks and what it wants [25, p. 22].

The process is built on the notion of trust as well as a view of all members of the negotiation, including board members, administrators, and education employees, as members of a family.

Items are considered individually, and the parties have three options as they debate: yielding willingly, dropping the item, or developing a “newpromise.” The newpromise is defined as a solution to a conflict situation that develops a restatement of the original standoff to arrive at a valid articulation of the obstacle [26]; it is a creative solution in which both sides benefit. The Goldaber Model does not want compromise, which it regards as the loss of something of value, but rather seeks shared solutions in which neither side has given up its goal [27]. The bargaining, which occurs in what is called a “communications laboratory,” is divided into several phases over the course of a month. The phases ensure that each side has an opportunity to recognize and discuss problems with the expectation that mutually beneficent solutions, rather than demands, will emerge. In a situation where a creative solution is not possible, both sides may willingly yield, although it is important to note that this is not treated as a loss, since it is not a forced surrender [10, 17, 27, 28].

The Goldaber Model has been criticized for being time intensive and requiring the involvement of many personnel [29], and the concept of win/win bargaining has been described as “inappropriate and unrealistic” because it characterizes the negotiations as a contest which can become self-fulfilling [30]. Additional weaknesses, identified by Idsvoog, include an assumption that creative thinking and “newpromise” could eliminate conflict and solve all problems, particularly concerns about money, along with a concern over contract matters that were resolved independently of each other, which complicated communication [25].

### **Educational Policy Trust Agreements**

Another collaborative strategy is the Educational Policy Trust Agreement, which is a written compact that attempts to address issues of concern to teachers and administrators that fall outside of the collective bargaining process. These concerns cover three general categories: peer assistance and evaluation; staff development; and school-site management. The agreements are not an alternative to collective bargaining, and they do not necessarily guarantee a reduction of conflict. Their purpose is “to specify educational problems of joint concern to teachers and school managers and to establish mechanisms for working on these problems” [29, p. 33]. Although the agreements fall outside the range of collective bargaining, they involve a considerable amount of collaboration between teachers and management, and the mutual respect and understanding developed through the ongoing dialogue can have an effect on both sides’ approach to bargaining [31, 32].

One key difference between contracts and trust agreements is that contracts seek to specify rules, while the trust agreements develop shared goals; the emphasis is on joint planning rather than accountability [29]. The teacher’s association and district select the area that will be addressed by each trust agreement, and each party then creates a team to write the agreement. But this cannot occur unless both sides have agreed to participate; in many cases, one party is unable to get the other to discuss the possibility of establishing a trust agreement. The process then involves a collaborative conversation in which both sides define the problem and their mutual interests.

The process began in 1987 and has been developed by the Trust Agreement Project in California. The National Education Association (NEA) does not support the concept, however, since the agreements do not have the same legal force of a collective bargaining agreement. Also, the spirit of collaboration that is purportedly developed through the trust agreement process might just as easily be built into the district’s collective bargaining model. The NEA noted that trust agreements are developed on the premise that labor relations evolve in a less adversarial manner, and that these agreements will help teacher-management relations grow into the third, professional phase of relations discussed above. But this is only one possible outcome. For example, one district may be working toward this collaboration until a new superintendent who prefers an adversarial approach arrives. The NEA also questioned how these morally, but not legally, binding agreements would play out in districts burdened with sudden revenue shortfalls or other problems [10].

### **Theory Z Bargaining**

The Theory Z Bargaining model closely resembles William Ouchi’s Japanese management philosophy. The bargaining process involves a management and union goal agreement, a cooperative team approach, concern for employee



welfare, consensus decision making, problem solving, and structures that facilitate communication. Several school districts in Oregon experimented with the method after experiencing frustration with traditional methods. The models used in those districts incorporated these components: each side bargaining for itself with no outside help at the table; teams meeting monthly to discuss problems; and an agreement to negotiate the contract whenever a problem was felt. The benefits included increased trust and cooperation, reduced negotiation hours, and increased communication as a result of the monthly meetings. The Theory Z approach has been deemed successful and has spread to several districts in Oregon; however, it has not become popular on a wider national scale [29, 33].

### **Joint Collective Strategic Bargaining**

The strategic bargaining model differs fundamentally from other approaches to collaborative bargaining efforts due to its focus on the future of the organization. Joint Collective Strategic Bargaining helps the parties think about what they would like their organization to look like and how to get there. It is based on the belief that labor and management have a long-term view, a relationship of mutual respect, and that they can contribute to each other's long-term success. The bargaining process involves reviewing both parties' perceptions of the organization, sharing perceptions of the next five to ten years, and developing joint goals and objectives.

The model seeks to create a community of interest in the future, involving employees and management in planning for the future. Cohen-Rosenthal and Burton noted that it is not necessary to have unanimity between labor and management. The parties may have very different objectives as well as perspectives on achieving goals. Although they continue to discuss their differences, "the knowledge of the common possibilities should help moderate the intensity of disagreement and contain the conflict" [34, p. 37]. The public school system of Glenview, Ill., was one of the first systems to engage in strategic bargaining.

The Glenview system adopted this new approach along with a contract they referred to as a "constitution." The teacher's association and district sought a living document that would resolve problems as they arose, and the U.S. Constitution was used as a model. Their decision-making process focused on four areas they considered critical: the role of the professional, the role of the family, concerns about what is best for students, and questions of accountability. In an analysis based on five years using this process, the Glenview superintendent observed several factors that endangered the future of their strategic relationship. These included external factors such as a change in the board or other personnel and concerns over the amount of time involved in this process. Even though consensus made implementation easier, it was still difficult for those involved to find time for the meetings [10, 19, 34, 35].

### **California PERB Model**

Many states or state teacher associations, such as California, have developed their own models for collaborative bargaining. These are often eclectic hybrids that combine elements of the above-mentioned approaches, particularly the Harvard Negotiation Project model. In California, both the state teachers' association and the California Public Employment Relations Board (PERB) have developed collaborative models. The PERB model will be considered as an illustration of one hybridized state model. The model is based on the assumption that successful bargaining depends on the ability of the parties to achieve shared goals without undermining either party's ability to attain individual goals or protect traditional rights and responsibilities [27].

The PERB model seeks to improve the effectiveness of labor-management relationships through negotiation simulations and team-building exercises to allow the participants to identify sources of conflict and work together as a team. The model combines the Harvard Negotiation Project approach with the work of Kurt Lewin, who articulated a three-step process for organizational change that included unfreezing, moving, and refreezing. This involves committing to changing the current state of the organization to a more desirable one, developing new beliefs and attitudes about the organization, and establishing self-regulating processes that solidify the new behaviors, making them less resistant to change. In San Juan, Calif., the refreezing process involved designing a labor-management partnership. Both parties agreed to establish a labor-management council, which was designed to meet on a regular basis for the purpose of discussing association and district concerns, as well as a negotiations-dispute-resolutions system, which included three "helping" mechanisms: helping teams, focus groups, and external helpers. Many checks have been devised to ensure the collaborative process and allow teachers and administrators to maintain their shared commitment to achieving excellence [27, 36].

### **Other Models**

This section considers several collaborative bargaining models that have played a less-significant role in this debate; several combine elements of the above-mentioned approaches or are simply different versions of the same model. These include situational bargaining, which is based on the premise that different situations demand different leadership styles, meaning that the adoption and exclusive use of one model will lead to failure. The situational approach allows one to select an appropriate strategy to fit various situations. These include conflict, with a high degree of mistrust on both sides; containment, with an emphasis on containing demands; accommodation, in which the emphasis is on building a relationship; and cooperation, in which the trust level is high [26].

Other models include constraint bargaining, in which both parties place limits on the bargaining concession before it begins in the interest of reaching an agreement in a limited amount of time. In marathon negotiations, both sides agree to negotiate formally for no more than a week. Both sides would have already met to define the problems and make initial proposals, and the issues are referred to an impartial arbitrator if an agreement is not reached in the week following negotiations. In single-team bargaining, labor and management agree to work together to identify and solve each other's concerns and problems. Discussions are conducted off the record, surprises and game-playing are not tolerated, and all ideas are carefully examined [28].

This discussion did not include an exhaustive list of collaborative models. Many communities, such as Pittsburgh, which developed "dynamic bargaining" [29], have developed collaborative bargaining models to suit their own needs. They usually build these models based on the key elements identified in the models discussed above.

### **Common Elements of Collaborative Models**

Smith, Ball, and Liontos discussed the commonalities across various collaborative models [29]. They identified six common features: 1) an emphasis on cooperation between teacher unions and school district management; 2) districts are committed to problem solving on an ongoing basis, often meeting at least monthly to deal with problems as they arise; 3) collaborative models involve an increased number of participants, along with an increase in discussions and decisions at the teacher level; 4) there has been a reduction in the amount of time spent negotiating the contract, and the sense of teacher morale has increased; 5) the parties conducted the negotiations themselves rather than involve professional negotiators; and 6) districts involved in collaborative bargaining remembered that collaborative bargaining was not a panacea and were committed to improving the collaborative process itself [29].

Other researchers have identified critical attributes that determine success in collaboration. Generally, these include: a large number of disputed issues; the parties' shared desire to maximize gains for all; high power in each party to harm the other; the lack of a zero-sum game; and the existence of a long-term relationship [5]. Mattessich and Monsey identified six essential factors that influence the success of collaboration [37]. These include: the environment; whether there is a history of collaboration or cooperation in the community; a favorable political and social climate; and whether the collaborative group is seen as a leader in the community. A second category is membership characteristics. Members should include representatives from each segment of the community, they should be able to compromise, and they should share the values of mutual respect, understanding, and trust. The third category involves the process or structure. There should be flexibility, adaptability, and multiple layers of decision

making and members should share a stake in both process and outcome. Fourth, communication should be open and frequent, involving informal and formal channels to communicate. The fifth category addresses the purpose, which is characterized by concrete, attainable goals and objectives, a shared vision, and a unique purpose. Finally, the success of collaboration depends on resources: this includes both sufficient funds as well as a skilled convener who is respected by all participants [38]. There is considerable overlap among the various determinants of successful collaboration. Critical elements include mutual respect, flexibility, and the availability of resources.

## CONCLUSION

The intent of this article was to develop a deeper understanding of traditional and collaborative bargaining by identifying many of the collective bargaining models that fall into these categories. Traditional and collaborative bargaining emerge not as concrete bargaining models, but rather as approaches that describe a range of bargaining models, many of them with overlapping characteristics. Traditional bargaining is rooted in an adversarial approach, one that involves concealed agendas and a lack of trust. Yet there is some variety among the collective bargaining models that fall into this category. Distributive bargaining pits one side against the other in a struggle designed to produce only one winner. The concession-convergence model is also adversarial, yet not as hostile. In this approach, opponents make a series of concessions until they arrive at a mutually acceptable solution.

The central themes that emerged from this consideration of collaboration and collaborative bargaining models included positive communication, mutual trust and respect, consensus building, and mechanisms for ongoing problem solving. Flexibility, the availability of resources, and long-term relationships among key players were also important. The constantly changing environment in which these factors operate in individual districts will also be an important indicator of what form collaborative bargaining will take and what prospects it will have for success. As noted above, many school districts develop their own models to suit their needs. Sometimes these models are hybrids that include both collaborative and adversarial elements. These models often vary, depending on who the participants are or what is being negotiated.

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