Case Analysis

Interest-Based Negotiations in a Transformed Labor–Management Setting

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The authors introduce a group of essays that evolved from a March 2003 symposium on the path-breaking new partnership and use of interest-based negotiation (IBN) at Kaiser Permanente (KP), one of the largest integrated health care programs in the United States. They briefly trace the history of the IBN approach (both success stories and failures); the growth of this phenomenon; and its use in collective bargaining settings. The KP case, the focus of the symposium (which was jointly sponsored by MIT’s Institute for Work and Employment Relations and Harvard’s Program on Negotiation), is by far the largest instance of the use of IBN in U.S. labor relations history.

Early in March 2003, the Institute for Work and Employment Relations (IWER) at the Massachusetts Institute of Technology (MIT) and the Program on Negotiation (PON) at Harvard Law School sponsored a one-day conference to examine the path-breaking partnership and utilization of interest-based negotiations (IBN) in the relationship between Kaiser Permanente (KP) and the Coalition of Kaiser Permanente Unions (CKPU). The title of the seminar captures the focus: “Transforming Labor–Management Relations: Interest-Based Negotiations at Kaiser Permanente.”

A team composed of faculty and graduate students from MIT and Harvard University had been studying the partnership and the 2000
negotiations for some time. Two case studies had been prepared and the team wanted an opportunity — with key participants present from KP and the unions — to conduct a workshop with experienced management and union representatives, primarily from the Boston area. In planning the seminar, several objectives were highlighted. First, to use a medical analogy, we wanted to put the “patient” on the examining table in order to better understand what important lessons could be gleaned from this story. Second, IBN is increasingly being used in labor–management bargaining, so it seemed opportune to take stock of this extensive use of the concept and technique. Third, the seminar also afforded key leaders from KP and the CKPU with an opportunity to receive input on their work in progress from approximately sixty knowledgeable practitioners.

The essays that follow provide background on IBN, especially as practiced in collective bargaining between management and labor; followed by the case study focusing on the 2000 negotiations at KP, an analysis by Deborah M. Kolb, enriched by her work on “shadow negotiations” (Kolb and Williams 2000); and concluding with an appraisal of the challenges and possibilities for IBN.

Overview on Interest-Based Negotiations

At the beginning of the conference, Robert McKersie proposed the following definition of this new approach in negotiation:

“Interest-based bargaining,” or “interest-based negotiations,” or “mutual gains bargaining” (various terms used interchangeably) refers to bargaining processes that are focused on understanding and building on interests and using problem-solving tools as a way of avoiding positional conflicts and achieving better outcomes for all stakeholders. Interest-based negotiations (IBN) uses an array of skills and tools, including: active listening, converting positions into underlying needs or interests, joint data collection, brainstorming, joint task forces, facilitation, and effective communication with constituents.

The Early History of Interest-Based Negotiations

At the outset, it is important to ask the question, “How and why did interest-based negotiations become so popular, gauged by its frequent utilization in labor and management negotiations and strong advocacy for its use by federal agencies, specifically the Federal Mediation and Conciliation Service (FMCS) and the National Mediation Board (NMB)?” To answer the question requires a type of archeology dig to understand its provenance.

The journey starts with the pioneering work of Mary Parker Follett, especially her work first published in the 1920s (see Follett 1940), in which she uses the term “integration” to capture the opportunities presented by
impasses in negotiations — these could set the stage for constructive problem solving. She authored the oft-quoted metaphor about friction — it can be an obstacle but it can also create light. She challenged negotiators to take the constructive turn rather than remaining deadlocked.

Richard Walton and Robert McKersie, in developing *A Behavioral Theory of Labor Negotiations*, published in 1965, drew heavily on Follett (1940) for shaping one of the four subprocesses present in all negotiations, specifically, integrative bargaining. Recognizing that all negotiations are mixed-motive, Walton and McKersie elaborated on a companion subprocess, “distributive bargaining.” Attitudinal structuring and intraorganizational bargaining subprocesses completed the picture. These four functions or roles can be summarized as follows:

1. Negotiators are competitors with their counterparts in claiming scarce resources (distributive bargaining).
2. Negotiators are collaborators with their counterparts in creating value (integrative bargaining).
3. Negotiators are relationship-shapers (attitudinal structuring).
4. Negotiators are coalition managers and consensus builders within their own organization and sometimes purveyors of divisiveness within the opposite organization.

The next stop in the storyline occurred early in the 1970s, when Thomas Kochan extended the theory to embrace multiple parties — a perspective especially relevant to understanding negotiations in the public sector where the typical bipolar configuration of labor and management is augmented by legislative bodies, citizen groups, and a range of other stakeholders (Kochan 1974).


During the 1990s, Walton and McKersie revisited *A Behavioral Theory*, and, with Joel Cutcher-Gershenfeld joining the team, analyzed negotiations from a strategic perspective (Walton, Cutcher-Gershenfeld, and McKersie 1994). The book by the same title introduced the concepts of forcing and fostering and, more importantly, developed the proposition that, in many negotiations, the social contract represents as important an outcome as the instrumental or substantive outcomes.

This concept of the social contract places in perspective the reality that IBN thrives best within the context of a labor–management partnership. And in the case of KP, the parties first chose to gain experience with
the concept and realities of a partnership before embarking on the monumental task of negotiating their first national agreement.

Over recent years, as academics developed and fine-tuned the conceptual frameworks for IBN, an increasing number of labor and management practitioners decided to engage in IBN practices.

**Extent to Which Interest-Based Negotiation Is Utilized**

As far back as 1988, the FMCS sought to stimulate interest in the concept of IBN and made its offices available for training practitioners in this approach to bargaining. Recent survey work by Joel Cutcher-Gershenfeld and Thomas Kochan (2002), using the database of FMCS, documented that by the late 1990s, more than 75 percent of union negotiators and more than 65 percent of management negotiators were aware of IBN. With respect to actively utilizing it, approximately 55 percent of both groups indicated that to some degree they had adopted the concept in their negotiations.

Another piece of evidence for the growth of interest in IBN is that for the past six years, a team consisting of Joel Cutcher-Gershenfeld, Robert McKersie, Phyllis Segal, and Nancy Peace have conducted, four times a year, a two-day seminar under the auspices of PON and IWER aimed at exposing what is now more than three thousand individuals to the concepts and skills of IBN. Further, many well-known private consulting firms, such as Judicial Arbitration and Mediation Services, Inc. (JAMS) and Restructuring Associates, Inc. (RAI), provide assistance to a range of parties involved in complex negotiations. The practice and support of IBN differ across industries and sectors, with public education being an example of a sector where a large number of labor and management negotiators have been trained in IBN and continue to utilize its concepts and practices.

Although the principles of IBN are taking on a growing importance in labor–management relations (Cutcher-Gershenfeld and Kochan 2002), only a handful of in-depth case studies are available of how interest-based principles fare in this complex institutional context of labor–management relations (Eaton and Kochan 1998; Friedman 1994; Hunter and McKersie 1992; Kochan and Eaton 1996; Paquet, Gaetan, and Bergeron 2000; Preuss 1997; Preuss and Frost 2003; Ury, Brett, and Goldberg 1982). These cases indicate that adapting these principles to traditional collective bargaining situations raises many different challenges to conventional wisdom. As we shall see, the KP experience casts these general challenges in sharp relief and offers at least one example of how they might be addressed creatively.

**Interest-Based Negotiations in the Context of Collective Bargaining**

Several key factors have contributed to the growing interest by labor–management negotiators in IBN, such as a desire to find a less constraining alternative to traditional bargaining, the need to tackle increasingly complex
issues, and a commitment to enhance labor–management cooperation. Negotiators typically introduce IBN practices into their collective bargaining in order to improve the relations between labor and management that have been damaged from a history of traditional adversarial bargaining. When adapting the principles of IBN, practitioners need to take into account the long and rich history and set of traditions associated with collective bargaining negotiations.

In general, collective bargaining negotiations are complex and risky endeavors. Collective bargaining issues often range across a wide spectrum, from highly distributive issues such as wages and employment security to highly integrative topics such as safety and health or work organization design (Walton and McKersie 1965). In addition, divergent internal interests within management and labor organizations require significant intra-organizational bargaining, particularly when bargaining covers multiple worksites and/or multiple unions with leaders held accountable to separate constituencies.

Finally, the continuous nature of labor relations produces strong links that carry over and ingrain attitudes and trust levels from prior negotiations, and day-to-day interactions that occur between rounds of formal talks. Overall, collective bargaining negotiations are often situated amid a long acrimonious history between labor and management, and involve multiple constituents who represent a wide range of interests. More often than not, the tensions in American labor relations (historically and currently), coupled with adversarial negotiation practices, have produced a low-trust relationship between labor and management.

Increasingly, labor and management negotiators are concluding that traditional bargaining practices tend to reinforce distrust and are inadequate for managing the complexity and uncertainty associated with collective bargaining. As described by Preuss and Frost (2003), labor–management cooperation has been shown to help improve both organizational performance (quality and productivity) and employee outcomes (job security, wages, and job satisfaction). Consequently, in an effort to address complex issues more effectively, avoid reverting to traditional, damaging, and overly constraining bargaining practices, foster labor–management cooperation, and adapt to rapidly changing environment, labor and management are turning to IBN.

As more firms engage in IBN practices, a number of success stories have emerged, most notably in the airline, auto, glass and ceramics, and steel industries (Preuss and Frost 2003). Along with the success stories, however, several notable failures and complications have been analyzed, highlighting the limits of IBN and the difficulties of introducing, promoting, and fostering IBN practices. Paquet, Gaetan, and Bergeron (2000), for example, concluded that in Canada, although IBN was more effective than traditional collective bargaining in fostering and managing labor–management relations (e.g., the introduction of alternative dispute resolution mechanisms),
it was less effective in dealing with working hours and work schedules. In addition, although IBN generated a greater number of mutual gains, it also led the union to make a greater number of monetary concessions (Paquet, Gaetan, and Bergeron 2000).

Preuss and Frost (2003) have noted several challenges in maintaining, fostering, and repeating IBN practices, including management seeking greater control over labor, and labor’s frustration over continued management hostility. In general, the conditions that enabled the success of the first use of IBN for collective bargaining often change, as do the motivations of participants. In today’s environment, for example, unions may feel they have less clout due to runaway health care costs, pervasive plant closings and mass layoffs, management’s ability to resort to alternative labor sources, particularly overseas, and in the case of a strike, the aggressive use of temporary agencies facilitating the replacement of workers (Dresang 2003). Although Paquet, Gaetan, and Bergeron (2000: 292) found that IBN “helps the firm to adapt to a changing environment,” the history of distrust, the complexity of the negotiation process, and the complexity of change make it difficult and risky to adopt and maintain IBN.

Against this backdrop of experience, the use of IBN at KP presents an interesting contrast and an example of sufficient richness to merit close examination.

NOTE

1. The team from MIT and Harvard studying the partnership between KP and the CKPU includes: Susan C. Eaton and Noorein Inamdar from Harvard, and Thomas A. Kochan and Robert B. McKersie from MIT. The planning team for the conference included Susan Hackley, James Kerwin, and Jeremy Bird from the Program on Negotiation at Harvard Law School, Joel Cutcher-Gershenfeld and Robert McKersie from MIT, and two Boston-based arbitrators and mediators, Nancy Peace and Phyllis N. Segal.

REFERENCES


