Kaiser Permanente: Using Interest- Based Negotiations to Craft a New Collective Bargaining Agreement

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Robert B. McKersie, Susan C. Eaton,
and Thomas A. Kochan

Building on a new labor–management partnership, Kaiser Permanente and its nearly seventy thousand union employees negotiated a five-year contract agreement in 2000 based on the principles of“interest-based negotiations.” The people who made this remarkable achievement happen, as well as the historic background of the case, are described and analyzed. A key element to the success of this initiative was the back-and-forth work of many different groups, including joint labor–management committees, coalitions of unions, bargaining task groups focused on particular subject areas, and local and national leaders of the company and its unions. Using illustrative comments
from actual participants in this complex, nearly year-long negotiation process, the authors explore how the parties crafted their agreement.

In 1997, Kaiser Foundation Health Plan and Hospitals and the Permanente Medical Groups (hereafter Kaiser Permanente, or KP) and a coalition of twenty-six local unions representing at the time nearly fifty-seven thousand Kaiser employees created what is now the largest and most ambitious labor–management partnership in the United States. In 2000, the parties faced the major challenge of negotiating their first labor agreement under their new Partnership agreement.They designed and implemented what is also the largest and most complex interest-based negotiations (IBN) process
carried out to date in the field of labor–management relations.We describe this case here both to provide a historical account of the process and to highlight the lessons that might be learned from how these parties addressed a series of generic challenges encountered when introducing IBN principles into collective bargaining.

The Historical and Institutional Setting

Kaiser Permanente (KP) is America’s leading nonprofit health maintenance organization (HMO) and hospital and health care delivery system, and is the third largest integrated health organization in the U.S. (following the Veteran’s Administration and Mayo Clinic).Nationwide KP serves 8.6 million members across nine states and the District of Columbia; fully 80 percent of its operations are still in California, where it began. It was in 1938 that Henry Kaiser created the nation’s first prepaid group health practice
and insurance programs to provide coverage for the sixty-five hundred workers building the Grand Coulee Dam; and together with unions representing blue collar workers, Kaiser expanded the health organization in California, Oregon, and Washington during World War II. Advance payment of union dues helped provide the funds to expand into Southern California.

KP consists of a partnership between two organizations: (1) Kaiser Foundation Health Plans and Hospitals; and (2) the Permanente Medical Groups. The latter are composed of physicians and other health care providers; the former, as the name suggests, is made up of the HMO insurance plan, and the twenty-nine medical centers and many other health care facilities owned by KP. The eight medical groups operate as professional corporations or limited partnerships, contracting services solely to Kaiser Foundation Health Plans and Hospitals; at the same time, Kaiser Foundation Health Plans and Hospitals retains its nonprofit status.

KP workers (including nurses, technical workers, service and maintenance, and many clerical workers) were unionized shortly after Henry Kaiser created the nonprofit organization during World War II, and unions continue to represent most eligible workforce members.Today, KP employs approximately one hundred thirty thousand individuals, of whom almost eighty thousand are represented by one of eight different national or international unions and one local independent union. Because KP’s operations are highly decentralized, so too has been collective bargaining. Traditionally, bargaining had taken place separately with more than thirty different local unions and more than fifty bargaining units, governed by separate labor contracts with different expiration dates.

Because of its origins, in part, management worked to develop positive relationships with the unions representing its workforce. Although labor–management relations have had their ups and downs over the years, they have been mostly positive during KP’s history. Part of the reason for this was that until the 1980s, KP could use some cost-plus pricing, thereby passing on some costs of improvements in its labor contracts to its customers, or “members.” KP and its unions sought for the organization to be the health care “employer of choice,” in their words.

However, in the late 1980s and early 1990s, KP began experiencing severe competitive challenges in its markets, particularly from for-profit health care providers aggressively seeking to increase market share. KP also decided on an expansion strategy around the country, including in predominantly nonunion areas such as Atlanta and North Carolina.With these new pressures,management implemented a tougher labor relations strategy that produced a series of layoffs, strikes, collective bargaining concessions, perceived “de-skilling” (such as substituting less highly trained and lowerpaid employees to do the work of registered nurses), and an increasingly demoralized workforce.“This is not the Kaiser we came to work for”was a comment often heard from frontline workers.

Developing a Partnership

By 1995, a crisis was building. Concession contracts had angered many union locals and more trouble loomed ahead. The largest single international union at KP, the Service Employees International Union (SEIU), convened all its local unions with KP union members to discuss strategy.“What was happening was contrary to how we wanted to build relationships and build the [health care] industry,” recalled Margaret Peisert, then an SEIU researcher and now assistant director of the Coalition of Kaiser Permanente Unions (CKPU).SEIU then turned to the Industrial Union Department (IUD) at the American Federation of Labor-Congress of Industrial Unions (AFLCIO) and asked its staff to call a meeting of all the unions representing workers at KP. Some KP nurses, represented by the American Federation of Teachers (AFT), joined the SEIU in this request.The IUD had many years of experience in coordinating bargaining efforts, and so Peter diCicco, then president of the IUD,welcomed the opportunity to address the critical problems at Kaiser. Peter diCicco was widely respected by his union peers for his thirty years of experience in negotiations with General Electric (GE) as business agent of the International Union of Electrical Workers’ (IUE) local representing GE workers in Lynn, Massachusetts as well as his success in leading coalition bargaining for the AFL-CIO’s IUD. Peter diCicco describes how the various parties got started:

We took our normal approach.We called an initial meeting of all principal unions. More than one hundred people attended.We knew from experience that we had to get all the unions on board with a clear strategy for how to deal with Kaiser. It became evident, given the negative attitude of the public toward strikes in health care,we had to consider other options, and so we began looking at other means to achieve bargaining strength — corporate campaigns and such. I went to the international unions for a supplemental budget to fund the corporate campaign. They accepted the supplemental budget and we staffed up and started the corporate campaign — a successful one. But it became clear to us if we proceeded with the campaign,we would lose control of all this. [So] . . . I went to the international union presidents and told them these guys [KP] are not the worst of employers we deal with, and we might do permanent damage to them and to our sixty-five thousand union members if we mounted an all-out corporate campaign or used the information we amassed for short-term advantage or leverage.Was there an alternative? How could we work to improve quality without damaging the already stellar quality reputation?

Based on his experience in Lynn, diCicco decided to try a “partnership approach” with KP and enlisted John Sweeney, then president of SEIU, now president of the AFL-CIO, to propose a labor–management partnership to David Lawrence, then chairman of the board and CEO of Kaiser Foundation Health Plan and Hospitals.

Lawrence describes the inception of the national partnership from his perspective:

At some point Al Bolden [a labor relations official at KP] and I talked about the need to get together and try something different. And I was willing to try anything at that point because it was clear that the path we were on . . . was a dead end.We were going to be facing labor strife in every corner of our organization.We had fifty-four labor contracts and thirty-six unions; at the same time we were in a fair amount of conflict between the Medical Groups and the Health Plan — what I saw was an organization that was starting to balkanize in very serious ways. External things were driving a lot of this; a lot of it was being driven by changes we were trying to make in the organizations at a strategic level. I agreed . . . that we would meet with labor representatives privately at Dallas–Fort Worth airport. It was almost a make-orbreak meeting. What I remember thinking about at that meeting was:We’ve got nothing to lose being forthcoming about what I believed needed to happen in terms of the relationships . . . [and] about the kind of collaboration that I think is required to deliver modern medical care in all of its complexity.We had nothing to lose in acknowledging the fact that there are no answers to these things; they grow out of the collective effort of teams of people who are working on specific areas of medical care delivery in terms of how you best organize. So I said these things. Peter [diCicco] said I took away all of his thunder because he was prepared to say all of those things.And it turned out that there was almost a revelatory session. . . .

However, KP is a complex organization, and getting approval to discuss a national partnership strategy with most or all of its labor unions was not a simple process.The overall KP board of directors took six months to consider the proposal and discuss it at length. One board member, a former chair of Northwest Power and Gas, had had a positive experience with labor–management partnership and encouraged Lawrence to explore the idea. Eventually all the unions formed a coalition, now known as the Coalition of Kaiser Permanente Unions (hereafter the Coalition or CKPU), and the board agreed to support partnership discussions. But this was just the beginning.

One of the first things the parties did after agreeing to pursue more collaborative strategies was to look for a consulting firm with significant experience in facilitating labor–management partnerships. After interviewing a number of candidates, they chose the Washington D.C.-based firm Restructuring Associates, Incorporated (RAI), founded by Tom Schneider. Facilitator and consultant John Stepp led RAI's efforts.

"Walking through the steps," as diCicco called it, to produce a real partnership agreement was actually an intensive negotiation and problemsolving process that took most of 1996 and into 1997,led by senior KP executives and union leaders, with significant assistance from RAI's Stepp and Schneider. The toughest issues involved employment security, union security, and the scope of shared decision making. An approach to shared decision making was proposed by RAI using a continuum ranging from, at one
end, unilateral decision making with management informing union leaders of actions to be taken, to full participation and consensus decision making at the other end.

Employment security proved to be both a particularly difficult issue and also one of the most critical. The language finally agreed to by the parties stated that one partnership goal was to "provide [KP] employees
with the maximum possible employment and income security within [KP] and/or the health care field." This was later to require additional clarification, but it was an essential element of the initial agreement.

"People felt it was fundamental," says Margaret Peisert of SEIU. "You couldn't ask people to step up to the plate,change the way they were doing things, get involved in joint decision making, redesigning work, and figuring out new ways of delivering services, or finding efficiencies, if they were going to be putting themselves or a coworker out of a job."

Once the labor and management leaders (and respective principals) had agreed on the key provisions of the proposed labor–management partnership, it was submitted to a vote of the membership of the twenty-six unions. Before this vote, however, an intensive process of education of unionized frontline workers took place.

Most union members had never heard of a labor–management partnership, nor did they have any idea how it would affect their interests.CKPU held a national teleconference to brief local and regional union leaders, and produced videos describing the partnership that featured AFL-CIO President Sweeney describing his vision for what a partnership of this size and scope could mean for the future of labor relations in America and for the labor movement.The partnership was approved by 92 percent of the local union members voting, with high turnout.The only major union choosing not to join the partnership was the California Nurses Association (CNA) representing approximately eight thousand registered nurses in northern California; the leaders of CNA,which is not an AFL-CIO union,chose to withdraw from discussions before the partnership was negotiated in final form, in part because of ongoing disputes with KP.

Preparing for Interest-Based Negotiations

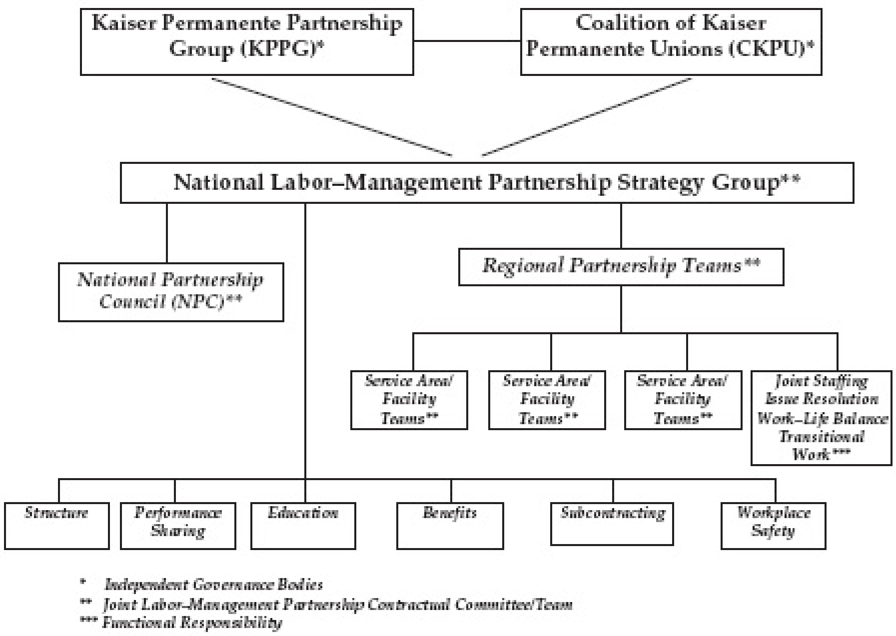
When the 1997 partnership agreement was signed, the parties made a decision to keep the partnership activities separate from collective bargaining. Union leaders felt that to do otherwise would risk losing local union support for partnership activities.This is a challenge many labor–management partnerships confront, because many start out with an agreement to hold the collective bargaining agreement separate and apart from the partnership activities.

The KP and Coalition Partnership met this challenge in 1999 and addressed it in a creative way. Because the partnership focused on ways to engage the workforce and train people in interest-based problem solving, it was naturally more developed in some areas than in others. In the Pacific Northwest region, a more confrontational management negotiation strategy continued at the bargaining table, particularly with SEIU's Local 49 in Portland, Oregon. When the service workers went on strike, and some nurses failed to go to work (although their union did not support staying out of work), Peter diCicco flew out to Oregon to put out yet another "fire" that had arisen from the ashes of previous poor relations. After a settlement was reached, he and others in the coalition began to consider the value of a national collective bargaining agreement so that the partnership could be fully realized.

Some months passed before a proposal was made, with both labor and management support, to the governing group called the Kaiser Permanente Partnership Group, or KPPG (see Figure One). Much to the chagrin of the proponents, KPPG members rejected the idea, perhaps because they were not well briefed, or because they feared a national strike possibility that had always been prevented by separate local agreements with different expiration dates.

This was a serious setback.However, facilitator John Stepp worked with Francis J. Crosson, MD, chair of the KPPG, and Leslie Margolin, senior vice president of workforce development, and other KPPG leaders, as well as with the union leadership, to fashion an alternative approach to national

Figure One
Joint Labor–Management Partnership Contractual Committees



bargaining with various “gates” that the parties would move through before negotiating a national agreement. Either side could exit as it passed through these gates if they felt the process was not moving in a constructive fashion. For example, in view of the primary reason for the initial rejection of the national bargaining idea,an important “gate”was agreement in principle that local labor market rates would continue to be negotiated locally rather than on a national wage basis. Another critical step involved training the many potential participants in national and local negotiations in the concepts and skills of IBN.

Certain provisions needed to be dealt with before negotiations could commence.For management, a key issue around which they required assurances from union leadership was maintaining the flexibility to pay local labor market rates as well as preventing the possibility of a system-wide strike. For the unions, it was essential to have a target date against which to test the feasibility of reaching a national agreement so — absent closure — they would be free to return to the status quo ante of negotiating agreements one by one.In other words,they needed to have a viable fallback. The task force of the KPPG and union leaders came back with a revised proposal that called for the following: extensive use of IBN problem-solving principles and the necessary training to prepare the parties for this very complicated process, a single integrated national negotiation that would allow local agreements to retain their respective deadlines (thereby addressing one of management’s fears of a common expiration date), and a series of decentralized task forces that would focus on particular issues. All parties approved this in February 2000, and the first big test of the partnership had been addressed.

Chronology and Overview

The 2000 negotiations at KP thus far represents the largest and most innovative and successful experiment with IBN processes conducted to date in U.S. labor–management relations. The negotiations involved nearly four hundred union and management representatives and more than twenty neutral facilitators. The negotiations included eight international unions with twenty-six locals, one of them an independent union local.

Table One lists the chronology of key steps in the negotiation process. Those involved in the negotiations hailed from all the local and national unions, and managers from all the participating Kaiser regions including Northern and Southern California, the Pacific Northwest, the Rocky Mountains, Ohio, and the Mid-Atlantic states. These representatives were then trained in interest-based principles and problem solving. They gathered for a large “kick-off” session with a central coordinating group, called the Common Issues Committee (CIC), and established seven areas for exploration. These groups focused on such ideas as wages, benefits, and work–life balance, which are discussed in further detail later in this essay.The parties committed to engage in discussions that were to be open for innovation and joint problem solving.The negotiations were complicated by the logistics of getting everyone together,the complex interactions between national and local negotiations (because all local unions agreed to open their contracts simultaneous with national bargaining), and the need for representatives to check back with constituents between meetings as well as keeping the organization “running.”

The CIC, (cochaired by Peter diCicco, director of CKPU, and Leslie Margolin, senior vice president of workforce development for KP) in fleshing out the timetable for the process, agreed that negotiations should be concluded by September 1, 2000, with any tentative agreement then recommended to the various memberships for ratification — and local bargaining needed to mesh with this schedule.

In addition to a national agreement, new local agreements would also be bargained separately,even though most were not approaching their expiration dates.The CIC sorted through the recommendations of the bargaining task groups (BTGs) and identified those that needed to be forwarded to local tables and those that applied uniformly across the system and therefore needed to be negotiated centrally by the CIC.

Table One Chronology of the Negotiation Process	
March 2000	• Management and unions separately solicit proposed issues from their constituencies.
April 2000	• Local unions and three hundred-member Union Bargaining Council approve process. • Common Issues Committee members go through training. • Management and unions, separately and jointly through the Common Issues Committee, determine there are sufficient common issues with potential for agreement.
Early May 2000	• Common Issues Committee charters bargaining task groups.
May–June 2000	• Bargaining task groups undergo training; meet to identify issues, mutual and separate interests; develop options and recommendations.
Early July 2000	• Bargaining task groups present options and recommendations to the Common Issues Committee. • Common Issues Committee determines there are sufficient common issues with potential for agreement, triggering additional local bargaining by all twenty-six local unions. • All local bargaining tables trained in interest-based problem solving (IBPS) and consensus decision making (CDM).
July–August 2000	• Common Issues Committee determines guidelines for which issues are to be negotiated nationally or locally. • Common Issues Committee bargains national issues while local unions and local management negotiate local issues.
Late August 2000	• Framework for a national agreement is tentatively agreed to by the Common Issues Committee, approved by KP's senior management, and endorsed by the three hundred-member Union Bargaining Council. • Additional guidelines for local bargaining are released to local unions and local management.
September–October 2000	• Tentative national agreement and tentative local agreements submitted to membership of the twenty-six local unions for ratification. Agreement ratified by 90 percent majority.

Dealing with economic issues, especially wages, took longer than planned and some subjects required more data and research.As a result, in the end the parties needed a few weeks beyond the September 1 target to finalize a tentative agreement.

The final stages of the process were characterized by a number of twists and turns (not revealed by the chronology).With the September 1 target in mind, in mid-August the CIC entered into what turned out to be a nine-day marathon session to resolve all of the outstanding issues — if only in principle so that local negotiations could proceed to the finish line. As September 1 approached and it became clear that the task of codifying the results of the marathon session would not be finished, several of the large unions said that they would not proceed with their local negotiations until they received appropriate guidance from the CIC (especially with respect to the resolution of financial items).

Consequently, the CIC found it necessary to reconvene in early September. Whereas the makeup of the CIC for the marathon session in August had numbered forty, for the final phase the size of the CIC had dropped to ten participants.This "end game" phase resembled traditional bargaining in some respects. The pace intensified with twenty-hour-a-day sessions. After six of these long sessions, agreement was reached on all but a few agenda items, thereby providing the guidance that several local unions needed.
Completing the task at the local level required another week.

By late September, the national and local agreements were ready to be presented and evaluated by both KP management and rank-and-file members of the participating local unions.The union membership approval process alone was a logistical marvel, and the national labor agreement and local contracts were ratified by substantial (90 percent) margins.

The substantive terms of the national agreement included a five-year contract with across-the-board wage increases between 4 percent and 6 percent for each of the five years of the agreement (providing for regional adjustments and higher increases for registered nurses because of labor shortages),and numerous specific changes in practices designed to redesign and improve business systems, quality of patient care, and work processes. In the 1997 National Agreement, Kaiser agreed to recognize requests for union representation with a majority showing of support without an election. Further, employment security was pledged — with a commitment to retraining and redeployment of workers if it proved necessary. In the 2000 National Agreement, a new trust fund was created, partially financed at six cents per hour (with an annual escalator) from employee wages after the first year to support training and other efforts needed to diffuse the partnership throughout the organization. Compared to other collective bargaining contracts, the thirty-eight-page agreement is quite brief.

In return, KP gained five years of labor peace — a major achievement given the record of numerous health care industry strikes during the preceding decade. Also, the promise of new HMO members was a significant gain. Here, union leaders of the partnership would promote KP as a "health care provider of choice" to their affiliates. And of course, the most innovative opportunity was the improvement of patient care, and the ability to deliver it in a more participatory cost-effective manner as a result of the joint activities fostered by the partnership. The parties agreed to jointly address several key issues in years two, three, and four of the contract.These issues would be the foci of workplace programs, with potential additional compensation tied to the accomplishment of specific performance objectives. These areas later were agreed to include improved health and safety (also tied to fewer errors and safer patient care), and joint staffing agreements. These agreements still are novel in unionized health care and would have been impossible in a nonunion health setting.

With this overview as background, several key aspects of the process that contributed to the success of IBN at KP will now be described, specifically: how participants were trained; the bargaining over how the parties would bargain (e.g., makeup of the committees and ground rules); the role and work of the BTGs; local negotiations; coordination activities and the dynamics of the process (e.g., the role of third parties).

Orientation

RAI had developed a systematic way of presenting the concepts and skills necessary for IBN. Early in the KP Partnership journey, extensive training took place in this approach to problem solving and negotiations. More than four hundred individuals, who would be involved in local bargaining, the BTGs, and the CIC,were trained by RAI in the principles and tools of IBN. Their pedagogy drew its inspiration from the work of Fisher,Ury, and Patton (1991).These authors believed the traditional approach to negotiations suffered from: (1) too much focus on people (i.e., fixing blame); (2) the taking of positions because solutions were advanced early in the discussions; (3) limited opportunity for generating alternatives; and (4) heavy reliance on power.

As taught and refined at KP, IBN involved five steps: (1) defining the problem; (2) determining interests; (3) developing options (often using the technique of brainstorming); (4) agreeing on criteria; and (5) selecting a solution.Training of the participants who would be involved in the negotiations was conducted by professionals from RAI and the Federal Mediation and Conciliation Service (FMCS), and took place over a three-day period in early May 2000.The recollections of one of the trainers captures the flavor of these sessions:

During the training, people were excited yet apprehensive.They did not know what to expect. A lot of questions came from the audience. People wanted to know what was going to happen to the issues after the national negotiations — when would local bargaining teams get underway? What would be their input? What would be the ratification process? There were loads of questions. Every question was answered by Leslie Margolin and Peter diCicco. There was very good, open communication at these meetings, and a very positive atmosphere.

Membership on the Committees, Ground Rules, and Logistics

Staffing the committees involved recruiting representatives from all sectors. Identifying the appropriate leadership on the union side was more straightforward: the individuals were those who held office and had participated in previous negotiations (for the most part at the local level). On the management side, the decision was made to designate a number of operating heads and medical group administrators, in addition to the human resource and labor relations professionals. For example, key operations leaders for both Southern and Northern California Permanente Medical Groups were actively involved in the negotiations. As one union participant observed:"The level of people that management sent to the BTGs was really impressive."

In addition to a commitment to follow the principles of IBN, an important ground rule for both sides was the option to pull out of the process at any time.As it turned out, this option was never exercised.

Turning to logistics, the mammoth size of the undertaking is captured by two comments:

We had only three to four weeks to get hotels and everything for the first meeting (kickoff on April 16, 2000). Normally it would take four to six months to put together arrangements for three hundred people.We only had four to six weeks.And then we had meetings, one after another. I was working one hundred hours a week. (From a management official) The meetings were held in hotels in Oakland, Los Angeles, and Chicago.The places just pulsated with activity.We tied up all the conference rooms in these hotels for the meetings of the BTGs as well as for caucuses.The schedule was very intensive, with many meetings, lots of dinner meetings as well. There was a lot of air travel and schedules kept getting revised many,many times. (From an FMCS official)

Engaging in Interest-Based Negotiations

Once individuals had completed their training in IBN and committees were staffed, participants began to engage in the interest-based process. In what follows,we describe several key aspects of the IBN process at KP, including the BTGs, local bargaining, the role of key leaders, coordinating the process, generating and exploring ideas, mediation and facilitation, and the role of caucuses.

The Heart of the Negotiations: The Bargaining Task Groups
The selection of members for the BTGs was done carefully, and individuals were recruited who were already champions of the partnership or who might be converted as a result of participating in the intense process of negotiations. In addition, some individuals with content expertise were also brought on board.

BTGs on the following topics were formed: (1) wages; (2) benefits; (3) work–life balance; (4) performance and workforce development; (5) quality and service; (6) employee health and safety; and (7) work organization and innovation. Each group engaged in an interest-based process of joint study, problem solving, and negotiations. Guidelines from the CIC urged the BTGs not to propose specific language but to develop guidelines and statements embodying concepts and principles.

The BTGs were each staffed with two facilitators, one from FMCS and the other from RAI.The facilitators intervened, especially when the parties got stuck, by asking them to go back to the fundamentals of IBN: identify interests (not positions) and generate new options.The facilitators, with the
help of the partnership's internal consultants, also managed various lists (on flip charts),prepared notes,and during the intervening night after each day's session produced a summary to help launch the next morning's session. Members of the CIC, except for Margolin and diCicco, were assigned to each BTG.Their role was stated as follows:"They are not to be co-chairs; they will play a leadership role and model the IBN principles and behavior; they will help keep the BTG on task and on target; and they will serve as the eyes and ears of the CIC."

The BTGs also included line managers who could speak to the operational feasibility of the options under consideration. In traditional negotiations, the management contingent usually consists of labor relations specialists and other staff with expertise in employee benefits and other"bread and butter" subjects. By contrast, the inclusion and participation in BTGs of middle managers with significant organizational responsibilities brought important knowledge and credibility to the process and enabled the BTGs to tackle a wide range of subjects.

Most of the important issues were considered (except for the negotiations over money) within the seven BTGs. Consider the experience of one subgroup within the BTG, which tackled the subject of performance and measurement.This group consisted of twelve people and included a person from operations at one of the KP hospitals, a vice president from one of the nursing unions, and other management and union leaders with direct experience with and responsibility for the issues within this group's mandate. The schedule involved meeting many long hours over three consecutive days every other week. During the interludes, members of the committee reflected on what had happened, consulted with constituents, and accomplished behind-the-scenes liaison work that was necessary. By early July 2000, the seven BTGs had finished their work and were ready to report back to the CIC. All members of the BTGs assembled in one room. Many members of the

KPPG also participated. Each BTG presented its work.The scene was incredibly energizing, according to more than one individual; everyone came away from the session on a real “high.”

Local Bargaining

Local bargaining did not commence until August 2000, after sufficient progress had been made in the work of the BTGs, allowing the CIC to forward subjects with its recommendations to the teams that had been assembled to conduct local bargaining. Consider this item from the minutes of the CIC regarding the timing for local negotiations:

Locals will not have guidance on the specific economic parameters of bargaining until late in the process. It is hoped that the CIC will have a good sense of the issues that will be referred to the local after the upcoming meetings in Chicago. Concern was expressed that unless locals have early information on what will be handled by the CIC and what is appropriate for local negotiations, they may spend time working on issues that they will not resolve or not begin to work soon enough on difficult issues that will be referred to them.

For many of the small unions, local bargaining did not differ from previous rounds because they always followed the pattern set by the larger unions. But for large unions, having the money items negotiated centrally by the CIC was a major change and created some unease.However, because early in the negotiations, management at the national level had agreed to put a significant sum of money on the table, local union leadership knew that ratification was highly likely. So, the local unions could turn their attention to allocating these funds and to addressing important nonmonetary issues.

Considerable effort was made by leaders on both sides to establish a context for local negotiations that would encourage the use of the new process, rather than reverting to the well-traveled bumpy road of adversarial bargaining. Consider this excerpt from discussions that took place within the CIC, as local bargaining was about to commence:

The unions expect that as many as 90 percent of the union BTG participants will be involved in local bargaining; they will bring an understanding of the overall common issues bargaining process and the interest-based approach. However, the union believes that many of the management representatives in local bargaining will not have been exposed to the partnership and are used to a very traditional approach to bargaining. The concern was also expressed that some participants on both sides may not be supportive of the common issues bargaining process or the interest-based approach. It was agreed that both the unions and management needed to communicate to their local bargaining representatives the expectation that their process should be consistent with the spirit of the partnership. Rigid adherence to the interest-based process is not required. Concerns regarding possible problems in local negotiations should be referred to Leslie and Peter.

The experience of a large union local illustrates how the process unfolded at the twenty-six local bargaining tables. Each side was allowed to have a traditional opening statement; however, instead of presenting demands, they were asked by the facilitators to identify issues. Approximately fifty to sixty items were earmarked for further attention. The lead negotiators then put the issues into four separate“baskets,” with volunteers assigned to the respective subgroups. On the union side, fifty or sixty people (many of them stewards) were at the opening session and available for assignment.However, on the management side only five or six were in attendance, and as a result many other managers had to be recruited to join the subgroups.

To enable the facilitators to keep track of what was happening, each subgroup met on a specific day, different from the others. Typically, each subgroup only met one day a week, usually for twelve hours. The parties agreed on a timetable of six weeks to negotiate the local agreements.As it turned out, local bargaining took longer because progress at the national level fell behind schedule. Indeed, there was considerable moving of issues back-and-forth between the local and the national levels.

Of the fifty to sixty issues, only a half-dozen could not be resolved by the consensus method. One major substantive issue had to do with the allocation of equity adjustments. Management members wanted the monies applied to classifications that were hard to fill in order to be competitive in the local labor market.The union,on the other hand,wanted to reduce some regional differences within the local between rural and urban areas. In the end, most of the money allocated for equity adjustments was used to lessen these geographical differentials.

Role of Key Leaders

Margolin and diCicco had worked closely together since 1998, soon after the signing of the first phase of the partnership, and as a result, had developed a close working relationship. Thus, the choice to focus the partnership initially on matters outside of contract negotiations gave the leaders time and a low-risk setting to develop a solid working relationship.

Margolin and diCicco were seen as skilled leaders of their own respective organizations. In fact, their success in negotiating the first national agreement in large part was the fruition of a much longer journey in developing alignment across the disparate elements within their respective domains. On the union side, diCicco had been able to weld together twentysix separate unions into a working coalition during the partnership era starting in 1996, a remarkable accomplishment given the diverse locations, sizes, and approaches to collective bargaining. On the management side, developing consensus was just as challenging as witnessed by the initial turndown of the proposal by the KPPG to engage in national bargaining.

IIt is clear that diCicco's leadership was instrumental in managing the many pressures that could easily have brought matters to an impasse. As negotiations progressed, several presidents of large local unions thought they could do just as well by going back to the format of separate negotiations. And in fact some leaders played "hardball" toward the end of bargaining and threatened to pull out of the effort to reach a national agreement. As one observer stated the challenge:

If we had not had the three years of experience with the coalition working together under Pete's leadership, we never would have reached agreement. Pete had the confidence of this large group of individualists and he knew how to keep them focused
on the objective of reaching a master agreement. He knew how to spell out the advantages of working together and when a leader went the other way ("let's shake the trees and see if we can get something better"), Pete stepped back and let some of the other leaders who were committed to going forward apply a little collegial arm-twisting.

Similarly, on the management side, it was critical to have a leader who had the respect of both line executives and physicians within the Kaiser Foundation Health Plan and Hospitals and the Permanente Medical Groups. Leslie Margolin provided this leadership. She brought experience as a management- side labor relations lawyer and a top manager at another health care company, as well as the authority associated with being a member of the top management committee (the KPPG). Margolin was as instrumental, on the management side of the table, in bringing about agreement as diCicco was for labor; in fact, they worked closely as a team to guide an extraordinarily complicated process. Significantly, she was frequently asked to attend union caucus meetings to explain management proposals and to answer questions.This observer captures the important bridge role that Margolin played:

Leslie's leadership was instrumental on both sides of the table. She enjoyed complete trust with the union leadership and when she said that management had "emptied its pockets"they believed her. In many ways her toughest job was keeping her management colleagues on the same page. Often when she would return from a meeting with the union leadership, she would find her teammates embroiled in tense discussion and in the process of backing away from positions that they had put on the table. For example, toward the end of negotiations the legal office came back to the management team and said that the commitment that had been made to transmit COPE funds could not be done. As soon as Leslie went to the union with this change, it opened the door for some union presidents to press anew for agenda items that had been dropped. She really had her work cut out for her in managing closure and achieving consensus on the part of the management group.

While diCicco did not attend management meetings, on several occasions he held off-the-record conversations with several key decision makers. Leadership has many manifestations, and in addition to the two cochairs, another important resource that enabled the parties to tackle a wide range of subjects was the presence of line managers and employees who could speak to operational feasibility of the options under consideration.

In the KP negotiations,middle managers with significant organizational responsibilities brought important knowledge and credibility to the process.

On an earlier occasion, Anthony Gately, then an administrator who would normally not get involved in frontline discussions, had observed:

What is key to doing this [IBN] well? It does not work as well without the people who are affected being in the room. I was the ultimate decision maker for many issues. If I had not been there, I would not have felt or seen the passion, the hundreds of ideas, I would not have felt the hurt. It was important for me to be there and to feel and see this.

And Pete diCicco echoed the same point:

What really made this work is that this was a process that did not have to filter things through labor relations representatives but rather we had operations people at the table with us so that when we began talking in both directions as the unions would try to describe an area of interest and why we had that interest, it wasn't being filtered through a traditional labor relations function but rather directly to the people who were making the decisions at the time and similarly when we got the responses back, or when we heard from a management perspective on this, it was directly to our rank and file leaders and our local union leaders so that they had that dialogue, it wasn't being filtered if you will through the union leadership in getting essentially what that bias may or may not be.

Third-party leadership was also critical in making the negotiations successful. A key factor in the success of these negotiations was the facilitation by John Stepp and his colleagues from RAI as well as assistance from FMCS staff.The key facilitators knew the parties well and were able to provide onthe- spot training as well as help the parties stay focused on a mutual interest agenda, using interest-based problem-solving techniques. Many union and management leaders praised the RAI consultants for the multiple roles that they played during the course of the negotiations. Aside from the expected help in keeping the process on track, in some of the local negotiations, the neutrals actually put language on paper to expedite closure once the parties had reached agreement in principle.

Coordinating the Process

The CIC served as the main instrument for achieving coordination.The committee cochairs, Leslie Margolin and Peter diCicco,were complemented by thirty to forty key union and management officials. Senior mediators, John Stepp from RAI and Barbara Pickett from FMCS, facilitated their work. The full complement of the CIC met regularly each evening to review reports from the various BTGs. A review of the flip charts (now archived) reveals a highly systematic effort to keep track of all the issues under discussion.

From the outset, the CIC assured the BTGs that their proposals would be seriously considered. But they also told them to be “blue sky” and visionary. When the seven BTGs reported out to the CIC, almost four hundred items were placed on the table for consideration. Many items were readily agreed to at the main table but many had to be sent back for further work. The RAI consultants recommended a system of “baskets” to guide the task. In the first basket were placed those issues that needed to be settled before
the master contract could be signed, what were referred to as the nationally mandated issues. In the second basket were items that were not mandated but could be negotiated at local discretion, and the third basket contained subjects for which the CIC did not hold views about how the subjects should be resolved in local negotiations.

At times, the CIC was overwhelmed by many of the recommendations that came to them.There were conflicts because many of the union representatives believed their joint recommendations should have been agreed to and automatically adopted.And of course management often came with the orientation,“We have spent a lot of time and money, and worked on a lot of conflicting priorities,and we can’t possibly do all these things at once.” As one management official expressed it:

So there were probably many differences in terms of expectations. But they got worked out as a result of a lot of hard work. Even today, I’m not sure how we did this mammoth amount of work within the CIC and then distilled it all down.

Generating and Exploring Ideas

According to Judith Saunders, director of national labor relations for KP management, the idea was not to have proposals and counterproposals:

We did not want to approach these negotiations in a traditional manner, where each side submits one hundred proposals directing the discussion to singular solutions. Alternatively, we jointly identified and agreed to broad subject matters, and structured joint teams around each subject. The teams were charged with identifying the issues related to their topic and, in an interestbased manner, recommending solutions that met the interests of both sides.

The emphasis was on generating as many ideas as possible and keeping the exploration away from positions, as the following quote illustrates:

Our approach was that there would be no proposals.We just had subject matters, and asked the teams together to identify the key issues and the interests we needed to work on.This was very different from traditional bargaining where we would start with one hundred fifty issues. (Management official)

All the participants had been trained in the methodology of brainstorming. Interestingly, the management members of the BTGs swung into the procedure differently than their union counterparts. As one person
reflected on the process: “The union folks had more difficulty expressing interests and offered short sentences, while management tended to talk in paragraphs.”

An effective exploration process requires the availability of substantial information. And the BTGs were well supplied with this resource. As one participant pointed out,“We had tons of information at our disposal.”

The work of the BTGs was thorough, with flip charts covering all the walls of the meeting rooms. Typically they listed data needs as well as options to be considered.

What was important about the process were the concerns that were reflected on the walls (flip charts). So we did not have minutes.We did not want to have a process where people could at some point look back at some minutes and say,“You said soand-
so, and here are my notes to prove it.” (Management official)

One union official agreed about this process:

By design, not being on the record, people could speak more easily, openly, and candidly, and explore more adventurously, without worrying about being quoted or called to task by some [people] after the fact.

The schedule also allowed sufficient time for exhaustive examination of the issues. In reviewing the raw data from the process (flip charts and notes from various meetings), one is struck by the thoroughness with which the participants tackled their assignments. It is also clear from the debrief notes that some thought that the process was “painfully slow”but as one participant observed,“While we used a lot of time on the process, it did serve as a good clearing house for us to look at all facets of the issues.”

Beyond sheer hard work, the parties formulated creative solutions to some of the toughest negotiations process dilemmas.Take one area, communications: the parties struck a fine balance between the ideal of joint communications and the political reality that some communications needed to be “in house.” And these communications were sufficiently detailed (as much so on the union side as on the management side) to inform the constituents but framed in a way to avoid creating unrealistic expectations. Even communicating about the interest-based process required partnership relationships to take priority, while each group felt bound to keep its own members informed.

The first cut at the issue of wage increases took place within the BTG charged with this agenda item. The participants agreed on the guideline that KP should pay “darn good wages.” Ultimately, the resolution of the wage increase issue had to be settled at the main table (the CIC), and at a critical stage the union representatives accepted the reality (and the assertion) that management had “cleaned out its pockets”and that there was no more money to spend.This statement was accepted as credible when it
came from Leslie Margolin,KP’s chief negotiator,because she had built a high level of trust with her union counterparts. Still,several union leaders wanted to test this statement. It took considerable “arm-twisting” within the union team to blunt the use of this tactic. Likewise,Margolin had to deter her management colleagues from making new demands or backtracking on prior agreements.

Once both sides realized that the best financial offer was on the table and acceptable,they could focus on the question of how to maximize value, devising the best allocations for the distribution of the available resources. Consider one aspect of this:

We decided to allocate one piece of money at the discretion of each region and for each individual union in that region. For example, they got across-the-board increases, and a pot that they could use for equity, reclassifications, and shift differentials, whatever. That process took quite a while, but it worked.(Management official)

One of the challenges in IBN, especially if many options are developed, is how to converge and reach agreement. Here is an observation on this challenge:

A key is for the group to establish priorities.And the groups did agree on what were the important standards.For example,staffing was important to the union. Performance was important to the company. Flexibility was also important to the company. So we knew that there were certain things, or certain outcomes, that were important to each side. That helped us focus on “how do we shape a contract that we are sure includes these important things?” (Management official)

An important innovation that RAI brought to the IBN process was the notion that at the critical stage of focusing on agreement the parties needed to identify their “make-or-break” agenda items. In their experience, RAI consultants have found that bargainers find it difficult to agree on general standards or criteria for settlement. Rather, the parties are asked to identify the agenda items that must be resolved before agreement can be reached. Ultimately, it is against this list of “must”items that any tentative agreement must be evaluated.

Mediation and Facilitation

The principles guiding labor mediators have been well established over the years and require a mix of passive and facilitative skills. These range from setting agendas and clarifying issues to such highly active efforts as making substantive suggestions for compromises, urging parties to move off fixed positions, and, at the right time, convincing each party that the best settlement offers are on the table (Kochan and Jick 1978;Kolb 1983;Kressel 1972; McKersie, Eaton, and Kochan 2003; Simkin 1971; Stevens 1963). Facilitating IBN requires learning and then using new skills suited to the more problemsolving mode of interaction.Yet,like the negotiators themselves,skilled labor mediators/facilitators must be able to mix these different approaches as the process unfolds and as the situation requires.The parties recognized this:

To do this process, you need a knowledgeable facilitator who knows when to challenge,when to allow people to go off process, when to keep them on process. It is not easy, and it takes constant skills of facilitation, reminding people that "that was a position," or "that was an interest,"or "are we coming up with solutions that are meeting everyone's interests?"And if someone didn't like a particular solution, are they taking responsibility for finding another solution? Individuals who serve as facilitators need to be thoroughly knowledgeable about the interest-based process in order to be able to do all of this. (Management official)

In an interview, one facilitator described the importance of being able to mix interest-based facilitation with more conventional mediation:

Initially, I split management and the union into two groups to determine their interests. On the union side, I found a real reluctance to reveal their interests for fear this would make them seem weak. Since there were some problems of distrust between the negotiator for the company and the staff representative for the union, who both told stories about each other, I decided to conduct shuttle diplomacy.

The Role of Caucuses

The IBN model often presented in seminars discourages caucuses.However, in this negotiation the parties held different views. The unions wanted to have caucuses so they could talk among themselves and iron out differences across coalition members. Management found they needed to talk among themselves as well. Given the size and complexity of the organization,many diverse interests were present, for instance, the medical centers from different regions that needed to work things out in private. Issues and solutions differed across KP and representatives necessarily wanted to thrash these out away from the main table.

Concluding Thoughts

In summary, what are the highlights of this complex negotiation story? The parties trained and engaged more than four hundred management and union leaders in joint problem-solving processes that focused on seven key economic and organizational areas,producing a five-year national agreement that enhanced the economic and employment security of the workforce. They established a framework for sharing rewards from future performance improvements, and positioned the parties to implement the partnership principles into ongoing operations over the term of the agreement.These negotiations stand as one of the signal accomplishments of the KP Partnership to date.They are also likely to be recorded by future historians as one of the most significant breakthrough negotiations in U.S. labor relations of our time.

In analyzing the history of these negotiations, it is difficult to capture the extent of the hard work, talent, and leadership of the leaders and participants on both sides and the key roles played by the facilitators.This combination of skilled people, resolute determination, and opportunity created the new five-year agreement.

The parties are now involved in implementing the agreement and putting into practice the concepts and skills that served them so well in negotiating the national agreement. Of course the good experience of the 2000 negotiations has raised expectations that day-to-day dealings will be transformed and that the principles of IBN will be very much in evidence in ongoing decision making and interactions.

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