



CASS EXPLORATION

In This Issue

- Collective Bargaining
- Traditional Bargaining
- Collaborative Bargaining Process
- Principled Negotiations
- Mutual Gains Bargaining Models

The collective-bargaining process is the most visible labour-management relationship in public education.

Review of Collective Bargaining Models

Collective Bargaining in Education

What specifically is it about education that makes collective bargaining “special”? The three most compelling responses to this question include:

1. The general importance attached to education by our society
2. The “lost time argument” related to the sentiment that if a significant part of the year is lost to job action, that time is “lost forever.”
3. The custodial function that many parents and society as a whole have placed on schools and come to rely on as an integral part of delivery of important support services.

The collective-bargaining process is the most visible labour-management relationship in public education. Adversity and mistrust have frequently clouded this relationship and over time, the process has taken on the adversarial nature of the relationship between labour and management. The assumptions that the parties have only divergent, if not opposing, interests and that the satisfaction of any party’s interests represents a loss to the other party have rarely been questioned. The very shape of the agreements that emerge is affected by the characteristics of the process itself. Materializing from long hours of late-night negotiations against punitive deadlines come large volumes of detailed rules delineating the use of authority and discretion, pages of salary schedules, and lists of contingencies for every possible exception. If a collective bargaining agreement is a set of solutions to some set of perceived problems, the analysis of most agreements would demonstrate that the problem being addressed is the relationship between the adults in the district.

No collective bargaining procedure is likely to be either entirely collaborative or entirely positional. Rather, as the data indicates each individual set of negotiations almost certainly contains elements of both, even where one style is predominant. Like that pictured below, bargaining procedures are best viewed as falling on a continuum.



At the extremes of the continuum are the theoretical "perfect" bargaining models. Typically, the format of negotiations will lie somewhere between the two extremes while a round of negotiations may be labeled as following a certain procedural model. These models can be, and generally are, altered to fit the dynamics of a particular bargaining environment.

Traditional Bargaining

Traditional collective bargaining according to Ponak, author of *Teacher Collective Bargaining and Dispute Resolution: What are the Alternatives?* (1997), is what most negotiators are experienced in and what they are most comfortable with. It is largely an adversarial process. But the process works. It results in negotiated collective agreements agreed upon mutually by both sides and it rarely leads to strikes (currently in Alberta 95% of negotiations are resolved without a strike). It can and does address some of the difficult issues. It is good at dealing with money. It has a harder time with professional type issues raised by teachers, such as preparation time and exceptional needs students, because such issues often clash directly with what school boards and senior administration see as fundamental management rights. Traditional bargaining is augmented by mediation, which also has a high success rate.

Using traditional bargaining, according to Ponak will result in continued strikes from time to time and these will be highly visible. He predicts that we will see less all-out strikes and more pressure tactics, like work-to-rule. We may also see increasing use of rotating strikes and study sessions.

The traditional bargaining approach varies significantly from other approaches. It postulates that each of the parties keep the negotiation process going by taking positions that do not reflect their real preferences, but rather are intended to get the other party to reveal their breaking point (*Carrier, 1980*). The coercive maneuvers (bluffs, threats, pressure tactics), as well as the information “manipulation” tactics (rumours, erroneous or incomplete information) that accompany position-taking, play a determining role in the process to the detriment of an exchange of information and discussion of the parties’ interests.

Experienced negotiators recognize that there are some issues on which they can cooperate and other issues over which they will have to “fight”. They understand that mutual gains bargaining (or similar approaches) will not always work. They also understand the difference between hard bargaining and game playing. The use of certain tactics to gain an advantage is simply part of the adversarial process; game playing, on the other hand, only generates unnecessary conflict and creates ill will. Problems with traditional bargaining include:

- leading to a compromise between extreme positions and does not lead to an optimal outcome or satisfy both parties; the solution(s) is (are) not the best possible solution(s);
- leading to low levels of trust between the parties, damaging or destroying the relationship in the process;
- resulting in a minimal exchange of information so that the underlying needs of each party are not met;
- forming of extreme positions which can become entrenched positions and can be used to “whip up the troops”; and
- incurring excessive economic costs in terms of time and resources, many meetings are spent on positions and contractual language that may never result in solutions and fewer meetings on the monetary components of the settlement (e.g., settlement occurs after 25 meetings, 20 of which deal with postulating contractual language and the balance negotiating the monetary issues).

Dissatisfaction with traditional negotiations has led labour and management to try alternative models. Collaborative bargaining, one of these alternatives, has had many names, such as “Win-Win,” “principled,” “mutual gains,” and “interest-based.” The

interest-based bargaining (IBB) model is currently the most common method used for collaborative bargaining in schools jurisdictions. The research found that collaborative bargaining is widely used, and is gaining in acceptance. This means additional training and increased awareness of the collaborative process will be necessary to accommodate the increased demand for its use. Although this process may not be useful in all circumstances, there is reason to believe that this model will continue to gain acceptance among labour practitioners. The reason for this belief is that when compared to traditional bargaining, collaborative efforts results in contracts viewed by representatives of both labour and management as more favorable and mutually beneficial.

Moreover, when collaborative bargaining occurs there is greater satisfaction with the procedure; the level of cooperation that takes place during negotiations is higher; and, the impact of bargaining on overall labour-management relations is more constructive.

Collaborative Bargaining Process

A Different Model

Is there a better way? Perhaps. But first there needs to be a breaking down of some barriers. The most significant one is the lack of trust and that will take effort on both sides to fix. From the outside looking in, the perception is that the politics, including interference from people who are not familiar with labour relations but occupy positions of power and influence, are too overwhelming to overcome. There is a tendency to maintain the status quo even when solutions become evident but there exists no will among the parties to make the necessary changes. Without the desire to change, especially by the professionals themselves, any efforts to suggest alternative models will simply fall on deaf ears.

It is a big challenge. There is no single solution that will revolutionize how professionals should exercise their collective voices but we believe that lessons can be taken from a variety of sources and merged into a unique solution. Let's look at some specific examples.

Strikes, walkouts, protests, work-to-rule campaigns all reduce the public perception of the professional. Yet the current alternative, systems of interest arbitration, are not favoured by either side. Again part of the problem is the introduction of third parties who apply external standards and norms to circumstances that demand unique and innovative perspectives.

According to Reynald Bourque in his paper on the *Merits and Limitations of Principled Negotiations in Union-Management Relations (1997)*, the qualifiers used to describe these new collective bargaining concepts are often based on an idealized vision of union-management relations seemingly transformed by some miracle recipe. The names used to describe such negotiations are “win/win bargaining”, “mutual gains bargaining”, “interest based bargaining”, and “principled bargaining”. “Win/win” and “mutual gains” emphasize the anticipated results of collective bargaining, while “principled negotiation” or “interest based bargaining” emphasizes the method rather than the results.

Principled Negotiation

The negotiation model proposed by Fisher and Ury in their book *Getting to Yes* is the primary source of inspiration for principled negotiation partisans. The process they recommend is based on **four precepts** that comprise the standard basis of principled negotiation.

The **first precept** requires that **personal issues be separated from the differences** that are the subject of discussion between the parties. Negotiation is a relational process that demands mutual respect and confidence on the part of all participants at the negotiating table.

The **second precept**, the cornerstone of the principled negotiation process, is to **concentrate on the interests at stake and not on the positions**. At the heart of this process is the exchange of information and the discussion of the parties' interests.

The **third precept** is to **seek a wide range of solutions before taking a decision**. According to Fisher and Ury, the search for solutions and the decision must be treated separately in order to come up with creative settlements.

The **fourth precept is the evaluation of results on the basis of objective criteria**. To ensure fairness and viability of the solutions put forth to solve the problem, the parties must agree on objective and verifiable criteria, such as appropriate laws and regulations (e.g., the Employment Standards Code) or the opinion of an expert.

The principled negotiation process proposed by Fisher and Ury thus relies primarily on the systematic application of problem solving during negotiations. While problem-solving methodology is effective in finding a solution to a problem that is of common concern to all participants, several collective bargaining experts believe that it is more a component of, than an overall approach to, collective bargaining, given the dual, adversarial-cooperative nature of the employment relationship (*Bourque, 1997*).

However, the principled negotiation approach is not a universal alternative to traditional bargaining because it ignores the "conflicts" of interest that are likely inherent in an employment relationship says Bourque. The effectiveness of the problem-solving method at the root of principled negotiation presupposes a "convergence" of interests, but runs a great risk of leading to an impasse where conflicts of interest exist.

Bourque points out that a realistic implementation process depends on adopting an approach that promotes the process and tactics of principled negotiation, as recommended by Fischer and Ury, while recognizing the legitimacy of exercising power relationships in resolving conflicts of interest. Also, a climate of trust, compatible with the problem-solving approach, must exist between the parties before initiating a trial process.

Mutual Gains Bargaining

The mutual gains approach assumes you will get what you want in a negotiation by making sure the other party's needs are met at a low cost to you.

There are five major principles to mutual gains bargaining:

1. **People:** Separate people from the problem. The people with whom you must negotiate should not be the opposition. The problems should be the focus of attention.
2. **Interests:** Focus on underlying concerns, needs, fears, worries and interests, not stated positions. Listen to the other party. Ask effective questions, define the problem.
3. **Options:** Generate a variety of solutions/possibilities before deciding what to do. Options must satisfy the needs of both parties.

4. Criteria: Insist that the result (agreement) be based on objective standards or fair procedures. Gain consensus and commitment from the parties.
5. BATNA Prepare your Best Alternative to a Negotiated Agreement in advance. The “fallback” position protects you against accepting an agreement that should be rejected, or rejecting an agreement that should be accepted.

The assumptions of mutual gains bargaining are:

- Negotiation can improve the relationship.
- Both parties can achieve their needs in negotiation.
- Both parties can and should help each other win.
- Open discussion will reveal mutual interest and increase the options available to satisfy the separate interests of both parties.
- Standards can be found to guide decision-making to successful conclusion.
- Focus is on establishing and maintaining trust. Future relationship is a priority.

Mutual gains bargaining can be applied to single or multiple issues, can include formal or informal bargaining, can involve two or more parties and can be used by one or all parties to a negotiation. The mutual gains approach varies significantly from the traditional bargaining approach. It begins with joint Management/Union training. In mutual gains, the focus is on joint identification of issues/problems and common objectives. The process for negotiations is informal, no bargaining table, a team approach with non-binding discussion. There is openness and candor in a joint problem-solving atmosphere, where facilitation and flip charts are frequently utilized. When reaching agreement, no language is signed until agreement is reached on everything. Then a memorandum of agreement is signed on completion.

Collaborative bargaining methods should result in a successful negotiation that produces better technical solutions, in an agreement that both parties can operate with, and, lastly in an improved the relationship between the two.

Problems with mutual gains bargaining exist as well and other considered in the following:

- it requires a buy-in by both parties and joint training in the process
- it requires a high level of trust
- it requires significant time and patience
- it requires both parties to have good communication skills
- it becomes difficult when the negotiations are conducted by external agents as the parties being represented do not have full knowledge of the issues discussed, the agents may need to be perceived as maximizing the outcome for their parties and the agents may bring in external agendas
- it depends on the process to develop (the perception being that the process will solve the problem not the individuals)
- it encourages the process to breakdown in relation to monetary issues.

Sunshine Bargaining

In several American states laws exist requiring governmental boards be conducted in the open, in the sunshine and open to the public.

Salary Benchmarking

‘Salary benchmarking’ is the practice of determining teacher salaries in the collective-bargaining process by referring to indicators outside the district. Salary scales of nearby school districts set the standard, rather than traditional formulas such as “cost of living increases.” Parties negotiate the list of referent districts and the formula that will determine the relationship between the district’s new salary scale and the scale at referent districts. Salary benchmarking is premised on two theories:

- Teacher quality affects student achievement; and
- There is a competitive labour market for high-quality teachers, operating on differentials in salary and working conditions.

Contract Waivers & Overrides

Increasingly, contracts include waivers or override language that allow the parties to sidestep specific contractual language in limited circumstances and for specific purposes, usually related to reform efforts. Waivers and overrides frequently have temporary effect only, and are always subject to joint approval.

As specific changes are needed in the learning environment to address student achievement, the terms of the collective bargaining agreement can be modified to accommodate those changes.

Thin Contracts

In comparison to traditional encyclopedic contracts, “thin” contracts are abbreviated agreements negotiated at the district level to address basic issues and standardize conditions across the district. Thin contracts address issues such as base compensation, benefits, and compliance with legislative mandates. Supplemental, more detailed contracts are negotiated at the school site level to address local needs, concerns, and working conditions.

With thin contracts, decisions affecting teaching and learning are made closer to the school site and can be tailored to meet the specific needs of students, practitioners, and the community. The two-level contract allows for flexibility within a district and avoids the rigidity of one-size-fits-all.

Living Contracts

Living contracts remain open to modification during the course of their stated term, adapting to evolving circumstances unforeseen at the time they are drafted. The parties define an ongoing collaborative process to identify and design changes to existing language as the need arises. Addressing the problem of multi-year contracts with terms no longer appropriate to the dynamic, innovative demands of education reform, living contracts allow for flexibility and innovation.

As parties seek to improve student outcomes with new strategies or programs, existing prescriptive contract language and re-opening the contract are not insurmountable barriers to reform.

“Living contracts” are comprehensive, district-wide collective-bargaining contracts that contain provisions to allow continual renegotiation and modification during the course of their stated term. More radical than waivers or override language, “living contracts” make provisions for continual negotiations and make the assumption that fundamental

changes are possible through the work of a standing committee that negotiates new terms.

Contract Language on Student Achievement

Not long ago one could read through hundreds of pages of contract language and never come across the word “student,” let alone an explicit concern about student achievement. In contrast, some collective-bargaining agreements now explicitly recognize students as the primary client of their working relationship. In these instances, negotiating parties typically attempt to set a new tone for their relationship, moving from a competitive stance to a position that is more collaborative and explicitly focused on improving academic achievement. Similarly, community expectations that teachers and districts will work together to produce good educational results are explicitly acknowledged as legitimate.

The parties insert language into the contract explicitly stating that the purpose of their relationship is students’ welfare, their academic achievement, and the improved performance of the public school district in meeting these goals. In so doing, parties emphasize student needs and articulate their shared interest in improving student achievement.

Final Comment on Nontraditional Bargaining

After more than a decade of experience and refinement, nontraditional bargaining practices appear to have settled into a set of methods that is more clearly distinguishable as a unified approach to bargaining. No doubt much learning has occurred, but it is still unclear whether mutual gains, interest based bargaining performs better than traditional bargaining in satisfying the goals of bargainers.

Documentation of the evolution in practice is limited and confined primarily to descriptions of individual instances. Research on the extent of use of the process, or the effectiveness of mutual gains in meeting its stated goals, is even scarcer. Little is known about why parties choose it over traditional negotiation approaches, its effect on the parties’ relationship, bargaining outcomes, and the ability of the parties to effectively advocate for their constituents. For bargainers today, then, little research-based knowledge can be offered as a result of the past 15 years of experience.

Despite, or perhaps because of, the lack of evidence for or against mutual gains / interest based bargaining, the question of whether mutual gains/interest based represents a viable or better approach to bargaining than do traditional practices continues to be debated. As the external environment for educational institutions holds increasing pressure for change and improvement and decreasing funding with which to work, the relative value of various bargaining strategies becomes even more important. Bargaining teams must choose their tactics in response to an often bewilderingly complex set of internal and external factors. It is natural to question whether nontraditional strategies are more successful than traditional practices in helping bargainers to achieve better outcomes in a complex environment.

READINGS AND REFERENCES

2007 Provincial Bargaining Structure in Canada

<http://www.naen.org/resources/Documents/Canadian%20Provincial%20Bargaining%20Structure%20.pdf>

Bargaining Methods and New Forms of Agreements

<http://www.hks.harvard.edu/fs/lkaboolian/publications/Win-Win-chapter1.pdf>

Fair Bargaining for a Better Future “Report on the 2007-2008 Collective Bargaining Process”

http://www.asba.ab.ca/wp-content/uploads/2014/07/fair_bargaining_report.pdf

In The Matter of An Industrial Inquiry Commission to Inquire into Labour Relations Matters

(BC Public School Employers’ Association and BC Teachers’ Federation) Final Report for Collective Bargaining Options Submitted to The Honourable Olga Ilich, Minister of Labour & Citizens’ Services, Province of British Columbia

https://www.labour.gov.bc.ca/pubs/teacher/07_bargaining_options.pdf

North American Association of Educational Negotiators

<http://www.naen.org/collective-bargaining>

Ontario Ministry of Education: Labour Relations in the Elementary/Secondary School Sector

<http://www.naen.org/resources/Documents/Ontario%20Labour%20Relations%20Overview%20Oct%202006.pdf>

State Collective Bargaining Policies for Teachers, Update by Michael Colasanti, January 2008

<http://www.ecs.org/clearinghouse/77/27/7727.pdf>

Summary of Teacher Collective Bargaining in Saskatchewan

<http://www.naen.org/resources/Documents/Teacher%20Collective%20Bargaining%20in%20Saskatchewan.pdf>

The Bargaining Toolkit: A Resource Manual for School Districts

<http://www.masb.org/portals/0/pdf/bargaintoolkitsingle.pdf>

Towards a Better Teacher Bargaining Model in British Columbia:

Report to Honourable Graham Bruce On the Teacher Collective Bargaining

<https://www.labour.gov.bc.ca/pubs/teacher/teachers-final-report.pdf>

When Education and Legislation Meet: Teacher Collective Bargaining in Canada: Andy Hanson, January 2013

<http://www.ctf-fce.ca/Research-Library/When-Education-and-Legislation-Meet-AndyHanson.pdf>

Jerome T. Barrett, "*P.A.S.T. is the Future: A Model for Interest-Based Collective Bargaining THAT WORKS!*", Third Edition, Barrett and Sons Publishing Company, 1992.

Bourque, R., The Merits and Limitations of Principled Negotiation in Union-Management Relations (Industrial Relations Department, University of Montreal paper) [presented as part of Hamilton, B. session, The Collective Bargaining Process Kingston, ON, Industrial Relations Seminar, IRC, Queen's University, May 1997].

Conflict Management Inc., Tyler-Wood, I. "Do You Have to Give In to Get to "Yes"?" in *Advancing the National Education Goals: The Role of Collective Bargaining* (Washington, D.C.: National Education Association, 1993).

Dennison, G. M., M. E. Drummond, and W. P. Hobgood. 1997. "Collaborative Bargaining in Public Universities." *Negotiation Journal* 13 (1): 61-81.

R. Fisher and W. L. Ury. *Getting to YES: Negotiating Agreement without Giving In*, second edition. Boston: Houghton Mifflin, 1981, 1991.

Keane, William G. 1996. *Win-Win or Else: Collective Bargaining in an Age of Public Discontent*. Thousand Oaks, CA: Corwin Press.

Kerchner, C. T., and J. E. Koppich. 1993. *A Union of Professionals: Labor Relations and Education Reform*. New York: Teachers College Press.

Ponak, A., Teacher Collective Bargaining and Dispute Resolution: What are the Alternatives? in Foster, W.F. & Smith, W.J. (eds.), *Reaching for Reasonableness: The Educator as Lawful Decision-Maker*, CAPSLE '98.

R. A. Friedman, "Bringing Mutual Gains Bargaining to Labor Negotiations: The Role of Trust, Understanding, and Control," *Human Resource Management*, Winter 1993, Vol. 32, Number 4.

Susskind, L., and E. Landry. 1991. "Implementing a Mutual Gains Approach to Collective Bargaining." *Negotiations Journal* 1 (7): 5- 10.

Whitehead, M. 1997. *Changing Paradigms in Negotiations: A Microethnography of the "Interest-Based" Model of Collective Bargaining in School Board-Teacher Union Contract Negotiations*. EDRS Research Report # ED409624.

Weiss, David S. 1999. *Beyond the Walls of Conflict*. Laval, Quebec City, Canada: Laval University Press.