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Does Where You Stand Depend on Where You Sit?

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Abstract

[Excerpt] In "New Roles for Collective Bargaining," I concentrated on the bargainers—the agents who will be sitting at the table and, indirectly, their respective constituents. There are some additional considerations, less critical but not inconsequential, that may also improve your negotiations. These recommendations and innovations constitute more than a bin of odd parts; they all address environmental (structural or physical) accommodations to the strengths and limitations of human capability—the field of human factors engineering. After all, it is human beings (not principles, techniques, or structures) who fashioning solutions.

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In "New Roles for Collective Bargaining," I concentrated on the bargainers—the agents who will be sitting at the table and, indirectly, their respective constituents. There are some additional considerations, less critical but not inconsequential, that may also improve your negotiations. These recommendations and innovations constitute more than a bin of odd parts; they all address environmental (structural or physical) accommodations to the strengths and limitations of human capability—the field of human factors engineering. After all, it is human beings (not principles, techniques, or structures) who fashioning solutions.

We'll organize our analysis around the parameters of "time" and "space".

Time

In traditional bargaining, the idea was to wear the other side down so that they would capitulate. That suggested the utility of long bargaining sessions starting late in the day and extending into the evening and even early morning hours.

In an interest-based bargaining environment, deals are arrived at not as a consequence of exhaustion, but through dialogue, analysis, and creativity—all of which require mental acuity. Therefore, consider the following recommendations.

The Bargaining Session

Start bargaining sessions early in the day, not late—most of us do our best work while we are fresh.

Take frequent breaks (every 60 minutes or so—the mind can absorb only what the butt can endure).

Bargaining sessions shouldn't last more than the normal workday (max 8 hours).

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The Bargaining Schedule

You have a choice between intensive and extensive bargaining. Intensive bargaining entails meeting several days a week each and every week until the deal is done. Extensive bargaining involves infrequent meetings spread out over a considerably longer period of time. Extensive bargaining is inefficient in that the first part of each session will be spent trying to remember where you left off last time, and the last part of each session will be spent trying to find a time when everyone's schedules will permit them to meet again. The only advantage of extensive bargaining is that it allows the agents ample time to communicate with constituents between sessions. But even if you negotiate as intensively as four days a week, that one day off should be sufficient to attend to constituents—and to check on the status of the job one does when not bargaining.

Experience has demonstrated that it takes about 4 hours to address a substantive bargaining issue in interest-based fashion. In about that amount of time you will have either arrived at tentative agreement on an issue, or come to the conclusion that you are stuck. Not all issues in bargaining are substantive, of course, and some might be so insubstantial as to be considered "housekeeping" in nature, requiring little dialogue or time to resolve. Review the combined list of issues presented by the two sides, and make a rough estimate of bargaining days required, figuring about 2 major issues per day. Then allow some additional time for housekeeping. Please note --the preceding formula assumes a combined bargaining committee in the 6-8 person range working one issue at a time. Larger committees go slower and parallel subgroup bargaining goes faster (parallel subgroup bargaining to be explained later in this present article).

Negotiation Progress Matrix—Project Management Approach to Bargaining

Time and other assets were generally poorly managed in traditional bargaining. There was lots of talk (some of it heated) and few conclusions until bargainers began to feel the heat of an approaching deadline—at which point issues were swapped, cropped, or dropped—leading to less than elegant solutions on only a portion of the bargaining agenda. In effect, bargaining always consumed whatever time was made available—and that amount of time reflected more the history of bargaining on the property than the content of any specific agenda.

Interest-based bargaining, on the other hand, forestalls compromise and requires a fair amount of time to engage in the sort of dialogue that produces a significantly greater depth and breadth of interests, innovative options, and quality solutions. Therefore, agenda (workload) rules and time is allocated accordingly. Steady substantial progress is anticipated rather than a flurry of inelegant activity in the last hours. For example, halfway from outset of bargaining to deadline, roughly half of the issues should have been treated.

The original estimate of bargaining days is just that, an approximation, and it may be necessary to make adjustments as you proceed. If you find yourself falling behind, you may wish to extend the deadline, abridge the agenda, or (more likely) use your agents differently (parallel subgroup bargaining). The latter adjustment works best when applied sooner rather than later and therefore it is desirable to have in place a device to measure progress against schedule. Construct a matrix in which a row is allocated for each issue on the agenda, and columns specify the nature of progress milestones (e.g., in-progress, tentative agreement, language complete, stuck, really stuck, objective external standards). Checkmarks are made in the appropriate box of the progress as the negotiation proceeds. In addition to signaling early the need for readjustment of resources (should you be falling behind) the matrix also provides some positive reinforcement as the list of TAs (tentative agreements) grows.

Space

Meeting Location

When bargaining was mainly a head game—trying to get the other side off balance—meeting on neutral turf (usually in a hotel) was the rule. In this style bargaining, selection of space has more to do with efficiency (lighting, multiple rooms, technical support).

Lighting

Ideally, you want to be in a room with plenty of windows providing natural light and a sense of expansiveness. Worst case would be a conference room buried deep in the basement of a hotel with no windows and the sort of lighting adequate only for proms and wedding receptions.

Temperature and Ventilation

It's all about controllability. Especially if you were fortunate enough to find space with windows, you will need to be able to make adjustment to temperature as the day progresses.

Room design

Ideally, you would like to have three meeting rooms, one for joint sessions and two for caucuses. In a pinch you can get by with two, the main room also serving as one of the caucus rooms.

Seating arrangement

The traditional layout, rectangular table with "thems" on one side and "uses" on the other, is not recommended. Especially when bargaining is tense, this oppositional seating tends to exaggerate the distributive (competitive) predisposition that we naturally bring to the table. Oppositional seating also makes it more difficult to "separate people from the problem." Our visual focus rests on the intransigent personalities on the other side rather than the issue or problem that we are trying to solve.

Some academics thought that a round table with alternate seating (an "us" sandwiched between two "thems"—and vice versa) would be just the ticket to remedy this ill of oppositional seating. But it turned out that this human engineering innovation amounted to putting the cart before the horse. In those instances in which trust levels were not particularly high, this arrangement caused considerable stress in that individuals had to shield their personal notes from both flanks, were unable to mini-caucus, and could not pass notes or make rude comments under their breath. In short, just as the oppositional rectangular table grossly exaggerates the competitive distributive aspects of bargaining, this alternating round table setup grossly exaggerates the integrative aspects of bargaining. It suggests that there is no us and them—when in fact, there is—otherwise you wouldn't be bargaining. Now, in situations in which trust levels are quite high, individuals may sit down randomly in interspersed fashion, and that's fine, no problem. It's only a problem if you try to over-engineer the layout to suggest a level of trust that is not, in fact, yet achieved. That mistake will only make people feel anxious and contribute to poor performance in terms of asking questions, listening, creativity, etc.

A more considered approach to engineering the seating arrangement is as follows: Put two rectangular tables together in a chevron, "V" or "L" shape, with the open end facing flipcharts or whiteboards. The agents sit on the outside of the V with the "uses" on one side and the "thems" on the other. But now the focal point of the negotiators is on the issue or problem as it is being captured on the flipcharts, and much less on the personalities on the other side. This "V" layout becomes a bit unwieldy with large committees, however, and at some point the "V" needs to be converted into an open "U" shape. But at that point you need to be thinking seriously about the size of your committees anyway.

Committee size

Most bargaining committees seem to fall in the half-dozen range—resulting in a total of about 12 agents altogether at the main table. That's starting to get a bit large. There is no science on this topic, but as the total number of participants grows larger than about 6, the quality of the dialogue begins to decline. Communication shifts from dialogue to

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speechmaking and that between the two spokespersons rather than the full range of agents at the table.

One way to optimize the contribution of a larger number of agents is to do parallel subgroup bargaining. Instead of the two committees working in full force on one issue at a time (single issue series bargaining), break the committees down into subgroups tackling issues simultaneously. That breakdown could be by class of issues or by individual issues, the latter entailing a reshuffling of players at the conclusion of each issue. In addition to the benefit of negotiating in smaller groups, parallel subgroup bargaining offers the advantage of speeding up the process. Here's how the math works. Using interest-based bargaining techniques it takes about 4 hours to work through a substantive issue from opening remarks to tentative agreement (or recognition that you are stuck). That means you can plan on tackling two such issues per 8-hour day. If you break that single committee down into two subgroups, however, you might be able to nearly double your output. I say "nearly" double, because you do have to factor in some additional time for caucuses to keep the subgroups on the same page. Before I explain how those caucuses work, let me first caution you against a common pitfall in subgroup bargaining. Often, a subgroup will be given an issue and sent off to work it with no plan to report back to the larger group until they have come up with a tentative agreement. The subgroup may, in fact, meet at different times on different days at different locations than other subgroups—especially true in the case of extensive bargaining. When they do finally report back, the response of their colleagues can be quite discouraging: "Who told you to come up with that?" "That will never work!" "We can't go along with that!"

Here's a better idea. Let's say you start bargaining at 8:00 am with two subgroups. One is working on an overtime distribution issue, the other on apprentice/journeyman ratio. For the first hour, each subgroup is separately engaged in discovering the interests of the two sides on their respective issues. The dialogue starts to slow down as they sense that they now understand sufficiently the needs and concerns of both sides. Before moving on to options, however, a joint caucus is held. "Joint" meaning that all of the union agents working on both subgroups gather in their caucus room, while all of the managers (both subgroups) meet in theirs. Let's look in on the union caucus. One of the union agents stands up in front of the caucus with a flipchart that contains two columns of interests, one for the union, and the other for management, on the topic of overtime assignment. He goes over the union's interests as explained to the company and he explains what the union has learned in that subgroup regarding management concerns. He is frequently interrupted by fellow union agents on the other subgroup, to explain some finer point of management's concern, and he is also reminded by those same folks of some additional concerns that the union has on this topic that have not yet been revealed to the company. The agent at the chart makes notes of these additional union concerns and of further questions to be posed to his management counterparts. Then another union agent takes the floor with a flipchart that outlines the interests revealed thus far in the apprenticeship discussion. A similar interaction takes place between him and the agents working on the overtime subgroup. Allowing about 15 minutes per subgroup report-out, this caucus is over in about half an hour. The management agents, engaging in the same sort of activity, are finished in about the same amount of time. A break is taken and the two subgroups are back at work around 10:00. Once back in their

subgroups, the agents first inform their counterparts of additional interests generated in the caucuses, and also ask further questions generated in the caucuses. Based upon a new enriched understanding of each others' interests, they brainstorm a list of options. It's now 10:30 and time for another joint caucus. Let's look in on the union caucus again. The agent that first took the floor in the initial caucus does so once again with his chart, explaining management's response to the questions raised in the last caucus. He then follows with the list of options generated in the subgroup. Once again, his colleagues working on the other issue jump in with commentary, suggesting additional options and passing judgment on the ones presented in the initial list. That complete, a union agent on the apprenticeship subgroup stands up with his chart and goes through the same process. Again, you can anticipate about 15 minutes per subgroup or 30 minutes total for this caucus. It is now 1100 and the subgroups reassemble to spend the next hour working up a short list of options, float semi-offers, offers, counters, and perhaps arrive at a tentative agreement. As you can appreciate, the product of subgroups working in this fashion (frequent joint caucuses) is much more likely to be accepted and embraced by their colleagues working on other topics because those latter agents have their fingerprints all over these deals. Through the caucuses they were virtually at the table even though they never engaged the other side directly on this topic and spent most of their time in another room working on a different issue.

I've spent quite a bit of time talking about parallel subgroup bargaining, not because it is an essential component of interest-based bargaining—it's not; most interest bargainers still rely primarily on single committee series bargaining. I spent the time because of the growing popularity of subgroup bargaining and because of the poor track record of its employment absent the frequent caucuses.

Record Keeping

Humans are sense-making creatures. We're not that fleet of foot nor sharp in tooth and claw and therefore, when under stress (faced with a cave bear's approach or an extreme proposal made by the other side) our principal survival strategy has been to make sense out of our predicament. We take information in through our various senses, compare it, contrast it, draw inferences, and come to conclusions as to the best course of action. And we are hard-wired to do this rather quickly (think cave bear's approach). In continuing bargaining relationships (labor negotiations) we tend to come to the table ready for bear—that is to say, with a game plan in place based on the assumption that we pretty much already know what the other side wants—it's the same old crap, year in, year out. And when the other side starts to tell us about their issue, we latch onto the pieces of information that confirm our preconceptions, and filter out information that does not jibe. We don't do this consciously, but it happens. What is the opposite of speaking in bargaining? No, not "listening", but "waiting to speak". We are lousy listeners in most settings and particularly poor in negotiations. And to the extent that we are listening at all in negotiation we have limited ability to process large amounts of information. If we haven't already made sense out of the other side's situation, we do so based on as much information as we can keep in our short-term memory. More than that is filtered out.

All of which is to say that it makes sense to keep personal notes in many negotiations—those in which the issue is complex and/or of great import. The juice isn't always worth the squeeze—sometimes the issue is not that complex or important and the short version of interest based negotiation (verbal) will suffice. But let's say the issue is both significant and complex and agents for both sides are taking personal notes. If we stopped and compared those notes, would it be likely that they indicated that all the agents heard the same thing? Not likely. One way of improving the chances that all agents are on the same page is to employ a master visual aid (flipchart, whiteboard, blackboard) on which is captured at a minimum "interests" and "options" as outlined in the issue analysis format. This allows a deeper and fuller analysis of the issue than a verbal approach will allow—forestalls too early conclusion, and permits the agents to pick up later on information that may have escaped them in a purely verbal exchange. To be most effective this master visual aid should be in full view of the agents—at the center of the opening of the "V" or the "U".

Information generated through dialogue and captured on the flipcharts may be converted to hard copy for distribution back to agents. This can be done daily or twice a day by clerical support. You might consider providing all agents a three ring binder at the outset of negotiations, with numbered tabs inside. The numbers on the tabs refer to a master list of issues that constitute the agenda for this negotiation. As hard copy is distributed, it is inserted in the binder at the appropriate tab. Updated versions of the progress on an issue replace the earlier copy. This allows each agent to maintain a personal record of progress on each and every issue.

It would also be helpful to provide as a cover sheet, the progress matrix earlier described, updated daily, to indicate progress overall.

Technical Support

Information of various kinds (agenda, interests, options, tentative agreements, progress spreadsheet) will need to be converted into hard copy. That will require a computer, printer, photocopier and somebody to attend to these clerical tasks. This can be handled by committee support people stationed in one or both caucus rooms—or by a single individual (generally company-provided) serving both sides and positioned in a separate space.

Concluding Thought

The core of interest-based bargaining rests in the attitude of bargainers: "Your problem is my problem (sorta)". In other words, an internalized belief that the best way to get more for one's constituents is to well understand the concerns of the other side and to invent potential solutions that address the other side's interests as much as possible in the context of advancing the interests of one's own constituents. That mindset is primary.

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which, in turn, leads to congruent behaviors (e.g., asking questions, paraphrasing, and brainstorming). This article has proposed yet a third level of bargaining innovation (structural/environmental) designed to support the attitudinal and behavioral basis of interest-based bargaining.

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