

Interest-Based Bargaining

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A new approach to labor negotiations, generally referred to as interest-based bargaining (IBB), has gained increasing popularity among federal negotiators in recent years. Based on negotiation research performed by the Harvard Negotiation Project, IBB presents a significantly different approach to the collective bargaining process--although it relies upon some skills and specific techniques common to traditional bargaining also.

The primary characteristic that distinguishes IBB from the traditional approach to labor negotiations is the absence of pre-determined bargaining positions and proposals. In IBB, the parties deliberately avoid adopting specific positions and drafting proposals to deal with various bargaining issues at the outset of negotiations. Unlike traditional negotiations, IBB makes contract language drafting the last step in the bargaining process, rather than the first.

Here, in a nutshell, are the steps involved in IBB.

1. Identify the issues.

This requires both parties to pinpoint those specific areas that either require improvement because of problems experienced in them, or present opportunities for positive change. This step does *not* include the identification or adoption of any proposed *solutions* to such problems or opportunities, however.

To illustrate, the union might determine that the current method of selecting employees for details is neither clear nor fairly administered. Under traditional bargaining, it would then draft a proposal to change the current contract language on details, and would focus its efforts on persuading management to accept the new provision.

Under the IBB approach, however, at this stage it would simply add the issue of details--specifically, the distribution of them--to the list of issues it would like to negotiate. When the parties convene to commence negotiations, it would then explain why it felt the issue required attention.

2. Identify interests.

After an issue has been identified for negotiation, the next step requires *both* parties to identify their particular *interests* in connection with the matter. Sometimes it is helpful to define the term interests as including needs, requirements, objectives or limitations.

For example, in connection with its intention to raise details as a topic of negotiation, the union might come up with the following interests that underlie the issue.

1. Any method of distributing details should be based on objective criteria, rather than subjective "gut feelings" of who should be chosen.
2. Details should be distributed in such a way as to maximize career development opportunities for employees.
3. Where possible, employees should be able to exercise their preferences in accepting or declining details.

Management interests, on the other hand, might include the following:

1. Any detail distribution method must allow supervisors to select genuinely qualified employees.
2. The method chosen must comply with applicable regulations and laws.
3. Any method must be administratively clear and simple; that is, not require complex paperwork, slow the process of filling details, or add significant costs to it.

Practically speaking, once developed these lists of interests amount to a set of specifications that establishes the essential needs that must be met to render any proposed solution acceptable.

At this point some parties also develop a set of standards describing the minimum requirements any agreement on this issue must meet. To illustrate, in this example they might agree that any detail distribution agreement must be fair to all employees in the unit, and effective in identifying qualified employees quickly. Many--perhaps most--federal negotiators omit this step, however, viewing it as redundant or unnecessary after pinpointing the parties' interests.

3. Identify potential solutions.

Most parties use a "brainstorming" approach to accomplish this step. That is, they use a specific procedure designed to elicit the maximum number of possible solutions to the issue at hand from the negotiators. In keeping with good brainstorming practice, they are usually careful to avoid evaluating the ideas as they pop out, or getting bogged down in advocating or attacking them at this stage.

To keep track of the ideas a designated recorder usually writes them down--often on large flipchart paper--and later clusters similar or related ideas together for easier review.

Only after the parties have run out of new ideas to add to the list of possible solutions do they move on to the next step.

4. Evaluating and selecting potential solutions.

At this stage the parties engage in a process of discussing the various solutions they have brainstormed in light of the interests they had identified earlier.

For example, one brainstormed idea might have been to simply rotate details among workgroup employees on the basis of seniority. During discussion, it would likely be pointed out that although that would certainly be an objective criterion, it might not always result in selection of a genuinely qualified employee for the detail at hand.

Further discussion, however, might result in a consensus that consideration of seniority might still be appropriate if supervisor's were able to vary from it as a selection criterion when qualifications issues might be a problem.

In other words, during this phase of the process the "brainstorm" list is usually winnowed down, with some ideas dropping off completely and others being combined or modified. Eventually, however, a satisfactory "agreement in principle" to the main features of a contract provision dealing with the issue usually emerges. At that point the parties are ready for the final step in the IBB process.

5. Drafting contract language.

Using the "agreement in principle" as an outline, one side or the other drafts specific contract language that is proposed for inclusion in the labor agreement. If the parties have done a good job of fully discussing the issues involved and have truly reached a meeting of the minds, this step does not usually present much of a problem.

If they have glossed over potential friction areas or failed to fully explore the way in which tentatively-agreed ideas would work in specific situations, however, this is when problems tend to pop up. For that reason, it's essential that you carefully review every word of the proposed contract language, "test drive" it to make certain both sides agree how it will work in various factual situations, and only sign off on it when satisfied that it does, in fact, accurately represent your agreement.

Other Features of IBB

There are several other characteristics of IBB negotiations that differ significantly from traditional collective bargaining. They include the following:

1. Facilitators

In traditional bargaining the only parties present during negotiation sessions are the respective bargaining teams, unless an impasse looms and a mediator is taking part. In IBB sessions, however, most parties use a "facilitator" to help keep the parties on track and within the boundaries of the IBB steps and behavioral ground rules. Although "outside" facilitators are often chosen, there is a growing movement in the federal service to "swap" such services among agencies to reduce the out-of-pocket costs of bargaining. In some cases, experience parties are even comfortable designating various members of the actual bargaining teams to serve as a facilitator.

2. Behavioral rules

Ground rules are nothing new to the federal service, but good conduct rules are. Case law dealing with traditional bargaining has anticipated a "robust exchange of opinion." In practical terms, this has meant that some negotiators have felt free to conduct themselves in an astonishingly obnoxious manner at the bargaining table. Those negotiators faced with such boors have generally been advised either to ignore their antics, or, in cases of extremity, to choose appropriate retaliatory steps.

IBB anticipates a kinder, gentler, more cerebral approach to negotiation, however, and recognizes that boorish behavior is likely to get in the way. Consequently, parties entering into IBB usually work out ground rules that specifically prohibit personal attacks, overt animosity, and demeaning other participants' ideas or suggestions. In short, it requires--and usually mandates--reasonable civility in the negotiation process.

3. Altered ground rules

Although IBB has established an impressive record of success in several federal agencies, it has not succeeded in every negotiation on every issue. Accordingly, parties have come to recognize that it is wise to structure IBB ground rules to deal with potential problems.

For example, if IBB is not working on some--or all--issues before the parties, what will they do next? Just keep discussing the issues, call in a

mediator in addition to the facilitator, declare an impasse, or discard the IBB approach in favor of traditional bargaining?

Based on their experiences with IBB, some parties have developed what might be termed "hybrid" approaches to bargaining, and have incorporated them directly into their ground rules. For example, one agency has found that it is most successful when it first discusses all issues in an IBB framework, but then separates out those in which it is clear the parties will have difficulty because of opposing interests. Such issues are then bargained in the traditional manner after the conclusion of all the other (i.e., IBB) issues have been agreed upon.

Advantages of IBB

Parties who have used IBB cite several advantages over traditional approaches to labor negotiations. First, it focuses negotiators on the issues, objectives and interests at hand, rather than upon the specific wording of a proposal.

A second major advantage is that IBB removes most or all of the gamesmanship and animosity from the bargaining process. This results not only from ground rules prohibiting such behavior, but also from a defined series of steps that focuses participants on identifying problems, interests and solutions, rather than upon attacking or defending specific proposals.

Adherents of IBB also contend that it tends to produce better quality agreements with a higher level of "buy-in" by both parties, and that it contributes to a less acrimonious labor-management relationship as the agreement moves into the contract administration stage.

Disadvantages of IBB

Although IBB clearly has a lot going for it, it is not a "magic pill" solution with a complete absence of flaws. There are, in fact, some disadvantages to IBB, including the following:

1. IBB is process-intensive.

That's a fancy way of saying that its wide-open, round-robin discussion approach can--and often does--lead to lengthy discussions and long-running negotiations. Traditional bargaining in the federal service can also drag on for extended periods of time, obviously, but experienced negotiators can often move issues to agreement much more quickly using it rather than IBB.

2. IBB works better with some issues than others.

Dyed-in-the-wool true believers in the IBB process deny it, but most negotiators concede that IBB works best when dealing with topics that a) involve the creation of a procedure or rule rather than the distribution of money, and b) that do not involve diametrically opposed interests. In short, it works quite well in the vast majority of issues federal negotiators deal with, but very poorly in dealing with some of them.

3. IBB is only as good as the participants involved.

This is true of traditional bargaining also, of course, though to a somewhat lesser degree. That's because in traditional bargaining the parties are usually represented by a chief spokesperson who does most or all of the talking, and who usually has at least some experience in how to move things forward--no matter how obtuse the other party may be.

In IBB that's not the case. Everyone gets to put his or her 25 cents worth in--every day. Moreover, since IBB ground rules usually call for consensus for the adoption of solutions (i.e., contract provisions), one or two folks who want to use IBB as a cover to manipulate outcomes their own way can, to use an old but accurate cliché, throw a large wrench in the gears.

Accordingly, parties using IBB have discovered that it is critically important to choose team members who genuinely understand and support the IBB approach, and who are trained jointly in its methods. Otherwise, all too often negotiations soon revert to traditional tactics masquerading as IBB.

Common Misconceptions About IBB

In their enthusiasm for a new approach to solving old problems, people often over-estimate the range of things it can do. Granted, that new headache remedy may, in fact, make head pain disappear faster. But claims that it will cure baldness and psoriasis are probably over-stated.

The same is true of IBB. True, it is an approach that has shown considerable utility in the negotiation of federal labor agreements. But it is not a "magic pill" that simultaneously causes all manner of other problems to evaporate. Among the most common misconceptions about the impact of IBB are the following:

1. IBB does not require as much preparation.

Actually, it requires more if you expect to emerge with an agreement that will adequately protect your interests and actually work. In the free-form discussion format of IBB, it is crucial that negotiators very clearly understand exactly what will and will not work for the clientele they represent. Otherwise, it's all too easy to buy into something in the "feel-good" atmosphere of cooperation that later proves an extremely unpopular burden upon those who must live with it.

2. Labor relations or personnel experience is not an asset in IBB.

Putting a team into labor negotiations without an experienced personnel or LR practitioner is like putting an aircraft in flight without a pilot--it'll come to the end of its journey eventually, though probably not where the passengers wanted to go and without the kind of landing they had in mind.

Some contend, essentially, that experienced labor relations professionals are "infected" with traditional attitudes toward bargaining, and therefore could not possibly be effective in IBB. That's hogwash. For one thing, it grossly underestimates the flexibility and learning potential of an entire group of people with no objective evidence to support this biased conclusion. Second, it conveniently overlooks the fact that unions routinely send experienced officials to the table, regardless of the method employed. If they are capable of adjusting to a new approach, why would we assume that only management representatives cannot?

Sending a team to negotiate an agreement dealing primarily with personnel-related issues without a solid grounding in the maze of federal personnel laws and rules is not likely to produce a happy result.

3. Conferring with constituents is contrary to the IBB process.

This makes sense only if one a) ignores the fact that the teams are there to represent their respective clients' interests, not their own, and b) thinks good agreements are somehow more likely to occur if a communication blackout is imposed on the negotiators.

Some IBB advocates have gone so far as to opine that neither party should be permitted to caucus during IBB negotiations, since it "violates" the "spirit of cooperation" upon which the process is built. It is easy to see why this makes little sense.

First, IBB explicitly recognizes that the parties have their own respective interests. Consequently, it only makes sense that they may occasionally want to discuss them privately to make sure they are staying on track.

Second, the point of IBB is the same as that of traditional bargaining: namely, to end up with a solid, workable labor agreement--not to safeguard the rigid, dogmatic rules of a process. Accordingly, if either party would feel more comfortable discussing some matters in private before, say, agreeing in principle to a proposed solution, it has the right and should do so. To argue otherwise--that it should agree without making sure it makes sense to do so--is just plain silly.

4. Negotiability is no longer an issue when IBB is used.

This would be true only if Congress passed an amendment to the Statute granting parties a waiver from all otherwise-applicable laws, rules and regulations. The mere fact parties have decided to use IBB as a bargaining method does not mean they are exempt from compliance with all those laws and regulations that apply to them otherwise.

Nor does it mean that their interests will suddenly coincide on every matter. Like it or not, there are some areas—for example, technology improvements that may lead to a loss of positions—in which the parties' legitimate interests are diametrically and legitimately opposed.

In short, IBB is not a panacea. The undeniable fact is that it does not work equally well regardless of the issues under discussion. Consequently, some parties have discovered that IBB works best when used in a modified, or hybrid approach that incorporates the use of traditional bargaining techniques to some extent in order to deal with certain issues.