

The Negotiator: Conditions for Successful Interest Based Bargaining

by Gregg Primo Ventello

Inside every airline magazine is an ad in which Chester L. Karrass insists, “You don’t get what you deserve, you get what you negotiate.” This suggests that the “art” of negotiation is more important than the substance of any issue under consideration. Under certain conditions Karrass is right; art trumps substance, but it’s a shame. His perspective breeds the kind of cynicism and suspicion that make contract negotiations rancorous.

When it’s time to negotiate at my college, the faculty union’s “professional negotiation” (PN) team musters from faculty volunteers whose experience in negotiations can range from novice to veteran. The old hands direct the new in order to field as knowledgeable a team as possible. The PN team meets with the administrative representation, composed of a lawyer hired by the board of trustees and a few dour administrators conscripted for the unpleasant task. What happens next? There are good years and bad, but too often, we beat each other up.

Sometimes one, or both sides, relents enough to carve out a contract. Other times we end in impasse, which requires each team to compose a long, wearisome report detailing their position for a federal mediator, who examines the reports and offers a non-binding opinion. In the interim, the board of trustees might grow tired of the stalemate and try to offer a unilateral contract, which never works because support for the union is high. There are times when our contract negotiations produce little but grist to sell local newspapers. Readers enjoy a letter-to-

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the-editor denouncing teachers, or a report of faculty rejecting a unilateral contract by stacking them in a tall column at the president's office. People love a good row.

And yet, in 2006 I volunteered to be a member of the union's negotiation team. Part of the reason I chose to participate was that the college committed to trying something new, an alternative method of negotiation called Interest Based Bargaining (IBB). In contrast to traditional methods, IBB adds a collaborative problem-solving process that enables everyone to air their concerns, encouraging understanding and trust. All of us hoped that IBB would foster a new era of trust between administration and faculty. Professional mediators from the Federal

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Mediation and Conciliation Service in Kansas City came to our campus to train faculty and administrators in IBB. Everyone was optimistic. The assumptions of IBB were conciliatory and cooperative. We learned from our trainers that "mutual gain is possible," and that "discussions will be open and frank." IBB directed the "parties to disclose and share information," and most importantly we learned that the spirit of IBB required that the "parties help each other succeed."¹ Helping us understand IBB were exercises contrasting it against traditional methods that revealed how human behavior can reach the height of absurdity under the conditions and assumptions of traditional bargaining. We laughed together and this helped us become a single cohesive team of faculty and administrators, instead of something closer to gladiators readying for a melee. A single point in the training materials was of utmost importance. "Since behavior is driven by beliefs" success using IBB depended on "the ability of the potential participants to accept the underlying principles and assumptions."² In other words, success hinged on whether or not you bought into it.

This can be difficult. We live in an era of increasing hostility toward the idea of shared governance. For some administrators, the notion that faculty are management has evaporated. The institutional model in our capitalist nation is the corporation, and the long reversal of antimonopoly laws has led to the consolidation and concentration of power. In our era, powerful individuals devalue college and disrespect personnel. Peter Thiel, co-founder of PayPal, has questioned the value of college, as outlined in this journal last fall,³ and just two years ago Silicon Valley CEOs agreed not to hire talent away from each other, effectively creating a labor cartel that eliminated new opportunities for engineers.⁴ Today, attempts to control employees and vilify education are myriad. No doubt this kind of thinking has found its way to our bargaining tables, and it becomes most evident to faculty

when an administrator behaves with the hubris of a misguided CEO. Administrators who wish to issue edicts will certainly not buy-in to IBB, and as a result they should get comfortable with stalemate.

IBB requires faculty and administrators to work together to reach a solution “that all can accept and support without feeling they have compromised any important interests.”⁵ In an actual session, negotiators follow a problem-solving cycle. A clear and defined issue is broached, all interests regarding the issue are listed, options are brainstormed, and then each option is measured against established criteria to develop the best solution.⁶ By way of example, let’s say one issue

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on the table is flex-time. The college staff in student services (Counseling, Career Planning, etc.) have an interest in creating a flex-time program, however the dean of Student Services has an interest that may conflict, which is he wants to be sure that all areas of student services are covered by the necessary number of personnel throughout the workday. Potential solutions or options are brainstormed and listed, then each option is considered against the set of criteria established by the whole group. Criteria may include questions like: Is it feasible? Is it beneficial? Is it affordable? Depending on how well the options do against the criteria, you may or may not establish a flex-time program. If an option makes it through the criteria, it is now the solution and the group works on the language to be included in the contract. If no options emerge, it’s okay. Perhaps flex-time isn’t practical. The important point is that you have come to that conclusion together. The entire group concludes that flex-time is not in the best interest of the college. No winners, no losers, just people trying to contribute to the success of the college and make the best workplace they can make.

At its worst, traditional bargaining polarizes each party by assuming that one side will win and one side will lose. It becomes a battle of wit in which the issue is lost to the divergent arguments each side presents to win their case. Arguments eclipse solutions. Art trumps substance. By contrast, IBB prompts everyone to help find solutions. It also facilitates a greater understanding among all the participants, which is vital when no viable options emerge.

In 2006, the IBB training at my college was excellent and it had an effect. Faculty and administrators recognized most of their common objectives, and put together a three year agreement. Some said it was the best contract we ever had. I had only one piece of criticism to offer, and that was that we really hadn’t been true to the IBB process or spirit. The administration was willing to try IBB, but they

were not willing to do it without the college-hired lawyer as a negotiator. As I understood it, this conflicted with IBB theory even though it is common practice. The presence of an attorney sends the message that the college needs legal protection from the faculty. Whether this is implied by the administration or inferred by faculty is not relevant. What *is* relevant is that the attorney's presence, not his person but his capacity, fosters distrust. It sets a litigious, defensive tone for the negotiations. More importantly, purists object to the presence of legal counsel because any outside agent will have interests beyond those expressed by administration and faculty. It is these outside interests that can make it difficult to offer full disclosure,

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and when one party is not willing to share information, the IBB process is less likely to work. This occurred while we tried to broker a compensation package. The lead administrative negotiator would not or could not disclose his limitations. Not having a range in which to work frustrated both faculty and other administrators. Admittedly, compensation is often the most difficult issue to settle, but refusing to openly discuss specific parameters can breed the kind of distrust that leads to impasse. Thankfully, this did not happen, and we ended up with a good contract, but we had to engage in a kind of hybrid bargaining, using a mix of traditional and IBB techniques that served to lengthen the process considerably and unnecessarily.

Of course, any method of negotiation is imperfect. Like democracy, you're better off if you are unable to perceive the imperfections, or able to overlook them and accept them as part and parcel of the process. This, I'm sure, is obvious to any seasoned negotiator. To a greenhorn like me, however, it was not. And I found myself, at once, brooding over the nondisclosure, while knowing perfectly well that I needed to let it go. Ultimately, though, we had a good contract, and even the federal mediators agreed that it didn't matter how true to IBB theory we were, if in practice we got the job done satisfactorily. So, I was hopeful. Overall it had been a stimulating and positive experience, and any criticism I had, I chalked up to being a transition year. "It takes time," I thought, "to change people's habits and hearts." But, I was wrong.

Three years later, in 2009, we returned to rancor. Negotiations dragged on into the following academic year. In our defense, there were complex issues no predecessors ever had to confront, issues over which we had little control. The most confounding was a mandate from the Kansas State Board of Regents requiring the college to absorb the Kansas City Area Technical School. Another, of course, was

what has been aptly called the Great Recession, which created problems we only managed to exacerbate. As I mentioned, IBB theory requires that all participants be trained together to build trust. Even if you'd been trained previously, you'd have to go through the training again. The federal mediators made this point explicit before the first day of our re-training. It wasn't long, though, before it was evident that the college administrators were not or could not be committed. With the exception of the college lawyer, who was paid to be there, the major administrative players shuffled in and out during the training period.

In fairness, they were stretched thin. A year earlier the provost had initiated a

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re-organization of the management structure. Streamlining would save money in tight economic times, and he'd hoped it might eliminate internecine feuds. It was an admirable attempt, but the new structure may have been his undoing. He had bitten off more than he could chew, and some time after the re-organization he was forced to add two new assistant provost positions, which were filled "temporarily" by two current deans who now had double duty. All three of them, the provost and the two deans, had scant time for IBB training. This was compounded by two factors. First, the provost had been through the training three years earlier, and I suspect that he felt it redundant, which may have set the timbre for the other administrators. Second, people new to IBB can sometimes feel suspicious of the method. They are guarded and doubtful that it will work, and their initial impression is that it's a lot of over-indulgent, hand-holding nonsense. They just want to "get down to business." I've seen this reaction in novices and seasoned negotiators alike, but it couldn't be more wrong.

When IBB is followed, and the procedures adhered to, it works well and works more quickly than traditional bargaining. When it works best, you are surprised, even amazed, by the people who emerge as allies. Unfortunately, our overworked administrators could not see this. Even when they were present at the training sessions, they appeared distracted at best, irritated at worst. They weren't buying it. And if you don't buy it, it won't work. So, suspicion and cynicism swelled, and we all fell into the Karrass mindset. The entire session was IBB in name only. Falling back into traditional methods, we struggled to put together a one-year agreement, but not until more than eight months had passed, which left us little more than a month before we had to return to the table.

Everyone involved was responsible for the dysfunction. No one can escape culpability. However, as long as an attorney is present, you always begin negotiating

from a less than interest-based perspective. The effect is that faculty and administration have more difficulty identifying mutual interests. If they cannot see their commonalities, they become “sides,” one side playing offense and the other playing defense. When sides emerge, there will always be negotiators who do not feel comfortable with full disclosure. It is a self-defeating cycle in which suspicion leads to nondisclosure, which creates more suspicion. And the cycle only worsens when money is tight. All the players begin to think, “You don’t get what you deserve, you get what you negotiate.” Art begins to trump substance, gridlock emerges, and the citizenry gets its melee. 

ENDNOTES

1. Federal Mediation and Conciliation Service, 7.
2. Federal Mediation and Conciliation Service, 61.
3. Lyne, “I Wanna Be a Billionaire: An Open Letter to Peter Thiel,” 43-48.
4. Lynn, “Killing the Competition: How the New Monopolies are Destroying Open Markets,” 27-29.
5. Federal Mediation and Conciliation Service, 61.
6. Federal Mediation and Conciliation Service, 60.

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- Lyne, Bill. “I Wanna Be a Billionaire: An Open Letter to Peter Thiel.” *Thought & Action* 27 (2011): 43-48.
- Lynn, Barry C. “Killing the Competition: How the New Monopolies are Destroying Open Markets” *Harper’s Magazine*, (February, 2012): 27-34.