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Interest Based Mutual Gains Bargaining

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Interest Based Mutual Gains Bargaining

National Conference on
Collective Bargaining in
Higher Education and the Professions
April 3 and 4, 2006

**Presented By Debra Osofsky, J.D.
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**Based on materials originally prepared by
the National Mediation Board**

Topics

- **The Difference Between IBB and Traditional Bargaining**
- **Behaviors Involved in IBB (Best Practices, Best Behaviors)**
- **Skills Needed for IBB**
- **The IBB Model**

Part One: The Difference Between IBB and Traditional Bargaining

Basic Definitions

- **Positional Approach:** a common negotiating method that explores the positions of each side by exchanging written proposals and counter-proposals. Resolutions are generally achieved through **compromise**.
- **Interest Based Approach:** a joint problem solving process that explores the interests of both sides and outlines options. Resolutions are achieved by **consensus**.

Positional vs. Interest Based

	<u>Positional</u>	<u>Interest Based</u>
Starting Point	<ul style="list-style-type: none">➤ Identify Problems➤ Develop Positions	<ul style="list-style-type: none">➤ Identify problems➤ Develop issues
Strategy	<ul style="list-style-type: none">➤ Defend positions, entrench in positions, discredit your opponent's position➤ Use power and manipulation➤ Make incremental changes to positions through counter proposals	<ul style="list-style-type: none">➤ Identify Interests➤ Develop options that address interests
Solution	<ul style="list-style-type: none">➤ Defer to the more powerful or concede to middle ground	<ul style="list-style-type: none">➤ Problem solve a solution➤ Reach consensus

Example: *Religious Holidays*

- **Standard Contract includes specified holidays: New Year's Day, Martin Luther King's Birthday, Good Friday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas.**
- **Faculty of different religions want their holidays guaranteed off: Eid al-Fitr, Eid al Adha (Muslim), Rosh Ha Shannah, Yom Kippur (Jewish), Holi, Diwali (Hindu), etc., etc.**

Example: Religious Holidays Peeling Back the Layers

	Admin.	Faculty
Position	Cannot agree to any more holidays WHY?	Need 6 more specified holidays WHY?
Interests 1 (Position?)	Too expensive Eliminates days necessary for class scheduling WHY?	All faculty deserve to have their most important holidays off Union can't favor one religion over others WHY?
Interests 2	If more than current contractual 9 days off, won't have enough money for appropriate salary increases More than the current 9 days off will make it impossible to finish the necessary curriculum	Non-Christian Faculty find it disturbing that Christmas and Good Friday are official school holidays, but their holy days are not. Our membership now contains x members (x%) who identify as Muslim, Jewish or Hindu, including the President of the Union and the Chief Negotiator (Ratification)

Example: Religious Holidays

IBB V. Traditional Resolutions

- **?Shared Statement of Issue?**: How can faculty members of varied faiths be supported in the observance of their most important holidays without unreasonably increasing the cost to the school or interfering with the completion of the curriculum? What system of holiday observance best meets the needs of the faculty, students and administration?
- What universe of resolutions are available using traditional bargaining?
- What universe of resolutions are available using IBB?

- **DISCUSSION**

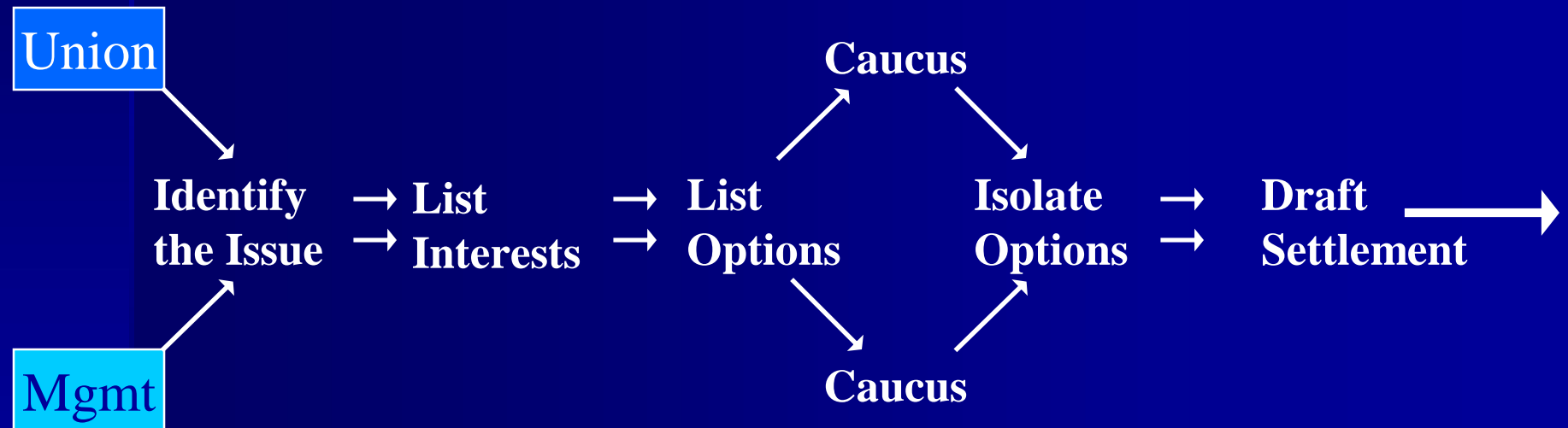
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Positional vs. Interest Based, Again

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Schematic of IBB

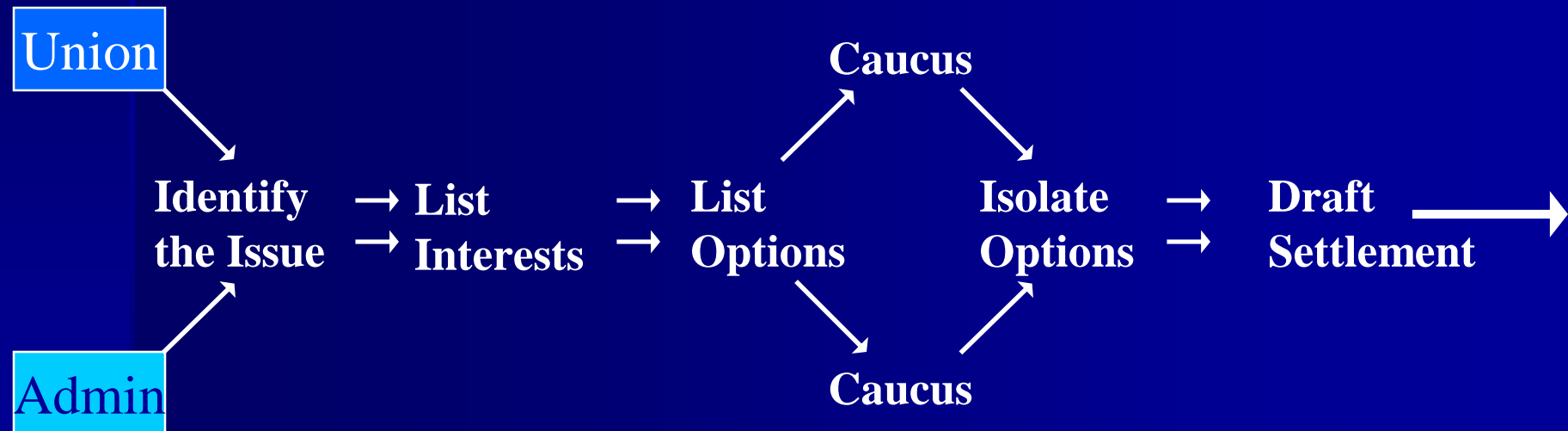


IBB as Bargaining Model

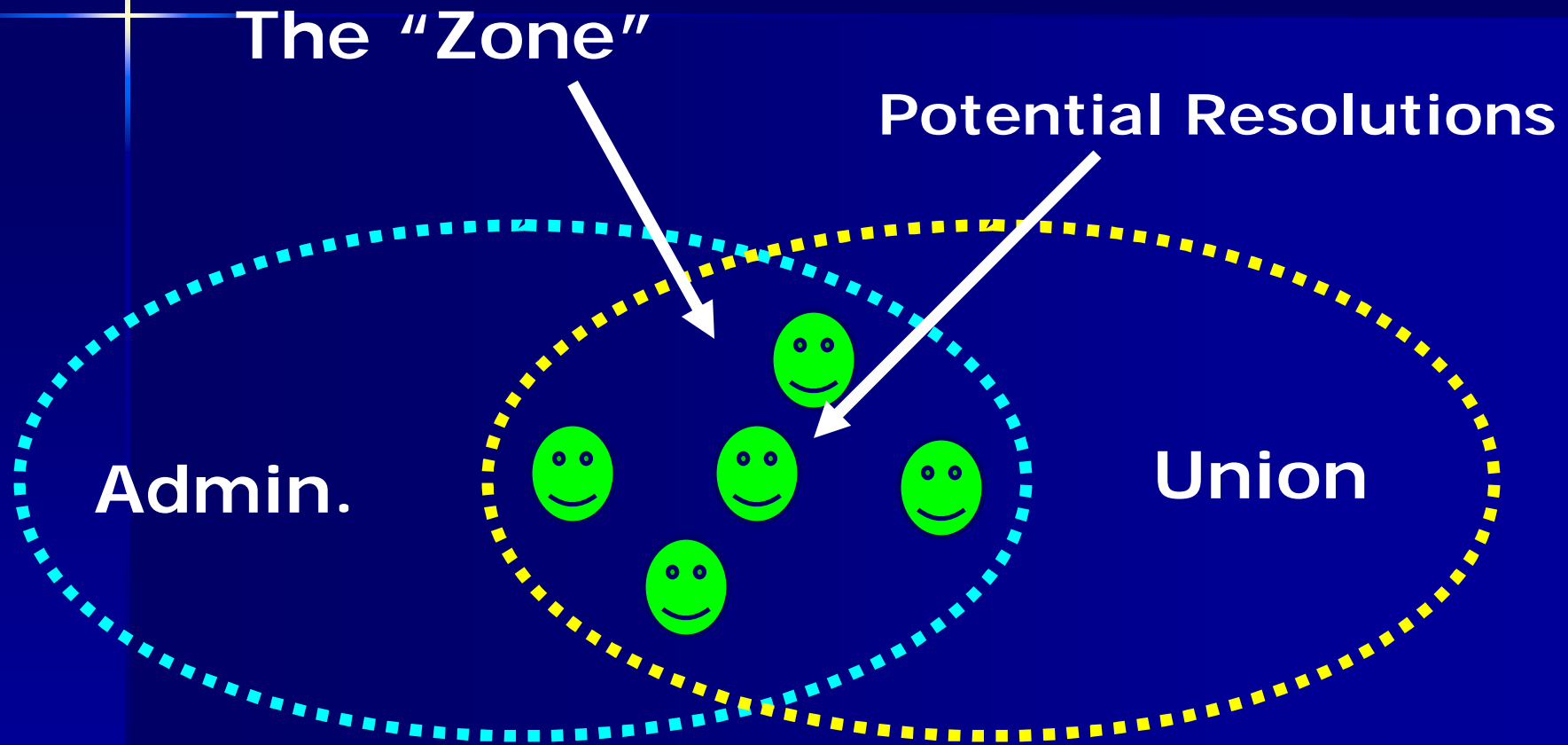
- IBB is a model, not dogma or static -- subject to variations
- IBB is a complete model and can be used for an entire negotiation
- Even if IBB is not used in its entirety, parts of IBB can be used as a bargaining technique, e.g., asking "why?", posing "what ifs"

Part Two:

Behaviors Involved in IBB



The “Zone of Reasonableness”



Best Practices: (Traditional and?) IBB

- **Have authority to make a deal at the table**
- **Be willing to share information**
- **Gauge significance of issue within overall bargaining strategy**
- **Link or sever issues to other issues or concerns**
- **Be willing to “cut to the chase”**
- **Timing – usually, begin with non-econ, end game with economics**

Best Behavior in “the Zone” of IBB

- **Active Listening/Good Communication**
- **Focus on the Problem**
- **Ask Open-Ended Questions**
- **Informality**
- **Open Exchange – Minimize Note Taking (unless agreement otherwise)**

Best Behavior in “the Zone” of IBB

- **Paraphrase**
- **Be Flexible (in Brainstorming)**
- **Summarize Often (by Bullet Points)**
- **Align Expectations with what is Achievable**
- **Closing Comfort (handshake, etc.)**

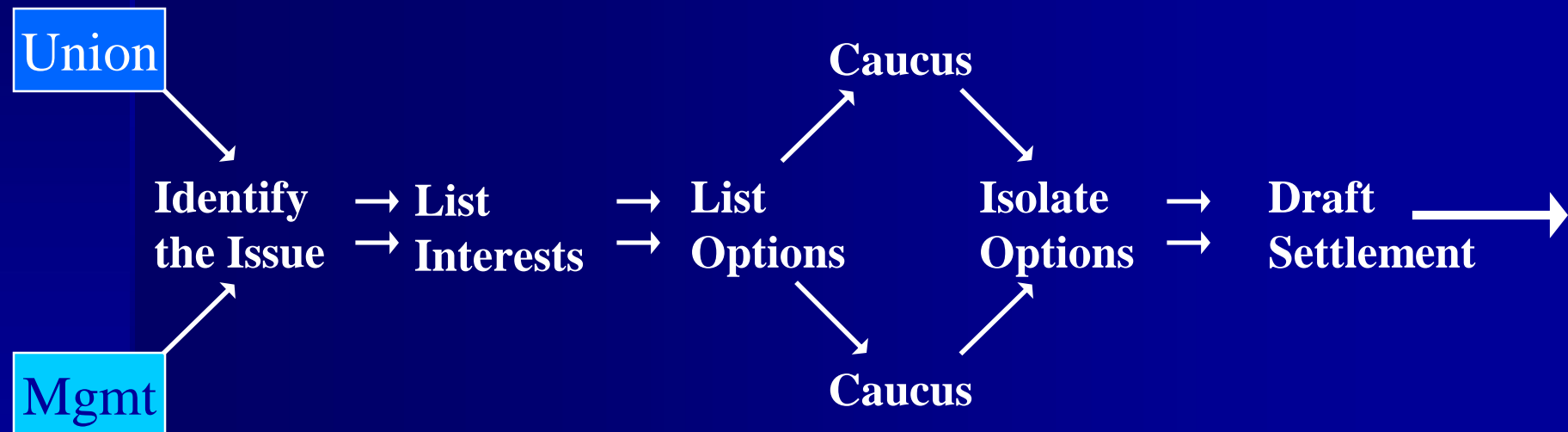
Why IBB Negotiation Fails

- Parties take rigid positions
- Parties do not view the process as problem solving
- Parties engage in “one-upmanship” (who wins and loses, like a competitive sport)
- If time permits, more behavioral aspects of IBB will be covered later in the workshop



Part Three:

Skills Needed for IBB



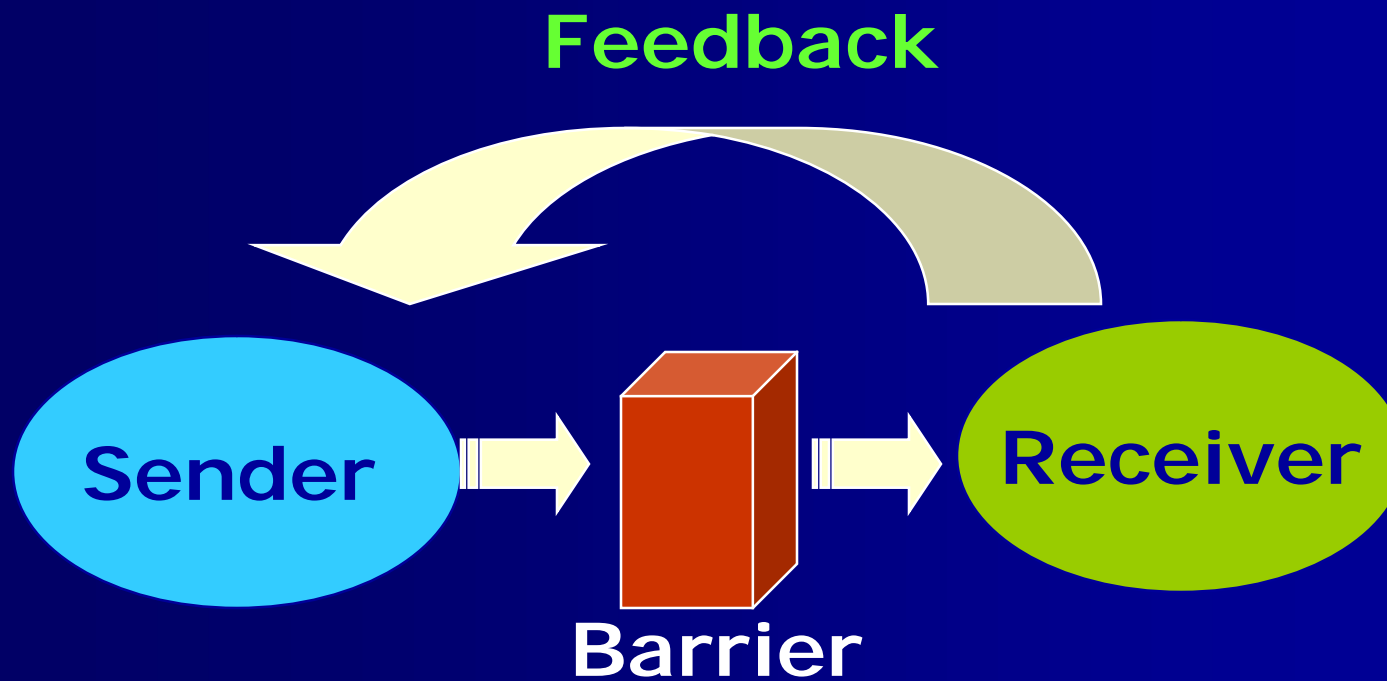
Communication

Communication is the basic skill that drives the IBB negotiation process.

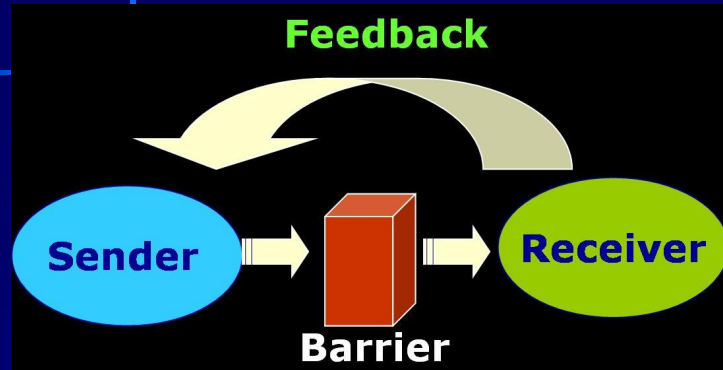
Through good communication parties build and demonstrate respect and trust.

Respect, Trust, and Communication are the keys to success in IBB.

Communication Model



Communication: *Redundancy*



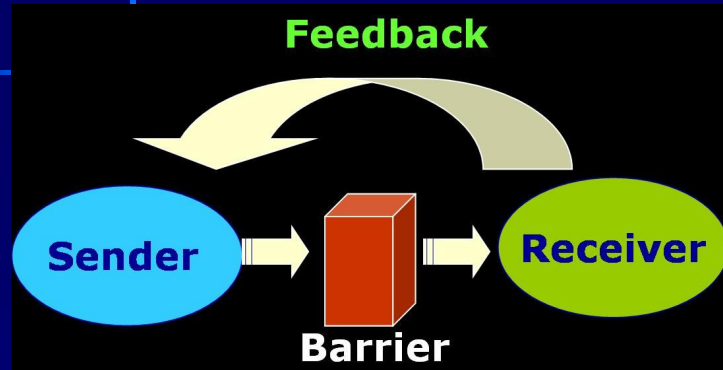
Redundancy Equals Meaning

Usually it takes more than one iteration of a message to get true understanding. In IBB, asking open ended questions, summarizing often, and other techniques to assure redundancy help the parties to make sure they all understand the issue and the options in the same way.

Communication

- Administration: "I heard you say that you don't care about the course schedule. All you care about is more days off."
- Union: "Not quite. We do understand that certain material needs to be covered within each semester, and that there is some limit on the number of additional "all-faculty" holidays that can be accommodated. We are looking for ways not just to get a larger number of holidays, but to accommodate needs for varied faculty holidays within the limits that exist."

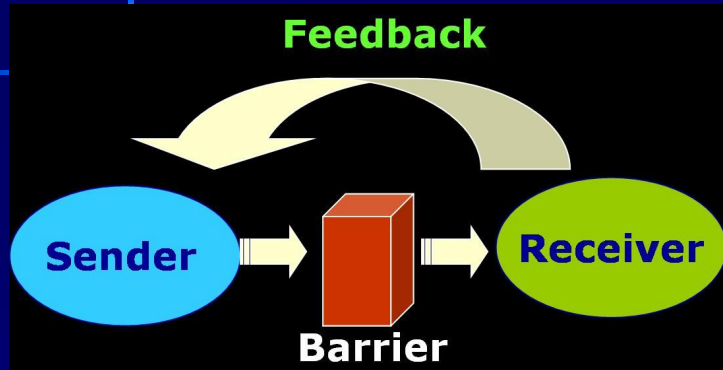
Communication: *Feedback*



Feedback Leads to Clarity

The ability to ask questions, probe for meaning, and engage in a give and take make it possible for parties to understand each other's positions, even if they don't completely agree.

Communication: *Non-Verbal*



Meaning is not in the Words

Meaning is created through interaction and perception:

7% of meaning is in the words

38% is in the way the words are said

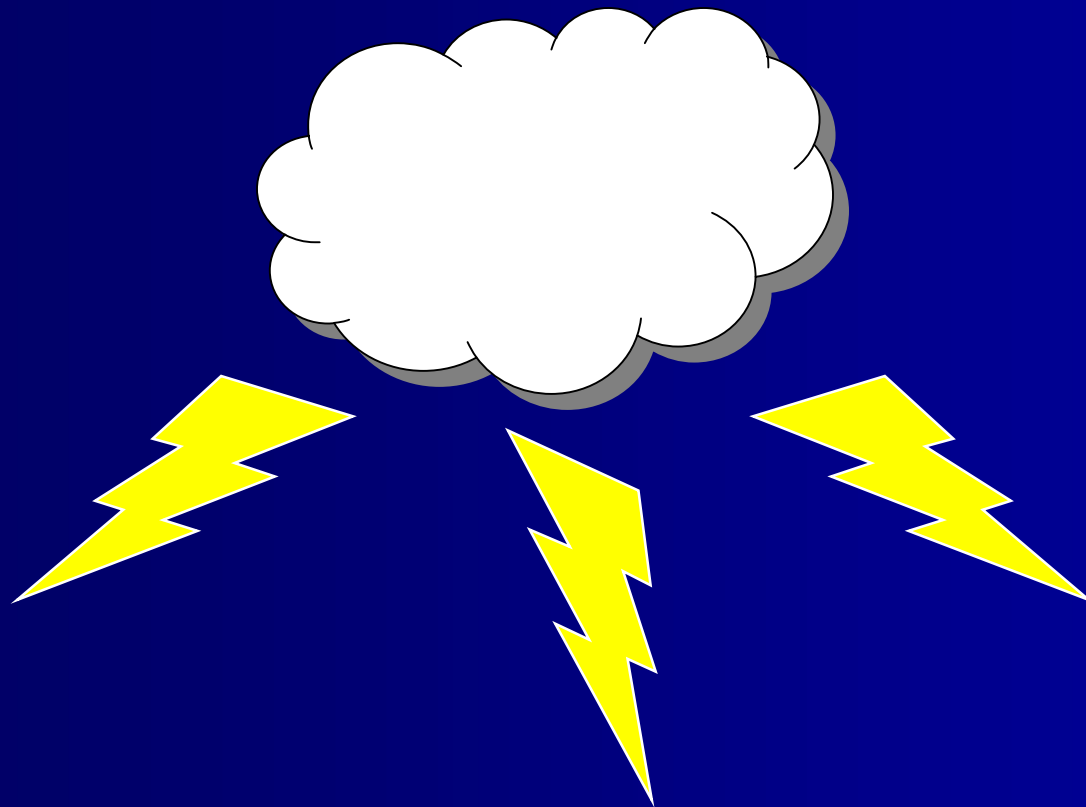
55% is in facial expressions and body language

Brainstorming

Brainstorming is a key skill for IBB:

- **Value Quantity not Quality**
- **Move Quickly – Chart Everything**
- **Never Criticize an Idea**
- **Keep Charts in Full View**
- **Look at the Problem from the “Other’s” Point of View**

Exercise: *Brainstorming*



Exercise: *Brainstorming*

- Negotiating over the Faculty Compensation System
- Traditional Positions: Union says uniform across-the-board increases of X%, Administration says merit increases to be determined by the Administration

Exercise: *Brainstorming*

Admin. Interests

Keep costs as low as possible

Internal equity?

Hiring and retaining high
quality faculty

Reward merit

Reward seniority/past service?

Union Interests

Keep up with cost of living

Internal Equity

Hire and retain high quality
faculty

Reward merit?

Reward seniority/past service

Exercise: *Brainstorming*

- ?Shared Statement of the Issue: How can we have a compensation system that meets the needs of faculty and the Administration? ?What is the best way to spend (additional?) compensation dollars?
- Brainstorm Possible Options, then (usually in caucus first) compare options against interests (new interests may be recognized in the process).
- Together, evaluate which options or combination of options best resolve the issue.

Exercise: *Brainstorming*

■ DISCUSSION: OPTIONS

Building Consensus

Guidelines for Brainstorming:

- **Encourage Free Discussion**
- **Discuss Issues – Don't Attack People**
- **Listen to Other Ideas and Discuss Openly**
- **Avoid Competing**
- **Strive for a Durable Solution – Not the First Deal**
- **Encourage Offering Alternative Options**

Building Consensus

A Consensus Decision:

- **Surfaces All Points of View**
- **Encourages Everyone's Input**
- **Is Reached Fairly and Openly**
- **Establishes Group Synergy**
- **Achieves Support For and Commitment To the Decision**

Building Consensus

What to Avoid:*

- Reaching Agreement Too Quickly
- Inflexibility
- Bargaining or Trading Support
- Flipping a Coin
- Settling for an Average
- Voting

*These are behaviors to avoid in “pure” IBB, but may be acceptable in a mixed negotiation.

IBB Problem Solving Techniques

Positive Techniques:

- Thinking Out Loud (What if?)
- Asking Questions (Open Ended)
- Using Reason/Logic
- Offering Counterproposals
- Asking for Facts
- Floating Ideas

IBB Problem Solving Techniques

Middle Ground Techniques:

- Body Language
- Facial Expressions
- Tone of Voice
- Avoiding Issues
- Reminding of Prior Agreements
- Relying on Prior Experience

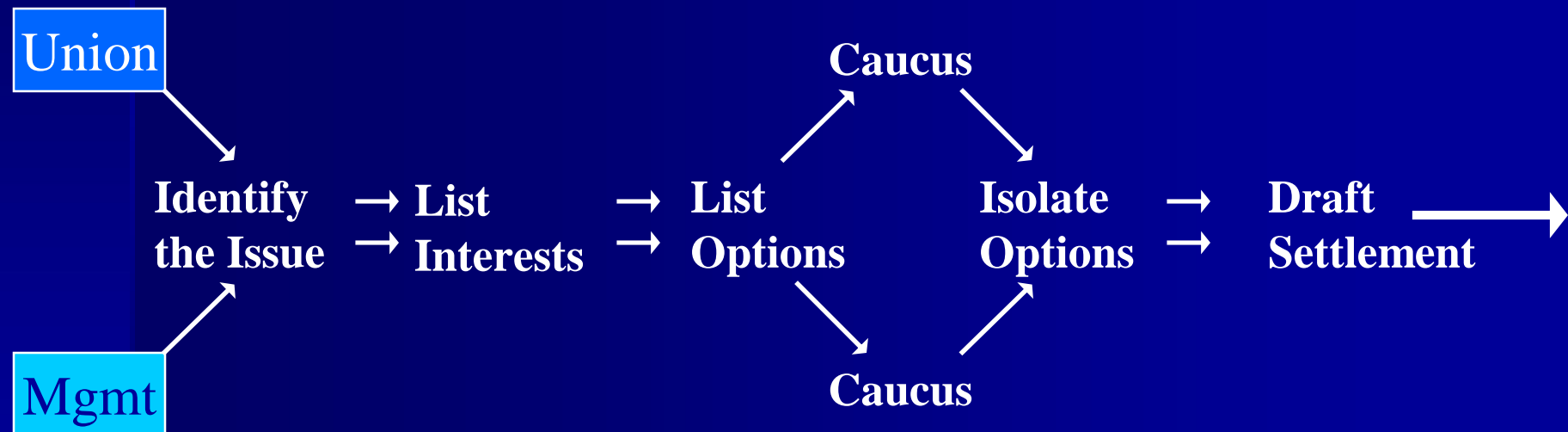
IBB Problem Solving Techniques

Non-IBB Techniques:

- Time Pressure
- Offering Deal vs. No Deal
- Asking for a Vote
- Lobbying or Horse Trading (Quid pro Quo)
- Using Peer Pressure

Part Four:

A “Pure” IBB Model



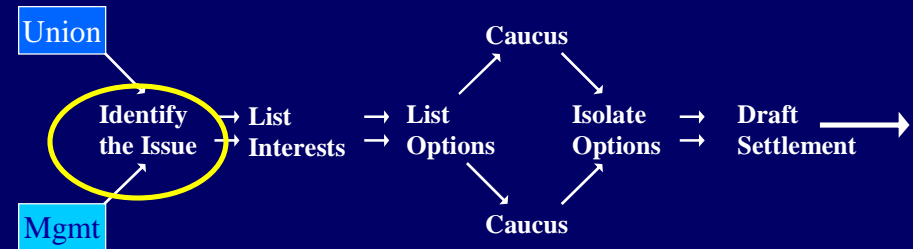
Background: Recording and Table Conduct

- **Document the Process**
- **Use Flip Charts/Screen to Involve Everyone**
- **Keep Charts in Full View**
- **Avoid Frequent Caucuses**
- **Have Team Captains, not Spokespersons**
- **Work Face to Face as Much as Possible**

Background: Basic Definitions

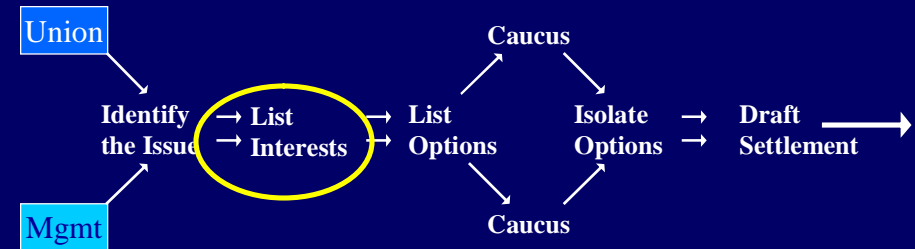
- **Issue:** The “What” to be resolved – the topic or subject of dispute
- **Position:** One party’s solution
- **Interest:** The “Why” – the need or desire behind the issue
- **Options:** The “How” - potential solutions that address one or more interests

Step One: Identify the Issue



- Select Jointly
- Discuss to provide understanding
- State clearly (as a question to be answered)
- Narrow to provide effective focus
- Record the Issue Statement
- Stay away from Interests and Positions
- Check! Make sure the solution is not implied

Step Two: Discuss Interests



Three Step Process:

- Record all interests on a chart or screen
- Discuss and clarify all interests
- Identify mutual interests (NB: interests don't have to be mutual to be important)

Interests/Positions – Differences

Positions:

- Focus on particular solutions
- Make Demands
- Set up Confrontation

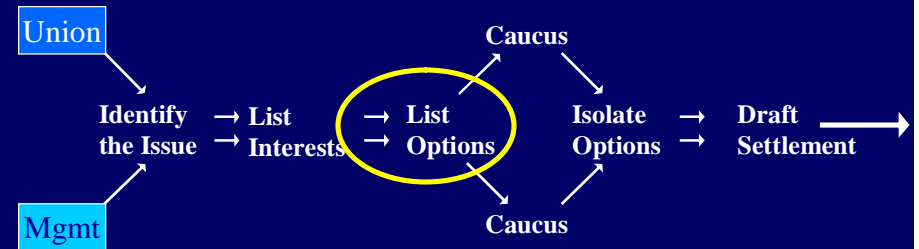
Interests:

- Focus on the problem
- Articulate a range of needs
- Establish a climate and language for resolution

Converting Positions to Interests

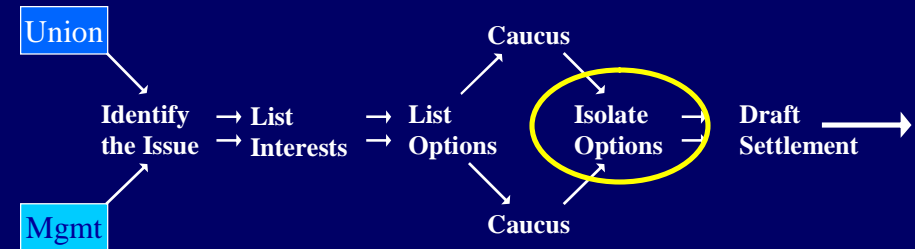
If a demand, solution, proposal, or position appears on your interest list, convert it to an interest by asking: **“what problem is this position trying to solve,”** or **“what concern is this position trying to address,”** or ask **“why is this important to you?”**

Step Three: Generate Options



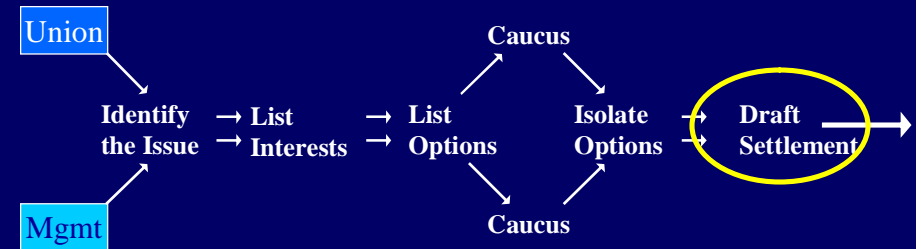
- Use Brainstorming (list, clarify)
- Try to satisfy both sets of interests
- Don't compare options
- Amend, combine, develop new options
- After developing and discussing a full list of options, caucus to begin isolating the options that may be used to create a resolution

Step Four: Isolate Options



- Apply standards during caucus (potentially share at table)
- Combine or expand options (in caucus/at table)
- Select options that address issue and interests (in caucus/at table)
- Develop selected options into a consensus solution
- Clearly define and chart the solution
- Reduce to settlement bullet points

Step Five: Draft Settlement



- Give bullet points to writing committee
- Bring agreement language back to full group to check for consensus
- Execute settlement agreement

How to Prepare for IBB

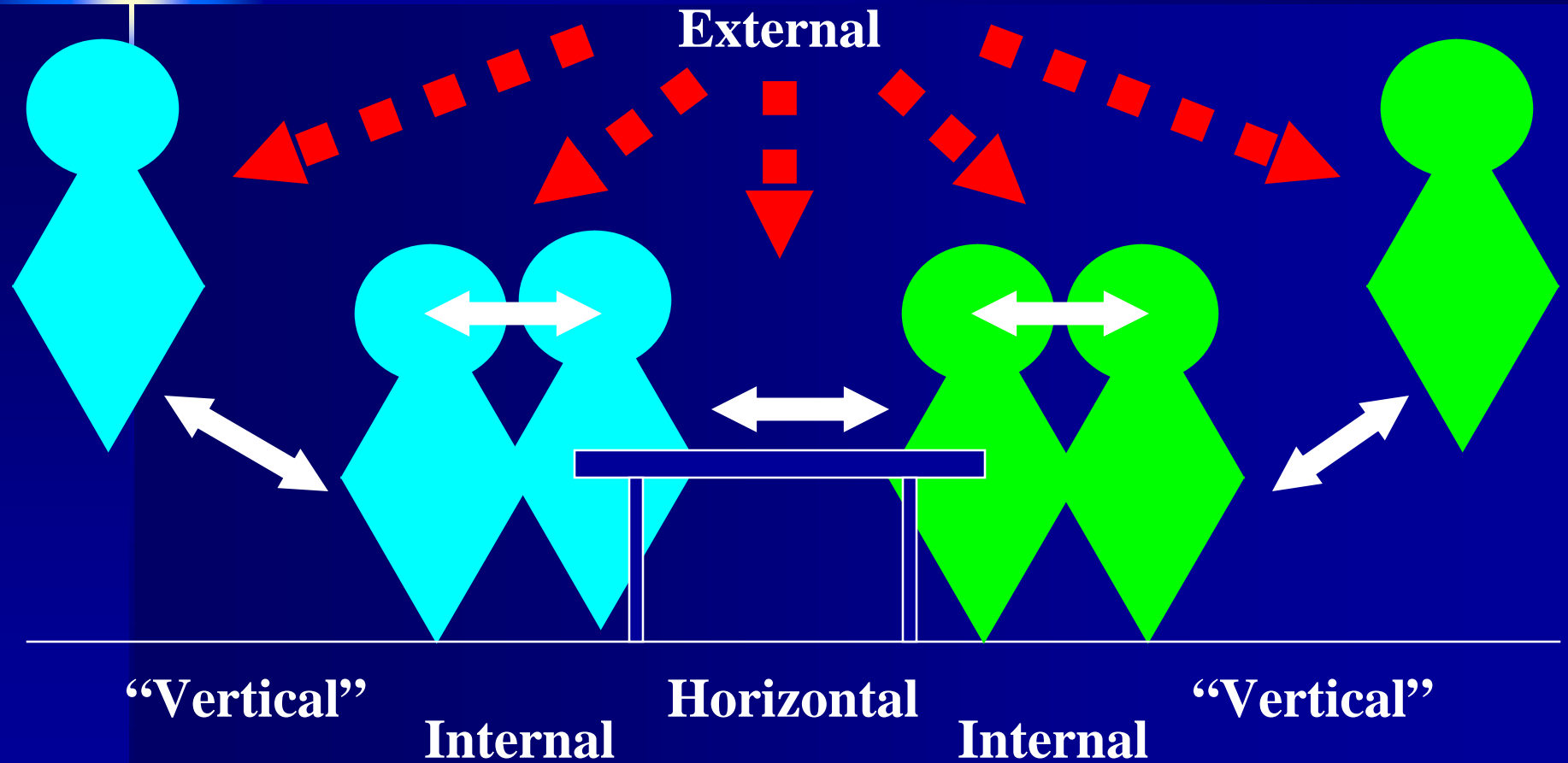
- **Reach consensus on ground rules**
- **Develop a process agreement**
- **Select grievances or issues (separately, then in conference with both parties and perhaps with the facilitator)**
- **Plan ways to educate constituents about the process**

Process Agreement Components

- **Statement of Philosophy (purpose and intent)**
- **Participants**
- **Communications**
- **Information handling**
- **Statements, notes, and records**
- **Schedule and location of meetings**
- **General items**

Questions?

Bargaining Dimensions



More Behavioral Issues

Optional Material if Time Permits

System Breakdown

- **External Environment**
- **Labor-Management Conflict**
- **Internal Organizational Conflict**
- **Personality Conflicts**

Competitive Behaviors

An advocate enters a negotiation to represent the interests of her/his constituents.

However

If there is a slight shift of attitude away from representing constituents toward “beating the opponent,” bargaining behaviors potentially harmful to constituents can easily develop.

Competitive Behaviors

- **Affect the way you think and act in your group**
- **Affect how you think about the other group**
- **Affect the way you think and act at the table**

Can Constituent Interests Get Lost?

Yes, if you get wrapped up in the competitive behaviors.

Process Checking

A technique that evaluates the process and the interactions of team members.

- **Structured opportunity to share observations about the process**
- **Prevents negative behaviors from becoming ingrained**
- **Provides an opportunity to acknowledge good work and to alter the process if necessary**

Anchoring

When an initial offer in the form of a position or proposed solution is made, the discussion can be anchored on that position.



Is Anchoring Bad?

Not always, but if it happens early in a discussion it may prevent the parties from exploring a full range of potential solutions. Anchoring becomes an impediment to using interests to achieve “quality resolutions.”

Avoiding Anchors

Discuss problems and explore interests before offering positions or proposing solutions.

Interests:

(Why resolving the issue is important)

- **Mutual:** interests shared by the parties
- **Separate:** interests unique to one party but not in conflict with the other party
- **Conflicting:** interests that cannot be simultaneously addressed

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MORE COMMUNICATION ISSUES

Optional Material If Time Permits

Assumptions and Perceptions

Assumptions

- Made Anytime
- Go Beyond What is Observed
- Unlimited in Number
- Some Probability
- Very Open to Disagreement

Facts

- Made After Observations
- Confirmed by Observations
- Limited in Number
- Closer to Certainty
- Less Open to Disagreement

Expectations

An **Expectation** is what you believe will happen –
can be related to your position or your
perception of the other party's position.

IBB/Consensus Development:

- Original Expectation
- Introduce New Information
- Revise Expectation
- Consider Additional Options
- Reach Consensus

