April 2006

Interest Based Mutual Gains Bargaining

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AAUP-UMDNJ

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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. Executive Director, AAUP-UMDNJ

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

<table>
<thead>
<tr>
<th>Starting Point</th>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Identify Problems</td>
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</tr>
<tr>
<td></td>
<td>Develop Positions</td>
<td>Develop issues</td>
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<table>
<thead>
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<th>Strategy</th>
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<tr>
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<td>Defend positions, entrench in positions, discredit your opponent’s position</td>
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<td>Make incremental changes to positions through counter proposals</td>
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<table>
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<tr>
<td></td>
<td>Defer to the more powerful or concede to middle ground</td>
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<td></td>
<td></td>
<td>Reach consensus</td>
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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

<table>
<thead>
<tr>
<th>Admin.</th>
<th>Faculty</th>
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<tr>
<td><strong>Position</strong></td>
<td>Cannot agree to any more holidays <strong>WHY?</strong></td>
</tr>
<tr>
<td><strong>Interests 1 (Position?)</strong></td>
<td>Too expensive</td>
</tr>
<tr>
<td></td>
<td>Eliminates days necessary for class scheduling <strong>WHY?</strong></td>
</tr>
<tr>
<td><strong>Interests 2</strong></td>
<td>If more than current contractual 9 days off, won’t have enough money for appropriate salary increases</td>
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<tr>
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<td>More than the current 9 days off will make it impossible to finish the necessary curriculum</td>
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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**
Basic Definitions, Again

• **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*.

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### Positional vs. Interest Based, Again

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Schematic of IBB

Union

Mgmt

Identify the Issue → List Interests → List Options

Caucus

Isolate Options → Draft Settlement

Caucus
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

Union

Identify the Issue → List Interests → List Options → Isolate Options → Draft Settlement

Caucus

Admin

Caucus

The “Zone of Reasonableness”

The “Zone”

Potential Resolutions

Admin. Union
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

- Identify the Issue
- List Interests
- List Options
- Isolate Options
- Caucus
- Caucus
- Draft Settlement

Osofsky: Interest Based Mutual Gains Bargaining

Published by The Keep, 2006
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

Sender → Barrier → Receiver

Feedback
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 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

<table>
<thead>
<tr>
<th>Admin. Interests</th>
<th>Union Interests</th>
</tr>
</thead>
<tbody>
<tr>
<td>Keep costs as low as possible</td>
<td>Keep up with cost of living</td>
</tr>
<tr>
<td>Internal equity?</td>
<td>Internal Equity</td>
</tr>
<tr>
<td>Hiring and retaining high quality faculty</td>
<td>Hire and retain high quality faculty</td>
</tr>
<tr>
<td>Reward merit</td>
<td>Reward merit?</td>
</tr>
<tr>
<td>Reward seniority/past service?</td>
<td>Reward seniority/past service</td>
</tr>
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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

- Union
  - Identify the Issue → List Interests → List Options
  - Caucus
  - Draft Settlement

- Mgmt
  - Caucus
  - Isolate Options → Draft Settlement
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?
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

<table>
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<th>Assumptions</th>
<th>Facts</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Made Anytime</td>
<td>• Made After Observations</td>
</tr>
<tr>
<td>• Go Beyond What is Observed</td>
<td>• Confirmed by Observations</td>
</tr>
<tr>
<td>• Unlimited in Number</td>
<td>• Limited in Number</td>
</tr>
<tr>
<td>• Some Probability</td>
<td>• Closer to Certainty</td>
</tr>
<tr>
<td>• Very Open to Disagreement</td>
<td>• Less Open to Disagreement</td>
</tr>
</tbody>
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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