

# New Roles for Collective Bargaining

By Michael E. Gaffney

Earlier in this series, my colleague described a behavioral shift that applies to any and all involved in the process of interest based bargaining. In this article I will focus on some behaviors that are role-specific. In particular, I will examine the unique contributions of agents, subject matter experts, leaders, and facilitators.

## *Agent – the principal role*

If you are negotiating, you are a principal, agent, or constituent. If you are bargaining for yourself, you are a principal and can agree or not agree to anything you like -- you are fully empowered. Like when you buy a car or a house for your family; you don't have to check with anyone – except maybe your spouse. But if you are bargaining for others, as is nearly always the case in labor/management negotiations, you are not fully empowered. You can't just agree or not agree to anything you like; you have limitations, constraints, parameters set for you by the folks that you represent. We call those folks, constituents. If you are a union agent, your constituents would be other union officials at your level (peers), as well as superior and subordinate officers, and in the final analysis, rank and file members of the bargaining unit. And if you are a management agent, your constituents would be other managers at your level (peers), as well as superior and subordinate managers, and in the final analysis, the owners of the enterprise for which you work. In the construction industry, there is often less hierarchy in management than the preceding sentence suggests.

In any case, your job as agent is to get your constituents more – that is to say, to advance their interests as much as possible. That was also the case in traditional bargaining – but there the focus was more on positions than on interests and with little concern for the implications to the other side. In interest based bargaining you attempt to get more for your people without doing any unnecessary damage to the other side, and even by helping them (the other side) out if you can without doing significant injury to your own constituents. Interest based agents behave this way not because they are nice guys, new age, or avant garde bargainers but because they expect that this behavior will pay dividends in terms of the establishment and maintenance of a relationship with the other side that will lead to reciprocity down the road.

This business of “getting more” is your principal and overriding job in bargaining, and you must not allow other ancillary functions (leader, facilitator) to get in the way.

Basically, your first effort toward this end is to get your agent self as empowered as much as possible. That is accomplished by engaging your constituents in dialogue so that you (and more importantly, they) understand their interests. When they hand you a position (and they will), do not just unquestioningly accept it, but ask why that is their preferred solution. When they respond, ask why again, peeling back as many layers of this onion until the significant underlying interests become visible to all. The purpose of this dialogue is to inform you as agent what interests you are championing, and (just as importantly) helping your constituents come to consciousness of the same. Absent this dialogue, you will go to the table only guessing as to what your constituents' interests are, and you will leave them focusing solely on the positions that they sent you out to achieve. In this unhappy scenario, even if your guess as to their interests was on the mark, and even if you should succeed in protecting and enhancing those interests, should the solution(s) you devise look different than the positions they handed you, you will be measured by that gauge alone and will be found wanting. In short, if you are thinking interests, and your constituents are thinking positions, you have essentially no ability to get creative. Conversely, the more they (your constituents) are thinking in terms of interests, the more creative (empowered) you can be.

Now that you've dialogued (asked and answered questions) with your constituents, it's time to do the same with agents for the other side. Listen very carefully, ask probing questions, listen to the answers, and then probe even further. Lay out the interests of your side and respond to the other side's questions as

fully as trust levels will allow. Once you sense that sufficient interests have been shared, test for understanding by paraphrasing, make any necessary corrections and additions, and then get

creative. You do that by brainstorming no commitment, no obligation, potential solutions or partial solutions to as many revealed interests as you can. Then both sides briefly caucus to indicate (by checkmarks or some other device) those options that seem to hold most promise and then, once back in joint session, compare checkmarks to compile a shortlist of most promising options. That will lead to further discussion, quasi-offers, semi-offers, offers, counters, and eventually either a tentative agreement or recognition that the issue is largely distributive and will be resolved on the basis of external standards (more on this end-game in another discussion).

For the moment, let's presume that the issue was sufficiently integrative (win/win potential), and the agents sufficiently skilled to recognize this integrative potential, to fashion a win/win deal. What remains is for the construction of language to suit the deal. This is also a responsibility of the agents but should not be attempted in full committee. Wordsmithing in a group is grossly inefficient and injurious to the soul. It is time poorly spent and at the possible cost of momentum. Better to let an individual or two work on this off line and have draft language presented in subsequent caucuses for revision and approval.

### ***Subject Matter Experts***

In traditional bargaining, subject matter expertise was not as important as being skilled in the art of psychological warfare. For that reason, many committees were composed of professional samurai (IR managers, labor attorneys, and itinerant union international reps.). They didn't need to know a lot of local operational details as that information did not figure largely in the solutions. On the management side, you couldn't drag operations types to the table because they viewed it as a total waste of their time.

That's all changed now. Operations managers are much more likely to participate on the management committee (and gladly) because they know the firm's technical interests, can respond to the union committee's questions, and are a good source of quality options. Once again, this change may not be as pronounced in the construction industry in which the owner of a firm is quite likely to have considerable operational experience himself, perhaps even as a journeyman. Union committee composition has not been so significantly changed other than its size may have grown to match that of management. In either case, it is sometimes advantageous to bring to the table for a specific issue, salaried or hourly folks who are not full-time members of the bargaining committees. They may be invited solely to answer a few questions or make a presentation, but more likely they will be asked to stay on for the half-day or so it takes to cover the whole issue. Their engagement in subsequent dialogue often resembles that of full-fledged committee members. With regard to the frequency and degree of engagement of subject matter experts, I would like to say the more the merrier, as they enrich the dialogue. The only downside is in the expansion of the number of people sitting around the table (see article on human factors aspect of bargaining). For that reason, subject matter experts seem to work best in conjunction with parallel subgroup bargaining in which the size of the committee is comparatively small.

### ***Committee Leaders***

This role used to be called "spokesman" or "spokesperson"; and the label was accurate because often they were the only ones doing the talking; all the other agents serving as silent witnesses. By way of contrast, in this interest based style of bargaining, everyone is engaged in the dialogue, asking and answering questions. That is not to say that interest based bargaining is leaderless; there is a very clear and important leader role. That individual is the only one who can make, accept, or reject offers. Beyond that critical difference, it can be useful to think of the committee leader as a player/coach. He actively participates in the dialogue, but is also responsible for assignment of tasks, and monitoring of performance of the team. Additionally, he is the go-to persons on all matters relating to the administration of the negotiation process (facilitation, clerical support, facility issues, schedule, agenda, etc.). Often the most experienced bargainer on the team, it may also fall to the leader to provide facilitation as well. If facilitation services are otherwise provided, such services are delegated by the two leaders.

### ***Facilitator***

There are actually several distinct roles wrapped under the heading of facilitator. I will focus on those associated with internal rather than external facilitators as those predominate and are the most likely readers of this article.

#### Facilitator / Recorder

Somebody has to stand up to the flipchart / whiteboard and extract from a fast moving dialogue the relevant information (interests and options). Requisite skills involve ability to listen well, separate wheat from chaff, and write legibly -- all at the same time (not a small feat). It helps a great deal if the person tasked with this has prior knowledge of the issues which are being discussed. For that reason, internal facilitators are preferred over externals. External facilitation is recommended only if the level of resident expertise / experience with interest based bargaining is very low and / or if trust levels between the parties are also quite low. In these instances it may be wise to pay the price of slow recording in order to improve the chances of keeping the process on track. In the vast majority of cases, facilitation is provided by internals, either agents doing double duty or by constituents.

Being solely a facilitator is a demanding job. Add to that the paramount obligation of an agent to advance the interests of constituents, and you can imagine that not everyone is cut out for this sort of double duty. And yet most facilitation is provided in just this fashion. This means that nobody should be volunteered for this job. Most would be miserable at it and the negotiation would suffer as a result. Let those who are capable and eager to play this role willingly enter the breach. In most, but not all, cases they will be from management's ranks. As a trade unionist, you might be concerned that a partisan recorder would wittingly (or unwittingly) shape the product of the dialogue on the flipchart to suit their side. Not to worry; the process is self-correcting. For example, let's say a union agent says at one point, "One of our interests is that we hate it when contractors blah blah blah." The facilitator, being a contractor in our example, hates to hear the union say that, doesn't believe it to be the case, and consequently fails to make note of it on the flipchart under the heading of "union interests". If this were to happen, the union agent, after a pregnant pause, and giving the facilitator the benefit of a doubt, would likely say, "Hey, Bob, you forgot to write down our interest." Bob might reluctantly reply, "Oh, right, let's see, the union's interest is that they don't like it when contractors blah blah blah." At which point the union agent, hopefully with some degree of humor, would say, "No, Bob, we don't dislike it, we hate it." I think you can see my point. If the non-facilitating agents are doing their job and attending to what is being placed on the flipchart, there is no need of neutral recorders. I've never heard of facilitators being dismissed due to bias. I have heard of some being let go (asked to release the marker and sit down with the other agents) because you can't read their writing or because they can't think and write at the same time.

#### Facilitator / Process Expert / On-the-job trainer

Keeping the process on track is a further function of facilitation, especially when the parties are new at this style of bargaining. It can be helpful for a veteran interest based negotiator to remind (or in some cases, to teach for the first time while underway) the agents how this style of bargaining is done. In some cases, the process expert role is played by whomever got to go to the interest bargaining seminar, or preferably, by that person who has actually used the process in a previous negotiation. Key here is not to behave like Chevy Chase (I'm Chevy Chase, and you're not). Especially if the expert is an agent for one side and behaves in a very officious (I know how this works and you don't) manner, this puts the other side in the role of trainee and that is a very difficult dynamic in the midst of bargaining. Better to provide on the job training to the other side in understated fashion. Avoid use of buzzwords and don't insist on rigid adherence to structure and process. Most of all, if you are an agent/facilitator, teach by example. Especially when the other side is a reluctant participant in interest bargaining. Ask questions and invent options even when they don't. It's not an easy role, but if you are tactful, skilled, and persistent, they may catch on in a subliminal or semi-conscious fashion that the best road to success for them is to follow your lead (though they won't see it as following your lead).

Just as you have to crawl before you walk or run, focus first on the essential core of interest based bargaining and wait for later to introduce techniques and structures which might initially put them off and defeat your purpose in championing this style of negotiation.

### Facilitator / Behavior Cop

People have different standards regarding inappropriate behavior in bargaining. And for some, that standard is set higher in an interest based bargaining environment. After all, isn't the idea now to resolve issues through analysis and creativity, rather than through bluster and intimidation? In some settings, agents are asked to sign-off on formal ground rules that contain behavioral guidelines (e.g., no personal attacks, only one person talking at a time, no getting emotional, etc.). While such guidelines have some value, a too-formal and too-rigid approach (written guidelines and close facilitation) can cause more trouble than it's worth. It is unrealistic to expect every individual (and the two subcultures -- management and union) to subscribe to a single standard or style. Yet there is a school of thought that suggests that the best way to change a culture (in this case, a bargaining culture) is to turn our backs on all aspects of the way we used to do it, wipe the slate clean, and redesign from scratch. Some of us have experienced this in boot camp or in some world class organizational change effort of the 80s and 90s (e.g. Total Quality Management). My experience is that this extreme approach, if ever recommended, is appropriate only in situations in which all the players are recovering from a disastrous experience and are predisposed toward a born-again approach. In most cases, however, individuals will come to the interest bargaining table with varying degrees of unhappiness with traditional bargaining. And some will approach quite comfortable with traditional bargaining and suspicious of this new fangled style of negotiation.

A close or strict monitoring of agent behavioral style by facilitators, especially of those behaviors which have a moralistic bent, can result in pushing people away from this style of bargaining, and reducing the chances of achieving higher quality technical solutions and an improved relationship. So I recommend light-touch facilitation in this behavior-cop mode. Most transgressions from an ideal behavioral pattern are minor, transitory, and are best ignored. Others can be addressed briefly in a humorous fashion by the facilitator, and some may require the calling of a time-out. Facilitators should be guided by the maxim; praise in public, criticize in private. Bargaining Committee Leaders have more authority over their agents than do facilitators (especially internal facilitators), and coaching and chastisement is best left to them. Finally, remember that the facilitator serves at the pleasure of the two committees as represented by their respective leaders. Should either side indicate a voice of "no confidence", facilitators are relieved of their duties (although they may continue in their roles as agents).

***About the Author:*** Mike Gaffney is one of the world's leading authorities on the practical applications of Mutual Gains Bargaining principles to the construction industry and multiemployer settings.