

# Considering a New Paradigm for Labor Management Relations

## Required Behavioral Changes for Successful Interest-Based Bargaining

By Bernard Flaherty

In the previous article we outlined the major elements of Interest-Based Bargaining including the major principles -- the technique of Brainstorming, the use of the Issue Analysis Sheet and the use of external objective standards and Sunset Clauses. The successful use of these principles will come with practice, persistence, and patience. It may appear difficult to alter the basic patterns of the adversarial system, but our success will be in direct proportion to our effort to employ these new principles, techniques and devices. Be patient. It takes time to change old habits; mine as well as the opposite party. If both parties make repeated efforts at following Interest-Based Bargaining, it will soon become second nature to probe positions instead of rejecting them and therefore successful in uncovering the legitimate interests which underlie positions. Both parties will discover that it is more profitable and rewarding to view the collective bargaining process as a problem solving forum rather than a ritualized opportunity for conflict resulting in winners and losers.

Learning and utilizing this systematic approach to collective bargaining can be enhanced and successfully promoted by some basic behavioral changes. At this point, I must point out that the Interest-Based Bargaining System is pretty foolproof and, if followed, almost always successful, but there is a human element. Human behavioral changes, if engaged in, can promote success like nothing else. I can list them rather straight forwardly, but sometimes it takes a lifetime to perfect these behavioral changes. They are: *learning to confront without hostility, even in conflict situations, having sufficient self-confidence, possessing a high tolerance for ambiguity and cognitive flexibility.* It is easy to list these but they need explanation and examples and then practice in their use and application.

### **1. Confront without hostility in conflict situations.**

When involved in negotiation, problem solving and conflict resolution, it is always essential to avoid “you” statements and make “I” statements instead. “You” is always an accusatory word in a stressful or conflicting situation. “You” is almost always followed by a set of adjectives which are not complimentary. For example, when confronted with “You lied,” it is very difficult to avoid a hostile or defensive response. It would be better to say, “I felt like I was deceived.” That’s much better than “You SOB, you lied.”

Rather than threaten the other party with a potential dire reaction on your part, which you may not be able to deliver if your bluff is called, it is better to ask reality testing questions. One may say, “If your side continues to stonewall and not consider our interest as well as yours, what do you think will be our reaction.” Underscore the cost of not reaching an agreement for both parties. Ask: “What do you think will happen if we don’t have an agreement? What do you think I will do if we fail to arrive at an acceptable solution? What will you do if we fail to reach agreement? What will no agreement cost?” Let the other party think about the consequence of their behavior without a threat on your part. Warn, don’t threaten.

Avoiding the word “you” when in the midst of a conflict ridden situation can have an impressive advantage. Simply changing “you” statements into “I” observations can do wonders.

Other questions which invite dialogue rather than rejection and conflict include: “How can we do this? When could we do this? Under what conditions could we do it? Yes, we will be able to do this if we can provide . . . How would we accomplish that? If I could do this, could

you do that?” It is possible to change the climate by changing what we say and how we say it! It should be obvious that questions like “Can we or is it possible to do . . .?” do not get us very far since we are inviting the easiest response which is, “No, we can’t.”

Other language in negotiations can have either a push effect or a pull effect. We can avoid hostility in a conflict laden situation by *avoiding* Push Words and *substituting* Pull Words.

<u>Push words</u>	<u>Pull Words</u>
You ought to	Could you
You should	Might your side
You must	I wonder if
You better	How can you
You never	Will you consider this
You always	
You have to	

**2. Having sufficient self-confidence.**

This means you don’t need to be liked by everyone in your constituent group; you are self-confident and want to lead even when leading in a direction which is not universally popular, but the right thing to do.

An examination of an event in the American Civil War provided an excellent example of sufficient self-confidence. In Jay Wink’s recent book entitled, April 1865, The Month that Saved America, he relates a story about General Robert E. Lee. Close to the end of the Civil War (the spring of 1865), Lee was being advised by Jefferson Davis, President of the Confederacy, and other Southerners of importance not to officially surrender to General Grant. Lee, keeping his own counsel, had concluded that the cause was totally lost, the Treasury of the South was spent and the right thing to do was end the destruction and killing which had become pointless. The advice from Jefferson Davis was to retreat into the swamps, hills, and forests of the South and fight a guerrilla war and continue to wear down the willingness of the North to fund a long protracted war. Lee told his soldiers the cause was lost and they should return home for spring planting and be as good Americans as they had

been good Confederate soldiers. Lee lead in binding up the wounds of the Civil War and united the nation while those with lesser vision advised continued losses and destruction. Lee made the right decision; leading even though his actions may not have had universal approval or support in the South. Two weeks later on Easter Sunday in St. Paul’s Episcopal Church in Richmond, VA, Lee again lead in a right cause but again, not universally popular. Slaves could attend church, sitting in the back corner. Communion was distributed to the slaves at the back of the church. A former slave, an old Black man just recently freed, decided since he was no longer a slave, he could walk to the front communion rail to receive Holy Communion. At the start of the communion service, the former slave walked all alone down the middle isle and knelt at the communion rail. The white church was frozen with shock. How to react to this taboo defying act? After a moment of stillness in the church, Robert E. Lee rose from his pew and walked alone to the communion rail and knelt down next to the former slave to receive communion and the whole church followed his example. That was demonstrating sufficient self-confidence doing the right thing even though not immediately popular. Labor relations and collective bargaining offer many opportunities to lead, to do the right thing on behalf of our constituents, our trade, our markets, our union meetings and associations even when not immediately popular. The leader’s job is to see the big picture and to educate his group by example and demonstration. Successful and effective Interest-Based Bargaining requires this kind of self-confidence leading constituents to advance fundamental standards of good conduct.

Doing the right thing requires honestly sharing all of your reasons with all comers explaining where they come from and very importantly where they lead. Sufficient self-confidence is a tall order but there is no substitute for it in Interest-Based Bargaining. This kind of leadership also inspires others to do the right thing.

**3. High toleration for ambiguity.**

This is a very import capacity in human behavior because bargaining outcomes are seldom all one way or the other. I cannot expect

to have it all my way anymore than the other party can have it his/her way exclusively.

An easy way to explain this is to understand that life's solutions are usually not in the extreme. The solution will not be entirely in my favor or entirely in the other party's favor since life's solutions are rarely all or nothing, open or closed, now or never, yes or no. Solutions are not in the extremes of a spectrum. They are generally along the spectrum somewhere between the two ends. In negotiations using Interest-Based Bargaining principles, we should look for solutions along the spectrum. Sometimes the parties can increase the number of dimensions. Multiple dimensions allow one party to win or succeed on one dimension (substance) and the other party to win or succeed on the second dimension (time table). This means we can begin to change the substance of an agreement but do the change very gradually over a specific period of time giving the party time to educate constituents and become accustomed to the change. Treat the solution as one of many points along a continuum rather than open or close, all or none versus an infinite number of degrees along the spectrum..

Recent Middle East history offers a good illustration of a high toleration for ambiguity. The former Israel Prime Minister Yitzhak Rabin, while negotiating with the PLO Leader Yasser Arrafat, was confronted with the dilemma of creating an independent sovereign state on the West Bank for the PLO and thus permitting the PLO to form an army and negotiate treaties of mutual defense with countries like Iran and Iraq or continuing to deny the Palestinians some autonomy and hope. The negotiations resulted in the creation of an autonomous Palestinian region of Hebron and Jerricho. This would allow for a PLO Parliament, Prime Minister, Courts, police, schools, and taxation under the control of the Palestinians in the autonomous region. Under this arrangement, no army, no treaty making power thus national security for Israel and a measure of self-government for the PLO. If the PLO would restrain terrorism, the way would be clear to establish an independent sovereign Palestinian state.

The rest of the story is also informative. Prime Minister Rabin was later assassinated by a

fellow Israeli who could not tolerate ambiguity. A partial answer or solution which would buy time and experience in self-government and ultimately in coexistence was not possible for the assassin to embrace. Most of life's solutions, and even most of those in Interest-Based Bargaining, lie somewhere in the middle rather than the extremes of either my way exclusively or your way exclusively. Interest-Based Bargaining is always an exercise in the pursuit of the best possible solution achievable under the present circumstances.

#### **4. Cognitive Flexibility**

On highly quantitative issues such as wages, both parties should avoid anchoring too early in bargaining because it shuts off the likelihood of discovering options and alternative solutions. To stay flexible, avoid early commitment. Early commitment says to the other party they must change because it is impossible for you to change because you have already taken some action. This behavior produces rigid thinking and solutions and locks the parties into positions taken before negotiations. The difficulty created by early commitment would occur when the union at a membership meeting passed a resolution to accept nothing less than what the plumbers got. The association could also pass a resolution to accept a wage settlement of no greater than 2%. This has the added disadvantage which comes from soliciting positions from our constituents rather than interests. Remember there are usually many different ways to resolve an issue in Interest-Based Bargaining. Your job as a negotiator is to explore a wide variety of alternatives and select the best for further assessment and refinement.

Always invent multiple options when considering an interest. Sometimes issues appear too complex to disentangle and it appears easier to use a win/lose approach and avoid the difficulty of exploring interest and alternative solutions.

An example of cognitive flexibility in labor/management negotiations occurred when a small industrial rail line had completed its negotiations with the union and explained it could not afford to pay a two-day pay signing bonus because of a disastrous fourth quarter. The parties finally agreed to a one-day pay

bonus to be made in the first quarter of the new year and a one-day floating holiday to be taken within the year ahead.

The negotiators in this case could have failed to invest time and energy to explore and search for an integrative solution.

Don't consider the other party as unreasonable. Pay attention to basic human needs such as pride, self-respect. Promote low cost/high benefit solutions. Rely on understanding and creativity in proposing alternates.

An example of cognitive flexibility occurred during negotiations between Mexican agricultural workers and the U.S. Department of Agriculture at an agricultural experimental station in Mexico. The issue was promotion. No Mexican agricultural workers were ever promoted to supervisor. The jobs always went to American citizens in the Department of Agriculture. During negotiations the stakes were very high for the Mexican workers who threatened to strike over a desired quota. The U.S. Department of Agriculture insisted that no Mexican was trained or prepared for supervisory work. The solution finally agreed upon was a supervisory training program and a timetable established for the appointment of 100 Mexican agricultural workers to supervisory positions upon completion of the 8-week course. The goal of 100 Mexican supervisors was to be reached within three years. A strike was avoided. Mexican agricultural workers were trained, the Agricultural Department had skilled and trained supervisors and diplomatic relations between Mexico and the U.S. were enhanced. Approaching an issue with an open mind and a search for a variety of ways to solve a problem is an essential behavioral characteristic for successful Interest-Based Bargaining.

Following are some questions to ask of our behavior as an Interest-Based Bargainer. The more questions you can answer affirmatively, the better able to participate in Interest-Based Bargaining.

- Am I committed to the mutual satisfaction of the interest of both parties?
- Am I prepared to empathize and fully understand the interest of the other person?

- Am I prepared to listen for at least a small element of truth in the other party's message?
- Am I able to separate my emotions from the issue as much as possible?
- Am I willing to complete this negotiation fairly or do I just want to "win" and/or be "proven right."
- Am I prepared to rely on understanding and creativity rather than clever arguments?
- Do I value the long-term relationship with those I negotiate with and will of necessity have to continue working with?
- Am I able to tolerate ambiguity while searching for a workable solution?
- Am I willing to forgive the other party for occasional lapses in Interest-Based Bargaining principles?

Union members and union contractors and employers must change the prism through which the public views union work, union management relationships, attitudes, beliefs and behavior towards one another, clients and customers. We are living in the midst of a newly unfolding historical process; one driven by globalization, exportation of capital, capital migration, outsourcing, elimination of time and distance barriers, demographic changes, automation, prefabrication, reductions in trade barriers, and proliferation of alternative apprentice training routes. These changes require that unions and contractors recreate themselves for the 21st century while preserving and protecting core values. To the extent that both parties, union and contractor, can change their behavior and adopt new principles of negotiation, they will be successful in changing the prism through which the public views them. Following Interest-Based Bargaining principles and practicing these behavioral changes will allow both parties to deal with the world as it is rather than how it used to be.

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