

Moving from Interest-Based

to **Results-Focused Bargaining**

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More than two decades ago Roger Fisher and William Ury published *Getting to Yes*, groundbreaking research on how to conduct negotiations to yield superior outcomes for all parties. Their approach suggested that the bargaining parties jointly identify issues, pinpoint separate and mutual interests, select criteria for solutions, brainstorm options, and reach solutions through consensus agreement.¹

Known by a variety of names (including Mutual Gains Bargaining and Win-Win Bargaining), Fisher and Ury's methodology, which they refer to as Interest-Based Negotiations (IBN), has been promoted as a more effective alternative to the typically adversarial methods used in traditional labor negotiations (see Table 1).² In the zeal to tone down the adversarial and dysfunctional aspects of traditional bargaining, however, some IBN devotees have removed components of traditional bargaining that we believe to be legitimate and productive, while they have added or emphasized features that seemingly elevate form over function, leaving labor and management bargainers frequently frustrated and disappointed. In the former category, for

example, is the use of caucuses, and in the latter is the generation of settlement options via brainstorming. There is also insufficient attention given to assessing IBN's appropriateness for the negotiations in question (see Table 2).

Through facilitation of IBN in complex and widely-heralded labor relations applications, extensive mediation of traditional negotiations, and as a result of innumerable conversations with practitioners and other third-party neutrals, we are convinced that a synthesis of traditional contract negotiations and IBN is much more effective than either approach by itself.³ This synthesis, which we refer to as Results-Focused Bargaining (RFB), uses the interest-based methodology as the foundation and borrows selectively from more traditional methods of negotiating. This article examines

IBN's shortcomings and the RFB alternative, with a focus on transformational negotiations.

Assessing the Appropriateness of an Interest Based Approach

Before negotiations commence, the bargaining parties must look carefully at the situation to ascertain whether IBN or any modified interest-based approach, such as RFB, is appro-

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appropriate. IBN overlooks this initial step. An interest-based approach works best when the following conditions are present:

- There is a general level of dissatisfaction by both parties with past results obtained through traditional bargaining;
- There exists a modest level of trust and respect between the two principal negotiators;
- The principal negotiators are secure enough in their positions to relax their control over the process in favor of some spontaneity and creativity from other participants;
- The process enjoys the support and direct involvement, at the table, of the opposing parties' key decision makers.

Unless the parties believe all of these criteria exist, employing an interest-based approach, in whole or in part, may not be wise.

Given the current pace of change throughout the global economy and the increasing competitive threats faced by unionized employers, many contemporary organizations and unions embrace a transformational objective for their bargaining. If the intent of bargaining is to address some serious challenges in order to transform the organization, then there is an additional prerequisite: a genuine acceptance of the union by management and a willingness to involve the union in nonmandatory bargaining issues. Union-free or union-containment strategies are not compatible with IBN or RFB.

Preparing for Transformational Negotiations

When bargaining parties meet RFB prerequisites, they should take several key steps in the preparation phase:

1. Jointly train the negotiating committees in RFB

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Table 1. Interest-Based Negotiations (IBN) typically entails the following steps:

Framing the issue to be addressed (the problem to be solved)
Identifying and sharing the "interests" (needs, wants, concerns) of the parties as they relate to the issue or problem
Generating options (potential solutions or components of solutions) for resolving the issue or problem
Agreeing on and applying objective criteria to validate various options
Striving for consensus agreement on a specific resolution to the issue

Table 2. Shortcomings of Interest-Based Negotiations (IBN) as Usually Practiced

Frequently Ignored or Given Inadequate Attention	Often Given More Focus than is Appropriate
Assessing IBN's appropriateness for the negotiations in question	Option generation
Preparing for the negotiations	Identifying "objective criteria" that can be jointly agreed to and applied
Fully analyzing issues and interests	Emphasizing the role of individual participants while under emphasizing the role of the institutional parties (union and management)
Valuing the role of proposals/counter proposals and the use of caucuses	Relying on consensus among all the participants
The role of power	Applying IBN to economic issues

techniques. The decision to use RFB, however, should be held in abeyance until the training is completed.

2. Educate nonparticipating senior managers, union members, and other key stakeholders as to why a new process will be used and how it will differ from traditional practices.
3. Jointly identify key issues—those that will fundamentally affect the future success of the enterprise and/or the vital interests of its employees. Initially, these issues should be broadly defined. In addition, the number of issues to be addressed should not exceed 10 to 12.⁴ Examples of broadly defined issues include "performance improvement," "workforce development," and "compensation and benefits."
4. Thoroughly explain and understand issues. Key is-

sues require much exploration if the negotiating parties are to derive true value from a results-focused approach. Parties can achieve this through a series of discussions, review of relevant data (involving performance, demographics, and customer surveys, for instance), best-practice site visits, solicitation of the views of outside and inside experts, all of which should be conducted as well in advance of bargaining as is possible.⁵

5. Identify mutually agreed-upon behavioral and procedural ground rules—including the use of a third-party neutral (mutually identified prior to bargaining).

It is critical that from the conclusion of the preparation phase there be no miscalculations or false assumptions on either side about the depth or breadth of the other party's bargaining objectives. Eleventh-hour sidebar discussions may still occur, but by then the parties' focus

should be more on closing the remaining economic gaps.

Option Development, Proposals, and Caucuses

The conventional application of IBN engages the full joint committee in an extensive brainstorming of options for potential solutions to each issue. Quantity is traditionally emphasized while quality is largely ignored. Often, the result is dozens of options, each of which represents, at best, a potential partial solution. The multitude of options must then be reviewed, clarified, organized, and evaluated.

By contrast, we believe that in most cases, prior to brainstorming options, the parties have already developed a sense of

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the basic approaches that will likely lead to agreed-upon solutions.

By limiting individual brainstorming to about fifteen minutes for each issue—with the stipulated caveat that fairly comprehensive options are much more useful than extraneous bits and pieces—the parties capture almost all of the value that can be derived from the option-development step.

We recommend the parties caucus during option development and evaluation. Each caucus might indicate via checkmarks those options they believe to be most interesting and deserving of further discussion. (This is done very quickly, in no more than ten to fifteen minutes.) When the parties return to the joint table, each side presents its check-

marked list to the other. This process reveals to the parties which options have the most interest, which focuses the subsequent discussion. This initial exchange might even lead to an agreed-upon solution. If not, another caucus would follow, and further refinements to options would occur, based on the expressed concerns.

Evaluation Criteria

The standard IBN process requires the parties to agree on objective standards or criteria by which the parties will jointly evaluate each generated option. This step of the traditional IBN methodology was designed to replace power in the bargaining equation. We have found that several problems often result from this step.

First, “objective criteria” are most often “objective” only in the eyes of the beholder. Attempts to reach a joint agreement on criteria based on objectivity typically result in a race to the lowest common denominator, such as “fair” or “equitable.” These watered-down results frequently lack sufficient precision to be meaningful standards for evaluating options.

A second problem associated with a focus on criteria is the burdensome mechanics of applying them in a concrete manner. Suppose parties have generated fifty options and agreed on five criteria. Applying five criteria to fifty options requires the joint group to make and agree to 250 decisions. Working with fuzzy criteria, partial options, and an insistence on each participant’s consensus leads to a lengthy and frustrating procedural nightmare.

A third problem with the emphasis on criteria is that bargaining participants have a tendency to believe that if they can prevail on the criteria, then they can be assured of the outcome they desire. Attempting to “game” the criteria is a fairly common practice.

If criteria are dropped from the pro-



cess, what, then, serves to evaluate and determine acceptable options or outcomes? The answer: critical interests and relative power. Not all interests are critical. Some are nice to have—icing on the cake—but others are vital. These critical or “must meet” interests, prioritized in individual caucuses and revealed at the joint table, can then serve as de facto criteria for that party. If vital interests are not met, an agreement is not likely to occur.

Power

Some parties are reluctant to engage in an IBN process because they see it as a forfeiture of the power advantage they perceive they possess. In calibrating relative power and the benefits of pursuing bargaining as a collaborative activity, however, the “weaker” party’s ability to foster or hinder implementation is too frequently given short shrift.

Though some believe that objective criteria can remove power from the bargaining equation, our experience is that relative power is an omnipresent factor in determining the respect that one party is prepared to pay to the other’s critical interests. By implying that criteria will help ensure that power is subordinated to the objective outcomes of an analytical process, IBN practitioners do a great disservice to participants and set them up for disappointment when power resurfaces during the final stages of the bargaining process.

The Individual and the Application of Consensus

An orthodox application of interest-based bargaining focuses on fully engaging the individual participant, and proponents believe that by maximizing each bargaining participant’s contribution, they optimize creativity, increasing the likelihood that elegant solutions to the issue will surface and be adopted. For

this reason, typically, IBN requires that each participant agree or consent before any solution is adopted.

Our concern with this construct is that collective bargaining occurs between institutions, not multiple individuals. It is the *institutions*, not the participants, who must consent to an agreement. Individuals certainly have a voice within their institution and in its caucuses can seek to exert their influence. They cannot and should not, however, stand in the way of a solution that their colleagues deem to have met their institution’s interests.

By returning the focus to the *institutions* involved in bargaining, parties are more likely to make key decisions within caucuses, restoring the role and influence of the chief spokesperson—at least in part. Our experience is that when the bargaining process is under maximum stress, getting the bargaining back on track requires strong leaders who are trusted by their colleagues and respected by their adversaries. IBN orthodoxy diminishes and undervalues this role.

Applying IBN to Economic Issues

Finally, traditional IBN has a very limited role to play in distributive or economic issues, where in most cases the parties at least perceive that the issues are of a zero-sum nature. The zero-sum perception is not always an accurate one, however. There may be times where both parties might have an interest in higher wages, for example, to attract a skilled and/or scarce workforce (in the field of nursing, for example). In addition, compensation approaches such as gain-sharing or goalsharing lend themselves to joint design informed by joint analytical work previously described in the preparation phase.

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cepts of IBN, the civility and tone of negotiations are more likely to provide the setting for a more candid and less emotional dialogue on the economic issues, though clearly, when it comes to economic issues, neither party should be expected to reveal their “bottom line” when divulging their interests. Ultimately, it is unrealistic to think that economic outcomes can be determined in the absence of at least some old-fashioned “horse trading” and both parties’ calibrating their relative power and willingness to exercise it.

Superior Outcomes through a Synthesis of Approaches

Through a strong focus on defining issues as “problems to be solved” and encouraging parties to explore and share their underlying interests, the pioneers of IBN have greatly enhanced the ability of union and management bargaining groups to understand the nature of their shared challenges and their mutual and separate needs. IBN has certainly enriched the quality of discussion and possibilities associated with collective bargaining.

Research sponsored by the Federal Mediation and Conciliation Service (FMCS), however, supports the contention that IBN practitioners, while not desiring a return to a purely adversarial process, are nonetheless losing enthusiasm for the orthodox IBN approach.⁶ In our experience working with leading organizations across industries, this approach can hamper the ability of bargainers to work effectively and efficiently toward a solution. We propose that by liberating the interest-based approach

from an overemphasis on process, and by recapturing the positive attributes of traditional bargaining, a results-focused bargaining approach can produce superior outcomes.

The zero-sum perception is not always an accurate one.

1. Roger Fisher, William Ury, and Bruce Patton, eds. *Getting to Yes: Negotiating Agreement without Giving In* (Boston: Penguin Books, 1981).
2. John R. Stepp, Kevin M. Sweeney, and Robert L. Johnson. "Interest-Based Negotiations: An Engine Driving Change," *The Journal for Quality and Participation* 21 (5) (1998), 36–41.
3. The authors' experiences include work with leading organizations such as Kaiser Permanente, Bell Canada, Wisconsin Energy, Yale University, Labatt Brewery, Levi Strauss, Algoma Steel, Cinergy (now Duke Power), and Nabalco (now Alcan Australia).
4. The 2005 Kaiser Permanente national bargaining produced a five-year agreement covering twenty-nine local unions with eighty-six thousand employees at four hundred facilities in nine states and the District of Columbia, and was organized around only nine jointly developed issues.
5. Again, in the case of Kaiser Permanente, a joint team worked together for several months prior to the first formal bargaining session to frame the issues that would be the basis of the negotiations; they commissioned a joint "data team" to identify the pertinent data and best practices related to each of the issues.
6. Joel Cutcher-Gershenfeld and Thomas Kochan, "Taking Stock: Collective Bargaining at the Turn of the Century," *Industrial and Labor Relations Review* 58 (1) (2004), 3–26.



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