

Notes for a Presentation on Interest Based Bargaining

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OCHU/CUPE

The Ontario Council of Hospital Unions (OCHU) has chosen not to support Interest Based or Mutual Gains Bargaining (“IBB”).

IBB differs from standard negotiations in a number of respects.

- Negotiators avoid taking bargaining positions, but rather focus on the interests of the parties
- Negotiators try to understand and empathise with the other party’s interests and focus on identifying mutual interests
- All members of the negotiating committees speak, not just designated spokespersons
- Together, the bargaining teams brainstorm and develop as many creative suggestions as possible, to address the interests identified
- Participants do not criticise the suggestions of others during brainstorming
- Caucusing is downplayed
- Joint training of management and union negotiators in IBB is common
- Agreements are not supposed to be reached based upon power, but upon objective criteria jointly agreed to by the parties

There are, at least, five areas of concern with IBB: [1] the differing interests of employers and unions, [2] power relations, [3] membership connection, [4] union strength, and [5] bargaining results.

Differing Interests

- Interest Based Bargaining tends to assume that the common interests of employers and employees are greater than their different interests.
- It’s ironic that this approach has developed when employers have gone on the offensive against working people. The economy has grown, the wealthy have become much more wealthy, but working people and union settlements have not kept pace with inflation. Social programs that benefit working people have been eroded, while tax cuts that primarily benefit corporations and the well to do have been introduced. The reality is that many employers do not support a living wage for workers to clean floors, serve sandwiches, or do laundry, and they are quite willing to contract out work to non-unionized contractors that pay considerably less. And if an employer is not willing to do just that, she may well find out that her competitor (or her funder) is.
- Major gains achieved by working people have been won through mobilization, over the objections of employers and corporations – the shorter work week, better pensions, real social programs. They came through political and trade union battles by working people. Conclusions based upon objective criteria freely agreed to by workers and employers have had very little to do with it, however much we might wish otherwise. There is a profound difference of interests between workers and employers and right wing governments. So naturally our bargaining structures should reflect this reality.
- Of course there are some important common interests, but it is important not to overstate them. So, for example, an employer may, for various reasons, believe its interests lie in a higher wage, more secure workforce. (I thought I saw some brief glimmer of this for certain groups when the Tories started to increase health care funding last year.) But then employers can turn around and decide their interests lie elsewhere, when funding or other circumstances change.

- Similarly, the win – win approach papers over the question of who got the most out of a deal. It would be a rare innovation that saw both parties receive exactly equal benefit.
- And common interest may still be quite separate when you scratch below the surface. Take, for example, health and safety. Workers have an absolute interest in this. Employers may have humanitarian interest in health and safety and they do have an interest in avoiding WSIB costs, but they also have to weigh this off against the expense of working safely and the need to get production out.

Power

- The IBB suggestion that power should have no place in decision making at the bargaining table is unrealistic. Power relations surround us. If we do not recognize this reality, we cannot effectively deal with it. Good examples of this are the recent hospital funding cuts from the provincial government and the layoff and service cut announcement from the Ontario Hospital Association that followed. Both of these announcements reflect the real power of the government and the hospitals and will set the terrain for the upcoming round of bargaining. These realities cannot be wished away or ignored.
- Keeping the reality of power in mind is especially important for unions – we have less power than employers and governments, so ignoring power relations serves simply to keep those relations as they are.

Separation from the membership

- The union is not the elected leadership, the bargaining committee, or staff. The union is the membership. The primary bond elected leaders and staff have to keep is with the membership. But IBB erodes this. IBB consultants talk about the need of negotiators to have some distance from the membership (or senior management).
- IBB training often consists of five days of joint training of union and employer negotiating team members. It's often held off site at a nice hotel. This may not be all that significant for managers, but it can separate union negotiators from the membership while increasing bonds with management.
- The “blue sky” brain storming technique used by IBB. Bargaining team members from both union and management are encouraged to come up with all sorts of possible innovations in front of each other. No criticism is allowed, as this could discourage creativity. Spontaneously developing ideas inside the room, in front of the other bargaining team is quite a leap from what we try to do – get as close as we can to the membership, hear what they have to tell us, and follow it closely.
- IBB asks bargainers to focus on the interests of the other party. Union leaders are encouraged to adopt problems that the employer faces as their own problems – techniques that can distance union leaders from members.
- IBB downplays caucuses. Here the IBB approach can be more beneficial to management. Management has a hierarchy – a boss to report to. Unions are political organizations, inherently less monolithic than an employer hierarchy. So the IBB process opens unions up to fractures somewhat more than management. (To be sure this is less true in central hospital bargaining, where management bargainers come from separate employers – albeit separate employers with the same funder.)

Impact on the union

- IBB undermines the union's BATNA ("best alternative to a negotiated agreement"). The union's BATNA gives the union its leverage in negotiations. It's what allows the union to walk away, or threaten to walk away from the employer's offer. IBB emphasizes common interests and mutual gains – but our BATNA depends on a strong, mobilised membership. It is hard to prepare for a process that emphasizes common interests while also preparing for mobilization and the potential of open conflict. It sends a mixed message to the membership. It is harder to get members fired up for mobilization if you are also telling them that you are co-operating with the employer and that you have common interests. In another words, it's hard to suck and blow at the same time.
- If you do prepare for IBB and then find out, later, that you need to mobilise, you will have lost time and energy and possibly credibility with the membership
- Major changes in society that have benefited workers have primarily come about when working people came together and fought for changes – stood up and made clear their dissent from the status quo and the powers that be. The skills needed to move employers and move society so that the concerns of working people are addressed are built through mobilising, through gearing up. Turning away from this will mean that those skills won't be learnt. The ability of unions to fight will be lessened and unions, unfortunately will be the weaker for it.
- It is not surprising that employers are usually the ones who promote interest based bargaining.
- The union membership is not likely to be co-opted by IBB – typically the work process goes on much as before, with much the same stresses and strains. So worker-management partnership is not taken too seriously by employees. But IBB is directed at union leaders, and, rightly or wrongly, union members sometime see union leaders as co-opted by management. This leads to problems for the union leadership and staff. Indeed, do we really need a union if the union leadership and management cooperate so much?

Bargaining Results

- Research on Interest Based Bargaining in Canada has indicated that IBB results in more mutual gains in collective agreements. This is hardly surprising given IBB's focus on common interests. However, the research has also indicated that IBB settlements contain more union concessions than agreements reached through normal negotiations. As well, IBB agreements have a greater number of monetary concessions. Finally, IBB results in fewer union gains than normal bargaining.

What are the Challenges for Interest Based Bargaining?

I've suggested that IBB limits union options, While this is the main stumbling block for IBB, there are also some areas that can create problems for both union and management.

- Generally IBB encourages more leeway for negotiators. This may allow more workplace innovation and more change – but it does so at expense of control by the principals – i.e. the union membership and management not at the bargaining table
- IBB negotiations focus on pulling ideas out of the blue – expanding the creativity of the bargaining representatives. Research indicates that IBB tends to bring with it

more workplace innovations. There is less emphasis on proposals developed by the union membership or by the management not at the negotiations. So those not present at negotiations are less likely to have their ideas represented. This becomes more difficult if bargaining teams are supposed to represent a large number of employees or a variety of different managerial activities.

- All of this is compounded if bargaining teams represent a variety of different employers, or a variety of different union locals – groups that may not even be directly represented on a bargaining team. Will those who happen to be at the bargaining table be able to reflect all of those different concerns as they blue sky and brain storm ideas?. (I think this is particularly relevant in central hospital bargaining.) And remember, the local parties do not have to participate in the central bargaining process if they are not satisfied, or feel they were not represented.
- A second problem: as IBB focuses on drawing ideas from people who are at the bargaining table, IBB can also erode industry-wide patterns. Local negotiators brainstorming alternatives naturally draw on their own experience -- the circumstances and settlements of others are just not all that relevant.

Is Interest Based Bargaining viable for the future?

- This approach will no doubt continue in some labour negotiations for at least some time to come
- We've heard for many decades from employers that collective bargaining is old fashioned, that employers and employees have now more in common than what separates us. No doubt we will hear this for decades more.
- Such an approach does have some appeal. Most people have a natural preference for easy relationships that are primarily co-operative. Dealing with conflict is difficult, even though it may be necessary.
- But the reality of corporate and right wing government power leads union negotiators back to normal negotiations – if they are to keep the confidence of their membership

I've emphasized that employer and union interests are separate and that, therefore, it is appropriate that the method we bargain together should reflect that reality. However there are certainly areas where employers and unions can work together. For example, the OHA has, to date, aggressively criticized the recent funding cuts imposed by the provincial government. This approach is positive. While at the end of the day, hospitals boards will often implement government policy, there is some room to work together to fight these cuts, at least in some ways. Indeed, unions are in a position to say publicly what hospitals officials can sometimes only think privately, and hospitals have access to information that unions do not.

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