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Interest-Based Bargaining's Impact on Collective Bargaining Outcomes

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Collective bargaining has long been the dominant process for settling workplace disputes between union members and management, but has recently been used less frequently as unionization rates continue to decline. Currently, positional bargaining is the predominant negotiation strategy used in collective bargaining. However, interest-based bargaining has emerged as an alternative method for negotiations. This paper will examine the different outcomes in labor relations, innovative agreements, and party satisfaction when interest-based bargaining is used instead of positional bargaining. This paper utilizes survey data and case studies to determine if there is a noticeable difference between the two negotiation strategies.

Throughout the last century the process for settling labor-management disputes peacefully is known as collective bargaining, and was given statutory legitimacy in 1935 with the adoption of the National Labor Relations Act (NLRA) (Boniface & Rashmi 2013; Barrett, Cutcher-Gershenfeld, Kochan, Ferguson, 2007; Cutcher-Gershenfeld & Kochan, 2004; Cutcher-Gershenfeld & McKersie; 2009; Post, 2009). The NLRA gave legal authority for employees to organize and join a union for the purposes of collectively bargaining with their employer. Collective bargaining is typically when one party (labor) will negotiate with the other party (management) to address working conditions, wages, and hours. However, negotiations will almost always address topics beyond these core economic issues. While the NLRA gives legitimacy to these negotiations, they do *not* give statutory regulation for what type of negotiation strategies can be utilized in these meetings, and instead provide a broad guideline that each party must abide by (Post, 2009).

The specifics that the NLRA provides relative to collective bargaining are contained within section 8 (29 U.S.C.A. § 151). Section 8(b)(3) statutorily requires each party to collectively bargain with each other by recognizing the refusal of any party to negotiate and develop an agreement as an unfair labor practice. This section preserves the rights to collectively bargain regardless of how the labor-management relationship has developed and/or if one side sees no benefit to negotiating further. Additionally, section 8(d) details the obligations of each side during the collective bargaining process. These obligations are the most specific guidelines that the NLRA provides in terms of the negotiation process. They require both parties to meet at reasonable times, bargain in good faith in regards to wages, hours, and working conditions, and clarify that neither of the parties are compelled to agree to a proposal or concessions. The stipulations of section 8(d) are important in preserving the essence of collective bargaining, ensuring that it doesn't become a meaningless exercise where only one party participates in earnest, or both parties go through the motions without making serious proposals that address the other party's concerns.

The NLRA never specifically stated what type of bargaining strategy must be utilized during negotiations. Knowing this, individual parties have the ability to determine and implement the strategy and process that will best help them to achieve their goals during the collective bargaining process. The NLRA literature outlines the various types of bargaining processes that the parties may utilize (and which will ultimately affect the behavior of each party). The two main bargaining processes that are used are distributive and integrative (Cutcher-Gershenfeld & Kochan, 2004). In integrative bargaining, which is associated with interest-based bargaining, each party seeks to find mutually beneficial solutions to problems. The parties view themselves as joint problem solvers of issues they are facing. The parties will then work in collaboration to develop solutions which benefit each side. This is categorized as "win-win" bargaining because, at the end of negotiations, labor and management have worked together to find mutually beneficial ways to address workplace issues.

The other type of bargaining, which is most commonly used, is distributive bargaining. In this method, parties view each other as competition during the negotiation, and try to find solutions that are closest to their position and benefit them the most (Post, 2009; Friedman, 1993; Farmer, Miller, Miller, & Peters, 2010). The parties will each work to have the other side accept a concession in order for their side to achieve a gain. This is described as “win-lose” bargaining process, where an agreement is generally more favorable to one side.

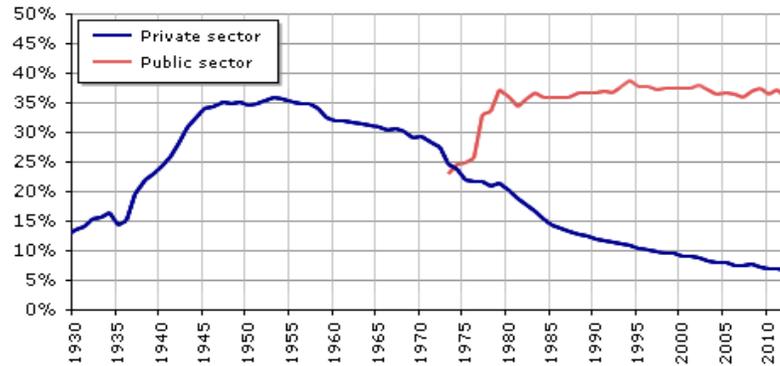
While collective bargaining can be viewed as a party (labor) that shares all the same goals against the opposing party (management) with the same internal structure, this is often not the case (Boniface & Rashmi, 2013; Colosi, 1983; Farmer et al., 2010). Within a bargaining team, each member will have different goals that they want to achieve during negotiations. Even when they do agree on overall goals, they may then differ on the positions or negotiating strategy that should be used. As this occurs, and to the degree it occurs, it causes additional problems that need to be addressed throughout the negotiation process. Before an agreement on issues can occur, each party must first internally bargain to arrive at an agreement on how they will proceed during negotiations. The internal bargaining that occurs within the bargaining team also occurs between labor and management negotiators and their constituents. Management and labor bargaining teams both have constituencies that they need to represent during collective bargaining (Boniface & Rashmi, 2013; Boniface & Rashmi, 2012; Colosi, 1983; Cutcher-Gershenfeld, 1994). This relationship to their constituents is dependent on the bargaining teams finding a negotiating strategy that allows them to adapt to new information throughout negotiations, while still representing their constituents. If the bargaining teams do not appear to be representing their constituents' goals, it can decrease how satisfactory these constituents ultimately view collective bargaining.

Eaton, McKersie, and Fonstad (2004) also define the deeper relationships that occur during collective bargaining called attitudinal structuring. Attitudinal structuring views negotiators as relationship shapers who will be able to influence the labor-management relationship not only at the bargaining table, but also in the post-contract relationship. All too frequently, the collective bargaining process is viewed as existing in a bubble, completely isolated from any actions or relationships that take place or exist before or after negotiations happen. However, the relationships developed during collective bargaining will have an effect on the day-to-day labor-management relationships. If there is a particularly adversarial bargaining session in which each party becomes suspicious of the other, that will influence how labor and management deal with each other during the length of the contract. Throughout the past several decades, there have been an increased number of managerial decisions to bring labor into a more active role during the length of the contract (Cutcher-Gershenfeld & Kochan, 2004; Cutcher-Gershenfeld, 1994; Lobel, 2000). This inclusion allows for labor and management to either develop or improve an existing relationship prior to the start of formal negotiations (where they may be placed in adversarial positions against one another). These continuous relationships, both within labor and management and *between* labor and management, show the impact that collective bargaining has beyond the negotiating table.

Collective bargaining is truly effective when used as a tool by both labor and management to resolve differences. However, its success depends on labor having union representation. Employees, acting independently, do not have the statutory protections granted by the NLRA if they wish to negotiate their working conditions with their employer. Since 1935, union density has peaked around 35% but recently been on a steady decline. According to the Bureau of Labor Statistics¹, union density has decreased to only cover 11.1% of the nation's total workforce. While the public sector has a much higher percentage

¹ <http://www.bls.gov/news.release/union2.nr0.htm>

of union density (with representation for 35.7%, covering 7.2 million public workers nationwide), the private sector has decreased only 6.6% (covering 7.4 million workers).



Source: http://www2.ucsc.edu/whorulesamerica/power/history_of_labor_unions.html

As there are fewer unions representing workers, which means that there are also fewer collective bargaining sessions taking place between labor and management. The decline of both collective bargaining agreements and union density is troublesome, as it decreases the ability of labor and management to use a negotiation process to resolve disputes. Rather, with an absence of union representation, the power shifts increasingly toward management where they can implement policies that do not have worker input into the decision.

POSITIONAL BARGAINING AS A NEGOTIATION STRATEGY

The dominant strategy used in collective bargaining is positional bargaining which can be adversarial due to one side winning and the other losing (Barrett et al., 2007; Cutcher-Gershenfeld, 1994; Cutcher-Gershenfeld & Kochan, 2004; Cutcher-Gershenfeld & McKersie, 2009; Eaton et al., 2004; Farmer et al., 2010; Friedman, 1993). Since positional bargaining uses proposals with one party's position on a topic, it can lead to both sides refusing to move too far off their position so that they don't appear to be bargaining from a position of weakness. If negotiators allow themselves to get moved too far off of their original position it can make it easier for the other party to use power moves in order to get the results they wanted. Power is the ability of one party to force the other party to accept an unfavorable proposal (Barrett et al., 2007; Cutcher-Gershenfeld, 1994; Grigsby & Leap, 1986). Power is exercised through the threats of job actions that could adversely affect the ability of the party receiving the threat to function. These are typically done through unions calling a strike to cause economic harm to the employer or management using strike or replacement workers to prevent the union from entering the worksite.

In order to best understand the bargaining process, two different strategies must first be examined: positional bargaining and integrative bargaining. Positional bargaining is associated with the distributive bargaining process, where parties compete with each other in order to gain the most resources that are available for themselves (Boniface & Rashmi, 2013; Cutcher-Gershenfeld, 1994; Cutcher-Gershenfeld & McKersie, 2009; Eaton et al., 2004; Lobel, 2000; Post, 2009). Positional bargaining is inherently looked at as a competitive relationship, where each side will be in conflict. The belief is that labor's goals and management's goals must come at the expense of the other side in order to obtain as many resources as possible. In this strategy, each party will develop proposals that represent the positions they are taking. These positions reflect the party's goals, but are almost always padded to include many more demands than they will actually accept. Even though each party is aware of how positional bargaining is used, it is often difficult to ascertain what the positions are actually trying to resolve, as they generally start at a much different point than they intend to end up at. Due to this being the dominant style of collective bargaining, each party knows that they are competing for limited resources, leading them to

take positions that will allow them to make the largest gains possible (Cutcher-Gershenfeld, 1994; Cutcher-Gershenfeld & Kochan, 2004; Friedman, 1993; Post, 2009). However, this also can lead to each party viewing the other as dishonest, affecting what is already frequently viewed as an adversarial relationship.

During negotiations, each party must determine what the position is that is farthest away from their original starting point, while still being favorable to their side (Colosi, 1983; Friedman, 1993; Post, 2009). Not only is each party responsible for presenting proposals reflecting their own position, but they are also responsible for presenting counterproposals based on both their position, and what the other party brings to the table. Through this exchange, it allows negotiators to get a better understanding of what each party is willing to accept. Lobel (2000), believes that a negotiator will be able to ask questions about the other party's positions in order to clarify what their interests are, and what they hope to achieve. However, this view on positional bargaining assumes that each negotiator possesses the skills necessary to gain information and make counterproposals that address an underlying interest. It is a riskier view of collective bargaining because if the negotiator is not able to identify the interests of the other party, it could cause negotiations to break down. Without an understanding of what the other party is trying to achieve through their proposals, the positions may never get to a point where one side finds them acceptable. Additionally, the adversarial style of positional bargaining usually results in a breakdown of the labor-management relationship, and inhibits the ability of negotiators to work through this breakdown (Colosi, 1983)

POSITIONAL BARGAINING AND LABOR-MANAGEMENT RELATIONS

The labor-management relationship that occurs is an outcome of positional bargaining, where each side attempts to cause the other side to take a concession, allowing them to "win" while the other side takes a "loss" (Cutcher-Gershenfeld, 1994; Cutcher-Gershenfeld & McKersie, 2009). Negotiators develop positions based on their party's self-interest in resolving workplace disputes in a way that provides the greatest benefit to those they represent (Post, 2009). As each party brings their positions to the table, an adversarial relationship between them is bound to form, especially when it is difficult to find an agreement that benefits both parties. This is particularly true of economic issues, such as wages and hours. For example, if negotiating employee wages, labor will almost always propose an increase in their wages, while management typically proposes either a smaller increase, or no increase at all. By engaging in a style of negation that pits labor and management in direct competition with each other, and by emphasizing the opposing views that each side has on the issues being negotiated, labor-management relations suffer. In order for the collective bargaining relationship to work and have both sides willing to engage in negotiations, the labor-management relationship cannot completely devolve. The continuity of collective bargaining requires labor and management to retain the ability to trust the other side, and to bargain in good faith as the NLRA mandates. Cutcher-Gershenfeld (1994; 329) explains this by describing a mixed motive assumption which, "holds that the interests of labor and management will always involve conflict and that there will be areas of common interest." This view of collective bargaining helps explain how both labor and management can continue their relationship, even if that relationship has been harmed. Even though labor and management are competing to gain the most resources, there are still likely to be areas where their positions are close enough and allow them to find common ground. Lobel (2000; 17) views positional bargaining as proceeding in the manner it is supposed to, and the type of negotiating, whether integrative or distributive, will cause at least some negative effect on the labor management relationship. He further believes that positional bargaining is occurring in the manner it was designed and credits it for the low amount of job actions being taken. However, while positional bargaining has been able to lower the number of job actions taking place, there have also been fewer collective bargaining agreements being negotiated (Cutcher-Gershenfeld &

McKersie, 2009). Even if positional bargaining is causing a reduction in strikes, the harm that can occur to the labor-management relationship during collective bargaining affects their ability to collaborate and find mutually beneficial solutions.

Fortunately, there are survey data and literature relating to how positional bargaining effects the relationship between labor and management. This allows for better insight regarding how each party views the relationship that results from the dominant strategy used in collective bargaining. The literature was able to compile data about the current state of labor-management relations by using survey results from the Federal Mediation and Conciliation Service (FMCS) (Barrett et al., 2007; Cutcher-Gershenfeld & Kochan, 2004; Eaton et al., 2004). The surveys were completed between 1996 and 2003, which shows how the relationships have either improved or decreased over the course of nine years.

In the 1996 survey, over 20% of the union respondents reported a somewhat or very adversarial relationship with management, with around 15% of the management respondents reporting the same. Already, this difference shows one of the difficulties within labor-management relationships is that one party may feel the relationship is worse than the other party does. This could potentially be due to the “win-lose” nature of positional bargaining. If one side has to continue taking losses in collective bargaining agreements, they may feel more adversarial to the other side. In the 1999 survey, the view of a somewhat or very adversarial relationship only increased slightly among union respondents, but increased to just over 20% among management respondents. In the 2003 survey, union percentage of this same view increased to over 30% while management reported a decrease to nearly their 1996 percentage of 15%. These surveys are able to show trends in labor-management relations as viewed by each party. An important trend to note is that unions were reporting an increasingly adversarial relationship with management as time went on. Most notably, the increase from 1999 to 2003 showed that it was nearly a third of union respondents viewing management in an adversarial manner.

Cutcher-Gershenfeld & Kochan (2004) surveyed both labor and management negotiators to determine how they viewed their relationship as it continued. They found that only a third of respondents from both parties reported their relationship as “improving”, while 5-7% viewed the relationship as getting worse. These numbers reinforce the aforementioned data by providing insight into how the relationships currently are, and how labor and management compare it to past relationships. In a specific example, research into the airline industry found that continuing conflict between labor and management had reduced the productivity during day-to-day operations (Gittel, Kochan, & von Nordenflycht, 2004). This example shows that adversarial feelings that are formed during collective bargaining will often continue, affecting the long-term success of the company. All of this information helps to gain a better idea of how labor-management relations that develop at the bargaining table will continue to have an effect between bargaining sessions, both in the immediate and long-term. The ability of each party to engage in successful collective bargaining where an agreement is reached depends on the ability of labor and management to be willing to negotiate with each other. Even if positional bargaining has an effect on how labor and management view each other, they still need to retain the ability to submit proposals and be willing to compromise.

Just how adversarial one party views the other in a labor-management relationship is frequently affected by the presence of power, and if one side had to exercise this power during a prior negotiation. One party utilizing threats of using power during negotiations, whether through strikes, lockout, or replacement workers, is an effective way to force their position onto the other party, but also increases the adversarial relationship between them. Lobel (2000) believes this is just the normal course of negotiations and is inevitable, as each party has to understand what will happen if they are not able to come to an agreement. This view of power within collective bargaining is consistent with the bargaining style of positional bargaining. Each negotiating team wants their counterpart to accept their proposal and understand what could occur if they refuse. Economic positions are especially vulnerable to threats

of power, since those positions are where labor and management are most likely to differ the greatest. For example, if a union proposal had a 5% wage increase and management counter-proposed a 1% increase based on a bad economic outlook, these proposals may be incompatible, requiring either labor or management to threaten to exercise their power to get an agreement that closest to their original proposal. The effectiveness of using power is dependent on each party understanding that it could be used to influence negotiations in the absence of an agreement (Colosi, 1983; Cutcher-Gershenfeld & Kochan, 2004; Grigsby & Leap, 1986). For example, if a union threatens to call a strike, but management knows that they do not have the financial resources to use this method, management will be able to call labor's bluff (due to them having more power in this situation). Management then has a greater chance to force labor to accept their position and take a possible concession. However, in order to get a finalized agreement, it may be necessary to go through the use of power to overcome the gap between the differences in positions. When their use did occur, 1996 and 1999 survey responses showed that labor and management view its influence on agreements (Barrett et al., 2007; Cutcher-Gershenfeld & Kochan, 2004; Eaton et al., 2004). Labor respondents viewed their threats of strikes, which only occurred in 5% of negotiations, as influencing the results in 12% of contracts, while management said labor threats only influenced 4%. When management threatened the use of replacement workers (which occurred in only 1%-2% of negotiations), only 6% of their respondents believed it had an effect on negotiations, while 10% of labor respondents believed it had directly affected negotiations. This data is able to show the many effects of power moves, as well as the imbalance of power between the two parties. Labor is more likely to threaten the use of power than management is, but this threat is only occurring in a very small number of negotiations. Additionally, management's use of power threats is more effective at influencing labor to accept management's position than labor's threats are in forcing management to accept labor's position. This also shows that management and labor do not have equal power since it seems that management's use of these tactics are more influential in getting an agreement. Since these are self-reported results, it shows that management has a greater ability to use power to get their position even if they are less likely to use it. This would also explain the disparity between how adversarial labor and management view their relationship. As management is able to force labor to accept concessions, especially over a period of multiple collective bargaining negotiations, labor would be less likely to negotiate cooperatively with management. This could become especially troublesome to labor-management relations as it could negatively affect how much trust one side has in the other side not taking advantage of them during negotiations.

Trust is not just an important factor in coming to an agreement in collective bargaining -, it is also an important factor in labor-management relations. Trust is a difficult concept to repeatedly track because it's an emotional response resulting not only from the collective bargaining agreement, but also the day-to-day operations of the workplace that occur after an agreement is reached (Colosi, 1983; Eaton et al., 2004; Friedman, 1993; LaCroix & Ross, 1996). During negotiations, each party will make themselves vulnerable to possible power moves from the other party. Survey data from 1999 found that 20% of union respondents and 10% of management respondents viewed lack of trust as influencing negotiations (Cutcher-Gershenfeld & Kochan, 2004). This is troublesome if only one-fifth of union respondents felt that they could not trust management during negotiations. If labor negotiators are unable to trust management, it makes it unlikely that they would be willing to negotiate cooperatively with them.

If a labor-management relationship continues to be adversely affected, it could lead to an agreement not being reached and eventually requiring a third-party mediator to be introduced. If negotiations reach this point, each party needs to trust the mediator, but most importantly trust that collective bargaining will result in an outcome that's positive to their party (Colosi, 1983). If a mediator is unable to convince labor or management to trust that they can find an agreement, then it becomes

more likely that one party will use power tactics to force an agreement. Each party may be unwilling to come to an agreement and may resort to the use of power moves again, only further decreasing the trust between each party.

Positional Bargaining and Innovative Agreements

The goal of collective bargaining is not just to come to an agreement, but to come to an agreement that allows for the development of new solutions that could potentially resolve differences between each party. Innovative agreements are ones that allow for greater cooperation and joint-decision making throughout the length of the contract. These types of agreements allow for greater collaboration between labor and management, which will ultimately improve relationships between them. However, it can be difficult to develop innovative solutions while engaging in positional bargaining, since each side will present their position and often not want to deviate far from it during negotiations (Farmer et al., 2010; Friedman, 1993; Post, 2009). Since distributive bargaining is essentially a competition between labor and management to gain the largest share of resources, developing innovative solutions is not often the goal. Instead, each party seeks to address the issues that best reflect their interests, rather than work collaboratively to develop solutions that benefit each party. Additionally, positional bargaining does not typically involve sharing all the information that each side has on an issue, and instead uses caucuses for each party to discuss the positions amongst themselves (Boniface & Rashmi, 2012; Cutcher-Gershenfeld, 1994). It is difficult to develop solutions outside the initial position if one party is not sharing all the available information, or if one party does not ask for any relevant information. Instead, parties will try to find solutions based off their original positions. This tends to narrow the focus of negotiations to find a compromise between two positions, rather than evaluate if there are other solutions that can address the problem.

This is not to say that innovative agreements cannot occur when positional bargaining is utilized. Since positional bargaining is the dominant process used, it is responsible for how collective bargaining has developed since the NLRA. Survey data from 2003 had slightly over 15% of union respondents report increased worker input during negotiations, and about 20% reported that the formation of joint committees, which increase worker input in decision-making resulted from collective bargaining (Cutcher-Gershenfeld & Kochan, 2004). Just 10% of management respondents stated that worker input increased, and slightly less than 15% reported that joint committees formed. This data shows that while there are innovative agreements being negotiated, they are in the minority, and are viewed quite differently between labor and management. The differences in how they are viewed shows how labor and management differ greatly on what they view as a gain or a loss – an issue that is often a result of positional bargaining.

A major impediment to the creation of innovative solutions is when one party will force the other to accept a concession (Cutcher-Gershenfeld, 1994; Cutcher-Gershenfeld & McKersie, 2009). Concessions typically go beyond positional bargaining's normal process, where each party will moderate their positions until they come to an agreement. Concessions are generally implemented through the use of power, forcing the other party to either accept the position, or deal with the consequences of not accepting it. Use of power to gain acceptance of positions reduces the ability of the negotiating teams to develop joint-committees or solutions beneficial to each party.

Concession bargaining can also be influenced by situations outside of collective bargaining, such as the economic condition of the employer, or how the economy is performing at the time of negotiations (Cutcher-Gershenfeld & Kochan, 2004; Gittel et al., 2004; Eaton et al., 2004; Farmer et al., 2010). If management views the economic condition differently than the union does, it may be more likely to use power to influence labor to accept a concession. Since collective bargaining is a lengthy process with a deadline, a party could use power at the end of negotiations to gain a concession from the other party,

given that there is less time to work towards innovative solutions. Frequently, management uses power moves in order to gain concessions. Power moves, or threats of using power, have been an effective method for management to get a concession from labor (Barrett et al., 2007; Cutcher-Gershenfeld, 1994; Grigsby & Leap, 1986). While this is occurring less frequently than in past years, management still uses this strategy to negotiate what they view as innovative agreements (Cutcher-Gershenfeld & Kochan, 2004).

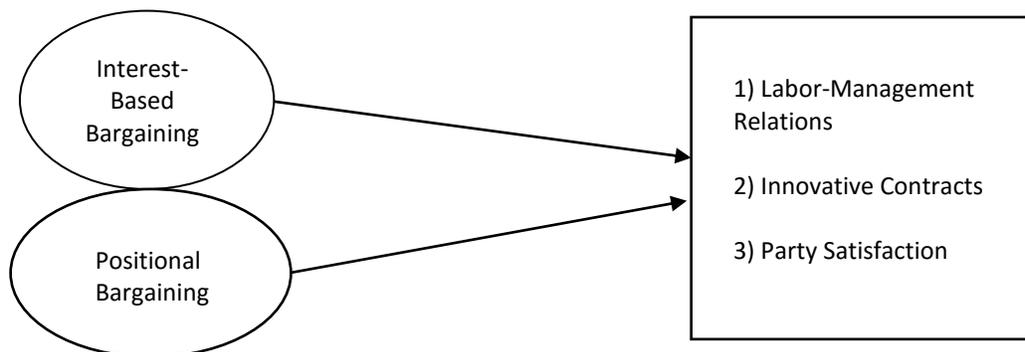
The ability to find innovative solutions in positional bargaining is, again, affected by the level of trust between each party. Since positional bargaining can increase the likelihood of an adversarial relationship, it can also decrease the amount of trust each party has for the other, ultimately affecting their ability to work collaboratively to find mutually beneficial solutions. The past use of power moves or past negotiations that were more adversarial have been shown to affect the amount that each party wants to work cooperatively with the other party (Colosi, 1983; Cutcher-Gershenfeld, Kochan, & Wells, 2001; Cutcher-Gershenfeld & McKersie, 2009). Since collective bargaining is reoccurring, this then can diminish the ability of labor and management to work cooperatively to find alternative solutions. This then affects the entire collective bargaining process, including labor-management relations, since it continually narrows the ability of negotiating teams to work beyond positions and address interests.

INTEREST-BASED BARGAINING AS AN ALTERNATIVE SOLUTION

Interest-based bargaining has emerged as an alternative strategy to positional bargaining, working as a process to address some of the current issues between labor and management. Interest-based bargaining is fundamentally different from positional due to the approach it uses towards collective bargaining. It implements integrative bargaining as a means to find joint solutions that are mutually beneficial for both labor and management (Boniface & Rashmi, 2012; Boniface & Rashmi, 2013; Cutcher-Gershenfeld, 1994; Cutcher-Gershenfeld & McKersie, 2009; Cutcher-Gershenfeld et al., 2001; Eaton et al., 2004; Friedman, 1993; Lobel, 2000; Post, 2009). In contrast with positional which uses distributive bargaining, interest-based bargaining views labor and management as partners in creating mutually beneficial solutions from available resources. It does not focus on the positions that each party wants to propose, but rather the interests they seek to address. This allows for labor and management to work towards finding a common solution instead of viewing negotiations as a time to try to acquire the most resources. Interest-based bargaining is also a longer process than positional bargaining, as it involves training both labor and management to adapt to a new bargaining process, beginning with a mutual agreement to use this strategy. It also allows for multiple options to be proposed to address an interest which requires more time during negotiations to determine what options allow for mutual gain and which do not. Interest-based bargaining is most commonly implemented as a result of an existing weakness in the labor-management relationship (most often a lack of trust between both parties) (Cutcher-Gershenfeld & Kochan, 2004; Farmer et al., 2010). It then requires each party to not only acknowledge this relationship, but to want to fix it before any possible alternatives to positional can be used. The training before negotiations uses a third-party facilitator to introduce the process and work on developing mutually beneficial interests (Boniface & Rashmi, 2012; Cutcher-Gershenfeld, 1994; Lobel, 2000). This will allow each party to remain focused on what they can achieve through negotiations and how to achieve it. Included in the training is usually an exercise where labor and management will switch roles and negotiate as the other team in an effort to understand their perspective. In doing this, they are building trust with one another by gaining a better perspective of the needs and views of the other party. After the training, if both parties agree to continue, the third-party facilitator will work with them throughout the formal negotiations. Instead of presenting a proposal in the form of a position, each party will discuss the interests they want to see addressed. Throughout negotiations, the facilitator will keep each party focused on interests, since they are likely to slip back into using positional

bargaining. Instead of relying on caucuses, discussions are open and information is shared freely, rather than simply when one party requests it. This allows the negotiations to be more transparent, as neither party has positions or counter-proposals to present. Instead, they discuss with each other how to resolve their interests. The goal is to reach an agreement that will be mutually beneficial to each side, or “win-win,” rather than one side having to accept a loss.

Due to interest-based bargaining having stark differences to positional bargaining, I will address if they produce different results during and after collective bargaining. I have already examined the effects that positional bargaining has labor-management relations and producing innovative agreements. Later, I will also examine positional bargaining and interest-based bargaining’s effect on intra-party relations. The model used to examine these relations also takes into account the trust between each party and their use of power, as these variables have effects on labor-management relations, innovative contracts, and party satisfaction.



Through the literature, I have established that positional bargaining typically has a negative effect on labor-management relations and does not produce high levels of innovation in the agreements. I will examine if interest-based bargaining produces better outcomes in labor-management relations, produces more innovative contracts, and increases overall party satisfaction.

- H1: Interest-based bargaining will improve relations between labor and management more than positional bargaining.*
- H2: Interest-based bargaining will produce more innovative agreements than positional bargaining.*
- H3: Interest-based bargaining will improve party satisfaction more than positional bargaining.*

Interest-based Bargaining and Labor-Management Relations

Interest-based bargaining (IBB) varies from positional bargaining in several ways that have an effect on the labor-management relationship. Perhaps, most importantly, it is used as a method to improve the overall relationship by increasing the trust that has been lost from continued use of positional bargaining (Boniface & Rashmi, 2013; Bergeron, Gaetan, & Paquet, 2000; Colosi, 1983; Cutcher-Gershenfeld & Kochan, 2004; Eaton et al., 2004; Farmer et al., 2010; Friedman, 1993; Grigsby & Leap, 1986). The most basic manner that this is able to change the relationship is through the differences within collective bargaining that positional bargaining negatively affects. Since interest-based bargaining changes bargaining from competition to cooperation, it is a much more open process. However, since positional bargaining has been the dominant bargaining strategy for so long, this requires training prior to the formal negotiations as a way to improve trust between each party (Barrett et al., 2007; Boniface & Rashmi, 2012; Cutcher-Gershenfeld, 1994; Cutcher-Gershenfeld et al., 2001; Post, 2009). This training,

which uses a neutral third-party facilitator, allows for both labor and management to gain a better perspective of the issues and values each other share. Due to prior collective bargaining experiences, this is crucial to changing the mindset of each party from being in competition with one another to working cooperatively together. However, this can also cause problems during the training if one party is particularly adversarial towards the other. During training sessions, each party will agree to provide all the information necessary to collective bargaining, remove past relationships by focusing on the interests of each party (rather than the person), and remove the incentive to have caucuses that are secretive in nature (Barrett et al., 2007; Boniface & Rashmi, 2012; Cutcher-Gershenfeld, 1994; Cutcher-Gershenfeld et al., 2001; Post, 2009). The facilitator, acting as a neutral third-party, is then tasked with ensuring that each party uses interest-based bargaining techniques throughout the training to better prepare them for the formal negotiations. The presence of a facilitator also introduces a third-party into negotiations from the beginning rather than waiting until negotiations have broken down to a point where a mediator is used. A facilitator is also useful in helping overcome obstacles from prior negotiations since they are more likely to be trusted by each party. At the conclusion of the training, each party can agree to implement the principles laid out in the training for the formal negotiations in order to commit to working collaboratively.

Interest-based bargaining focuses on increasing trust within the labor-management relationship in an effort to help improve the overall collective bargaining process. Trust is vital for interest-based bargaining to be successful, as each party must be able to believe that they can increase their vulnerability without consequence in order to collaborate on solutions (Colosi, 1983; Post, 2009; LaCroix & Ross, 1996). Since the “table” is essentially removed from negotiations in favor of open discussion and multiple solutions, labor and management have to trust that they can throw out multiple means to address issues. The low level of trust that was discussed before could also be an effect of the post-collective bargaining agreement or the power imbalance between labor and management, since power moves have a negative effect on the labor-management relationship. The training that labor and management go through is meant to increase these trust levels so that they can work on collaborative solutions during formal negotiations.

During interest-based negotiations, each party is supposed to focus on their interests and propose multiple avenues to address them, rather than taking one position and working from that baseline. When one party does not trust the other, they focus solely on having their solution be the one chosen, something that is more typically seen with positional bargaining rather than interest-based bargaining. This is counter to the goals of IBB, since neither side is supposed to “win” but rather each party is supposed to benefit from the solution. The facilitator that is used throughout negotiations is then supposed to ensure that the parties overcome any reversion to positional. IBB is also a considerably longer bargaining process than positional, as there are multiple solutions to every presented interest that are examined before being removed from consideration (Lobel, 2000). Trust becomes even more important as labor and management continue working towards solutions without a fear of a power move being used. As trust continues to improve through training exercises with the use of a facilitator, the openness of negotiations begin to remove the desire of each party to use a threat of power to come to a solution (Colosi, 1983; Cutcher-Gershenfeld & Kochan, 2004; Lobel, 2000). A party is most likely to exercise power, or threaten to exercise power, in an effort to get the other party to accept their position and take a concession. However, it is more difficult to take this course of action if there is a common interest being sought, or when trust has been improved enough to where each party does not want to revert back to the prior damaged relationship. Lobel (2000) disagrees that IBB reduces power moves in negotiation, stating that each party must be aware of what the other side may do in order to ultimately agree on a solution. While this may be true, and the ability to use power will never completely be gone from negotiations, IBB is able to reduce the willingness of each party to use it. The facilitator that is

present works as an effective barrier to a party threatening with the use of power because they are a neutral party, and are able to shift focus back to the interests and attempting to resolve the issues at the table (Bergeron et al., 2000; Colosi, 1983; Friedman, 1993). This is an important role, and an advantage of IBB, because it will allow each party to work towards an agreement and help the continuation of IBB in following negotiations.

Even though interest-based bargaining is a more recent development in the collective bargaining process, it is important to evaluate how often it is being used, and if it is playing a role in producing an agreement between parties. According to survey data, between 70% and 80% of union respondents reported being familiar with IBB, while between 65% and 70% of management respondents reported the same familiarity (Barrett et al., 2007). Within that survey data, fewer than 20% of both management and labor respondents who engage in negotiations with one another had experience using IBB principles. Though these percentages are not particularly high, these results are encouraging, as they show that IBB is becoming increasingly better known by negotiators, allowing for an alternative bargaining process to be brought forward by either labor or management. When one party is using IBB principles and the other party is not, the negotiations become problematic, as one party is using positions to bargain while the other is using interests. This reduces the ability of IBB to be utilized continuously or for both parties to agree that is effective since there is a difference with how labor and management are approaching negotiations. Survey data also found that two-thirds of management and 40% union respondents reported using IBB in following negotiations (Cutcher-Gershenfeld & Kochan, 2004). Cutcher-Gershenfeld et al. (2001; 20) found that when new negotiators implement IBB, instead of negotiators with established relationships, IBB was more preferred than positional bargaining. This is understandable, as new negotiating teams are less likely to have established adversarial relationships from past negotiating attempts, making them more open to trying to use collaborative bargaining. Since trust from collective bargaining has not affected these new negotiators, there is a greater opportunity for each party to identify the common interests and work towards them, rather than focusing on past experiences. The data available in the literature shows that IBB does improve labor-management relations through increased trust, but this improvement also correlates to the type of agreement that is reached (Boniface & Rashmi, 2013; Eaton et al., 2004; Post, 2009). Through the process of focusing on interests, rather than positions, it allows for a greater diversity in the types of solutions that are reached to address issues. Even if interest-based bargaining improves the relationship between labor and management, the outcomes from collective bargaining can undo the improvements made at the collective bargaining table.

Interest-based Bargaining and Innovative Outcomes

Interest-based bargaining allows for a much broader set of proposals by removing the ability for parties to commit to a position and instead making them commit to an interest. Unlike positional bargaining, IBB allows for the proposal of multiple options throughout formal negotiations, and for multiple negotiators to propose those options (Boniface & Rashmi, 2012; Cutcher-Gershenfeld, 1994; Post, 2009). This allows for more solutions to be introduced into negotiations in order to find a mutually beneficial agreement between parties. The openness and honesty of how each party seeks to address an interest makes it more difficult for negotiators to ignore the other party for their own solutions (Post, 2009). When one party does not trust that other will consider their options seriously, they may elect to not even attempt to use IBB. The pre-negotiation training works to address this, allowing for negotiations to move ahead. During negotiations, the facilitator is placed in an important position. They are tasked with ensuring that each party does not revert back to positional bargaining roles. Facilitators also work to find common areas for solutions that both labor and management benefit from (Friedman, 1993). This contrasts with positional bargaining, which only introduces a third-party to the negotiation

process during mediation, when the bargaining relationship has already deteriorated, and the parties have become more committed to their positions.

It must be noted that, in regards to IBB, multiple options for every interest means a more complicated bargaining process (Lobel, 2000). Positional bargaining is effective at narrowing issues to two solutions, while interest-based broadens the issues and draws out negotiations. Since negotiations have a deadline for when an agreement must be reached, this can potentially cause negotiations to revert to positional bargaining in order to complete an agreement in time (Cutcher-Gershenfeld et al., 2001; Friedman, 1993; Lobel, 2000).

As interest-based bargaining has become better known by negotiators, it has led to more collective bargaining agreements being reached through IBB. Survey data found that between one-third and half of labor and management negotiators had used IBB, and both parties used it in approximately 18% of negotiations (Cutcher-Gershenfeld & Kochan, 2004). Labor and management respondents differed on whether they prefer using IBB in negotiations, as well as on how highly they would rate their experience with IBB. Approximately 60% of labor respondents preferred using IBB, while only 28% of labor negotiators rated it highly. Managers found that 80% of respondents preferred it, but just 39% of managers rated it highly. It is a positive sign that over half of the respondents from both labor and management preferred the implementation of IBB. The discrepancy between labor and management could be a result of what types of agreements interest-based bargaining produces. Since management and labor differ on how much they prefer IBB, the entire contract may not be as mutually beneficial as they are with specific issues.

In addition to agreements being mutually beneficial, interest-based bargaining is supposed to improve the ability to find innovative agreements. Since there is greater collaboration in interest-based bargaining, it should also produce collaborative solutions. Bergeron et al. (2000), examined thirty-eight collective bargaining agreements, with half using IBB and the other half using positional bargaining. In the final agreements, IBB had a greater ability to produce new changes in work organization, grievance procedures, and labor-management relations. Every negotiation completed by using interest-based bargaining involved new solutions to the grievance procedure, while only 12 positional negotiations experienced similar results. A significant difference was seen in the results that dealt with increased worker input and joint committees. In 18 of the interest-based negotiations, new language was produced that increased worker input and cooperation between labor and management. Conversely, this only occurred in 8 of the positional negotiations. The interest-based bargaining contracts also had more agreements that were mutually beneficial, which improved labor-management relations as well. In the 19 interest-based negotiations, there were 82 different agreements that increased cooperation and produced joint solutions to issues, with 77 of them directly involving labor-management relations. This number was significantly higher than number of solutions reached through positional bargaining, providing further evidence that the improvement in labor-management relations directly impacts the improvement of solutions across a wide range issues. These results are similar to the survey results that covered a larger pool of respondents. The survey data from FMCS showed that labor and management's respondents were reporting increases in cooperative agreements that resulted in joint committees and increased worker input (Cutcher-Gershenfeld & Kochan, 2004; Cutcher-Gershenfeld et al., 2001). However, they also found that these agreements were heavily contingent on increased cooperation throughout the length of the contract. The resulting joint labor-management committees also were reported to have improved labor-management relations because of greater involvement in the day-to-day operations of the workplace. As labor and management were able to work cooperatively during the length of the contract, they were able to improve their relationship. Survey data additionally found that IBB was more effective when it was used to develop a first contract rather than it was when it was implemented into an existing bargaining relationship (Cutcher-Gershenfeld et al., 2001). This was also

true when IBB was implemented along with new negotiators for both labor and management who did not have a prior bargaining relationship. This provides evidence that while IBB is often implemented to help improve relations and develop new innovative language, the existing labor-management relationship can ultimately affect its success. Even if it may improve labor-management relations and produce new language pertaining to increased cooperation in day-to-day operations, prior adversarial feelings between labor and management influence if it is going to be used in following negotiations (Barrett et al., 2007; Friedman, 1993). The implementation of IBB during negotiations thus shows greater cooperative agreements throughout the contract, limiting the effects of adversarial past relationships and improving the current and future relationships.

While the survey data and study of the contracts have shown that interest-based bargaining does have a positive effect on developing greater cooperation and joint committees, it is also important to examine how it affects other areas of contract negotiations. Referring back to Bergeron et al (2000), they found that in the contracts that resulted from interest-based bargaining, labor had gains in 44% of issues within an agreement, concessions in 30%, and mutual gains in 25%. In the positional contracts, labor had gains in 63% of issues within an agreement, concessions in 26%, and mutual gains in 10%. The difference between the interest-based and positional negotiations provide evidence that interest-based bargaining is not only producing agreements with more mutual benefits, but also fewer gains and greater concessions by labor. The greatest differences between the interest-based and positional contracts were seen in economic issues such as wages. In positional bargaining, labor made concessions in 21% of agreements, while in IBB concessions increased to 41% (Bergeron et al., 2000). Additionally, there was only one agreement that was mutually beneficial when it pertained to wages. The results of the survey found that there was a smaller effect on wages and economic issues when IBB was used, as opposed to when positional bargaining was utilized. This is understandable as these issues are more distributive in nature. In IBB, it is difficult to develop innovative solutions or mutually beneficial results with economic issues since labor and management view it from differing self-interests. Over half of labor and management respondents reported using positional bargaining at the end of negotiations when economic issues become the focus (Bergeron et al., 2000; Cutcher-Gershenfeld et al., 2001). It then seems that interest-based bargaining does not provide innovative solutions in economic issues. When economic issues are tackled by using interest-based bargaining, the results show a greater number of concessions made by labor, and more gains made by management (Bergeron et al., 2000). The benefit of interest-based bargaining then becomes its ability to develop innovative outcomes involving worker involvement in decision making and increasing joint labor-management committees that improve labor-management relations as well. The trust developed in the pre-negotiation training is effective in improving labor-management relations, as well as helping to reduce the power imbalance between labor and management. However, as negotiations seem to become positional with economic issues, it then relies on the improvement in trust and the relationship to not use power moves to force the other party to take a concession.

Party Satisfaction within Interest-based and Positional Bargaining

Collective bargaining can often be viewed as existing solely between the labor and management negotiators without taking into account the constituents that each party represents. Labor has its rank-and-file membership to speak for and find an agreement that best satisfies their needs. Management will also have constituents that expect to be represented during negotiations. Before negotiations even begin, labor and management have to understand the goals that their constituents want addressed (Boniface & Rashmi, 2013; Cutcher-Gershenfeld et al., 2001; Cutcher-Gershenfeld & McKersie, 2009; Eaton et al., 2004; Farmer et al., 2010). This can vary widely among internal members of each party who put the burden on the negotiating team to develop proposals that reflect those who they represent, but also where they can be adjusted to find agreements. Labor negotiators typically face greater pressure

from their constituents because they have to trust that their negotiating teams are representing them and are suspicious when it appears that they are not (Boniface & Rashmi, 2012; Colosi, 1983; Cutcher-Gershenfeld et al., 2001). Constituents for both labor and management tend to think in positions, and want gains that they can see in effect (such as a wage or benefit increase), rather than interests or relationship terms such as increased trust (Cutcher-Gershenfeld et al., 2001). Since negotiators are accountable for constituents their constituents have to trust that the negotiators are not working against their interests. When prior negotiations are adversarial, whether from the use power moves or one side taking concessions, it negatively effects party satisfaction, which in turn prevents collective bargaining from being successful (Eaton et al., 2004). The negotiating teams are meant to be reflective of a broader group, but if their constituents view the other party in an adversarial manner then it can decrease the ability of negotiators to find compromise.

It is crucial for trust to exist between negotiators and their constituents in order for the negotiating team to be able to information as it become available during collective bargaining (Colosi, 1983; Post, 2009). Colosi (1983) believes trust between negotiators and their constituents can be improved through increased education and communication with internal constituents to keep them informed as negotiations progress. By making constituents more active in negotiations by providing updates, the negotiating teams are still able to adapt at the table while still keeping their constituents happy. However, constituents can also be used against the other party in negotiations (something that is more commonly used in positional bargaining) (LaCroix & Ross, 1996). For example, management can publically threaten a lockout to put pressure on labor's constituents to get their negotiating team to accept a concession. While this is an effective method for developing an agreement, it reduces the overall trust that constituents have with their own representatives, as well as how adversarial they view the relationship with the other party.

Even after an agreement has been developed between the negotiating teams, each party's constituents have to be satisfied with the outcome. This mandates that negotiating teams continually balance the realities of the negotiating table (such as realizing an agreement is unlikely to be reached unless one party moves away from their position) with what their constituents expect. Since constituents to the bargaining team must approve the final agreement, it is critical that negotiating teams consider if the agreement is satisfactory to their constituents so that it does not get rejected (Cutcher-Gershenfeld, 1994). In the public sector, bargaining teams have to take into consideration union members as well as legislatures when negotiating an agreement (Cutcher-Gershenfeld & McKersie, 2009). Additionally, legislators are answerable to the public, meaning there are other actors that they have to be accounted for when approving an agreement. However, the majority of the public tends to view labor positively which reduces the pressure on legislators to reject an agreement. Labor negotiators face a greater pressure than management, in most instances, to not deviate considerably from their positions when an agreement is reached (Boniface & Rashmi, 2013; Cutcher-Gershenfeld & McKersie, 2009; Farmer et al., 2010). As important as it is to repair and grow labor-management relations in order to help improve collective bargaining and innovative outcomes, labor constituents are often less interested in achieving those goals than they are in achieving other outcomes that can more immediately affect them (Boniface & Rashmi, 2012; Boniface & Rashmi, 2013; Cutcher-Gershenfeld et al., 2001). This is particularly true when constituents believe that they have had to accept concessions in prior, more adversarial, negotiations. However, that is not to say that the other party's constituents are not considered during negotiations. Even though labor and management may have differing views on a wide range of issues prior to the start of negotiations, an agreement that is not satisfactory to their internal members can cause issues during the term of the contract. Gittel et al. (2004) found that, in the airline industry, there was a decrease in productivity by union members when the labor-management relationship had deteriorated significantly. Even though labor constituents may not be as concerned

about better labor-management relations, the relationship, particularly when it is increasingly adversarial, affects the day-to-day operations in the workplace. In order for negotiators to not appear to have taken significant concessions, they will often present the agreement as being beneficial for their interests (Cutcher-Gershenfeld & Kochan, 2004). This could also help explain why survey data has shown a disparity between labor and management viewing their last negotiations as an improvement.

Positional bargaining appears to be more in line with increased party satisfaction. Even though positional is more adversarial and has been found to frequently decrease labor-management cooperation and trust, it is still an effective means to provide direct results that satisfy a negotiating team's respective party. In the data examined by Bergeron et al (2000), there were more gains made for labor in regards to hours and wages when using positional bargaining rather than interest-based bargaining. This could be attributed to these issues being more distributive than integrative in nature; aligning them more closely to how labor constituents view proposals, and ultimately becoming the bargaining strategy that they prefer. Additionally, interest-based bargaining is harder to implement due to it being a newer negotiating strategy, and because of its focus on working cooperatively to collaborate on agreements with the use of a neutral third-party throughout the process. Each party's constituents are less likely to trust a mediator since, good or bad, they do not have a prior relationship with that person and are unsure if their views will actually be represented (LaCroix & Ross, 1996). This can have a negative effect on how a party's constituents view IBB before it even begins, and can impact whether or not they continue using it. The pre-negotiation training used by IBB has been shown to help bridge this gap of trust and increase how satisfied parties are from its implementation (Boniface & Rashmi, 2012). Before undertaking interest-based bargaining (rather than continue with positional bargaining), negotiators have to convince their constituents to commit to following through with this style of negotiations (Post, 2009). However, less than one-quarter of negotiator respondents reported of telling their constituents that they were going to use interest-based bargaining in negotiations instead of positional (Cutcher-Gershenfeld & Kochan, 2004). This not only has an effect on how each party views each other but how they view themselves as well. When using IBB, negotiators need to be able to provide mutually beneficial outcomes rather than concessions to satisfy their constituents (Cutcher-Gershenfeld et al., 2001). This is important for negotiating teams as they go through IBB, as increased cooperation is not as easy to claim a gain as monetary or economic benefits are. Additionally, labor constituents tend to be suspicious of using interest-based bargaining because it is based on cooperative negotiations between labor and management (Boniface & Rashmi, 2012; Eaton et al., 2004). This contrasts with positional bargaining, where the constituents for both labor and management are able to clearly see their negotiators representing through competitive negotiations. Past negotiations also affect how suspicious each party is of IBB. The more adversarial the relationship is, the less likely it is that the constituents are going to be willing to trust the other party (Eaton et al., 2004). When there is an adversarial bargaining session, especially if one side uses power to force concessions, the parties may be less likely to use IBB. Due to IBB's collaborative process, it requires negotiators, as well as their constituents, to be willing to avoid using threats of power during negotiations (trusting that the other side will avoid this as well) (Colosi, 1983; Cutcher-Gershenfeld et al., 2001; Cutcher-Gershenfeld, 1994). Trust is important to labor-management relations because it requires each party to risk making themselves vulnerable to potentially accepting concessions. This fear of being at risk occurs more predominately within labor, and generally comes from the increased ability of management to force them to accept concessions by way of positional bargaining (Cutcher-Gershenfeld et al., 2001; Cutcher-Gershenfeld, 1994). As labor-management relationships have become increasingly adversarial in the wake of positional bargaining, damage is also done to the views of IBB, making it difficult to be accepted by union members.

Constituents may also be influenced by how willing negotiators are to implement IBB. Survey data found that the more experiences negotiators have with each other, the less likely they are to implement IBB or use it throughout the entire negotiation (Cutcher-Gershenfeld et al., 2001). A silver lining to the use of IBB is that there is a higher chance of it being implemented successfully when new negotiators who had no prior relationship were used. This allows for the development of trust in the training period, and finds the negotiators to be more willing to educate their members about the process.

The hesitation in trying to implement interest-based bargaining (more so with labor than with management) depends on the outcome of an agreement and how it is viewed by each party. Labor needs to develop agreements that are mutually beneficial or have more gains than positional is necessary for them to show that the change was worthwhile (Cutcher-Gershenfeld et al., 2001; Cutcher-Gershenfeld & McKersie, 2009). Even if the agreement leads to better relations and increases joint decision making, it may not be what their constituents want to achieve. In the study by Bergeron et al (2000), unions had considerably less gains in agreements when using IBB rather than when positional bargaining was implemented. The gains that labor did have were mainly the increase of worker involvement in the operations of the business, while management had more gains in economic issues when interest-based bargaining was used. These results reinforce the suspicions that labor frequently has when attempting to implement IBB that results may not be beneficial to their interests. This also effects the continued commitment to the use of IBB, since it requires both labor and management to agree to implement it. Survey data discussed in earlier sections reinforce this when Cutcher-Gershenfeld & Kochan (2004) found only 40% of labor respondents reported continued use of IBB, while two-thirds of managers reported continued use. These results are proof that interest-based bargaining faces more challenges with the party satisfaction of labor than it does with management. Labor also has the challenge of improving overall party satisfaction, especially since interest-based bargaining data has shown that there are fewer gains for labor, most notably in wages and other economic issues. Interest-based bargaining also faces an additional challenge when being implemented due to the adversarial relationships that positional bargaining can develop.

CASE STUDIES

In addition to the survey data and studies on interest-based bargaining, there are several case studies that examine the effects it has when put into practice. These case studies allow us to develop a better picture of what interest-based bargaining is actually able to achieve, rather than what it could potentially achieve. These case studies include a Department of Labor sponsored test of IBB, a public-sector negotiation in Canada, and negotiations at Kaiser Permanente.

Department of Labor Sponsored Training

The first case study is a result of the Department of Labor (DOL) sponsoring joint labor-management training in mutual gains bargaining (Hunter & McKersie, 1992)². Though trainings were held in three sites, the case study focuses on Northrop Precision, the only company chosen who had not sought outside help to improve labor-management relations. The DOL brought this training to management, who decided to partially fund it as a result of wanting to implement a new policy in their negotiations. Management's constituents pressured the negotiators to cooperate with labor, incentivizing the negotiators to agree to use IBB. The labor-management relationship had become increasingly adversarial throughout prior collective bargaining agreements, and labor was suspicious of attempting

² In this study, interest-based bargaining is referred to as mutual gains bargaining and will be referred to as interest-based bargaining throughout this section.

IBB, feeling that they could not trust management. The fact that it was management who brought this idea to them only increased their suspicions. As reported in the survey data, the relationship had gotten to a point where trust had been severely reduced due to an increasingly adversarial relationship. Before the training even began, the issues of trust between labor and management nearly prevented them from even agreeing to attempt training. Additionally, labor and management did not have any ambition to improve cooperation, and faced pressure from their constituents. The rank-and-file union members wanted to focus on past positional issues, while front-line managers who dealt with day-to-day operations did not want to pursue IBB, leaving the decision up to the negotiators. The constituents of labor wanted to stick with positional ideas and bargaining rather than attempt to improve relations. The negotiators preferred to stay with positional strategies, as they had in the past, rather than attempt IBB. This preference by labor and management reinforce two points from the data mentioned in previous sections. First, labor is pressured by their constituents to propose positions rather than interests, and increased cooperation is not preferred over more distributive issues (Cutcher-Gershenfeld et al., 2001; Eaton et al., 2004). Second, experienced negotiators will prefer to use positional bargaining and be less willing to attempt interest-based bargaining (Cutcher-Gershenfeld et al., 2001).

When the facilitators were able to get labor and management to agree to the training, they attempted to get the negotiators from each party to focus on their relationship and how it reached its current state (Hunter & McKersie, 1992). During the training, they continued to focus on a wage issue from a past negotiation that had caused labor lose trust in management. Knowing this difficult past, labor demonstrated a commitment to IBB by not inviting one of their negotiators to following trainings, as he was too focused on past issues. Management also faced questions from their constituents about the past use of adversarial methods, and the effect it had on being able working cooperatively with the union. Even though they were able to honestly discuss issues that caused contention and agreed that the training had helped to improve relations, labor decided they did not want to continue with the IBB process while management did. Fortunately, the facilitators were able to convince labor to continue training. The facilitators had been able to gain enough trust from each party, that they were able to keep the IBB training moving forward.

One of the processes of IBB training is role-reversal, with which labor and management can get a better understanding of how the other party views an issue and what their interests are (Boniface & Rashmi, 2012; Cutcher-Gershenfeld, 1994; Hunter & McKersie, 1992; Lobel, 2000). But, when labor agreed to continue with the training, they rejected any role-reversal situations. They were suspicious that it would make them more sympathetic to management, and ultimately lead to concessions (Hunter & McKersie, 1992). Even though the first training had helped, the past relationship and trust issues continued to be a barrier to IBB. During this training session, they attempted another simulation that, once again, caused labor to threaten to leave the training. Again, the facilitators were able to keep labor at the training, despite their suspicions. They then split into separate groups to implement IBB that had varying levels of success that ranged from one group focusing on minor details rather than interests to a group that fully implemented IBB techniques. When the training ended, labor and management agreed to use IBB methods but still negotiate using positional bargaining. Labor negotiators had issues throughout the training, and management had left the decision regarding which bargaining style to use up to experienced negotiators. This shows the problem with implementing IBB. While it is successful when both sides agree to it, it can face barriers when trying to overcome an adversarial labor-management relationship.

Even though positional bargaining was used instead of IBB during the formal negotiations, labor and management reported a better negotiation that resulted in a quicker agreement with less adversarial arguments (Hunter & McKersie, 1992). Both parties attributed the training to gaining a better understanding of the issues that were occurring, and how they affected the overall trust between each

other. However, one of the negotiators for labor did not go through the training and refused to try to find mutually beneficial solutions. On the management side, the lead negotiator also focused on his positions, sticking to them rather than trying to find ways to address the underlying interest that could resolve an issue. Even when using the IBB methods to find joint solutions, the negotiations broke down when a labor negotiator used a distributive approach to push management towards committing to one of labor's proposed options. From that point on, they dropped the use of IBB techniques. The labor negotiator's constituents also focused on positional demands, which the negotiators then used at the table. This decreased the ability to use IBB techniques while still representing what their members wanted. Nevertheless, both labor and management reported that the training allowed them to be better listeners, focusing on problem solving rather than on arguing their point as they had done in prior negotiations. These negotiation results clearly show the problems with IBB when more negotiators are brought into the process. Labor faced difficulties with their own internal goals that placed preference on positions over interests. Management, on the other hand, saw their negotiation spokesman argue his self-interests and positions, rather than work collaboratively to develop solutions. Fortunately, there seems to be a silver lining to continued use of IBB or, at least, IBB techniques. In the Northrop Precision case study, the head labor negotiator was replaced. Management believed that this new negotiator would revert their relationship back to what it had previously been. However, the new negotiator was both interested in and willing to use IBB. This helped improve relations, as there was a clear commitment to IBB, aligning with what Cutcher-Gershenfeld et al. (2001) found in their surveys where new negotiators are more likely to use IBB. The main issues with this case were centered on party satisfaction, especially because there were still challenges faced by both parties to move away from positional bargaining and towards interest-based bargaining. Furthermore, the past relationship developed between labor and management was a large barrier in using IBB (and may have been a factor in why they went through the training, but ultimately opted out of using it in negotiations). In this case study, the facilitator was able to play a positive role in getting each party to complete the training, which is a unique attribute of IBB. Most importantly, this case showed that even if IBB is not used in negotiations, the initial training is still able to improve overall relations and reduce some of the adversarial effects that positional bargaining may have once caused.

British Columbia Cool-Aid Society

British Columbia Cool-Aid Society (BCCAS) is the first of two public-sector negotiations that implemented interest-based bargaining into their collective bargaining relationship. The labor-management relationship that existed prior to the use of IBB was extremely adversarial. Labor viewed management as having anti-union sentiments, while people within management felt as though they were unable to be in the same room with some union leaders, let alone have productive discussions with them (Caverly, Cunningham, & Mitchell, 2005). The adversarial relationship between the two parties was a result of the day-to-day dealings between them in the workplace, as well as what took place during past negotiations. Due to the past negotiating experiences, as labor and management developed cooperative work practices to use in the day-to-day operations, they accepted that any collective bargaining would stop the progress that their work had achieved. This belief resulted in the willingness of both parties to implement IBB in an effort to reach mutually beneficial results. This contrasts with the experience in the Northrop Precision case study, where the adversarial relationship made both labor and management suspicious of trying IBB. Before negotiations began at BCCAS, labor and management sought to avoid causing more harm to their relationship in the upcoming negotiations. Because of the mutual desire to repair relations, facilitators then were able to get labor and management to talk honestly and openly about the problems each party saw, and what was the cause of them. This helped to get beyond all of the distrust and adversarial feelings, and allowed for more open negotiations.

During formal negotiations, the improved relations continued and helped them transition to interest-based bargaining rather than using positional. During negotiations, there were several instances that could have caused IBB to break down and revert to positional but they continued rather than risk continuing the path they were on (Caverly et al., 2005). This commitment is crucial to IBB being successfully implemented because issues that come up, positional methods, or a lack of trust are understandably going to occur but continuing shows that the parties are more willing to collaborate than compete. IBB also was able to change the negotiating teams as there were instances where the parties would self-correct behavior that did not align with an integrative approach. Furthermore, rather than take positions to address issues the negotiating teams focused on problem-solving and the interests of each party which was much different than their former negotiations. Each party also introduced fewer proposals, unlike in Northrop where labor made positional demands, which helped negotiations occur without them becoming adversarial. Interestingly, labor and management agreed to focus on areas where there is common interests before negotiating wages or economic issues which are more commonly distributive. But, they instead used IBB principals to develop criteria and objective goals that allowed them to avoid reverting to positional (Caverly et al., 2005). By using IBB to negotiate economic issues, they were able to find multiple options that addressed both of their interests rather than one party having to accept a concession. Using this approach also led to them agreeing to form joint committees and increase worker input to continue improving relations throughout the contract. IBB was then successful in this case of improving relations, developing innovative solutions, and satisfying each party as they committed to continue bargaining when things became tense. Their ability to find innovative solutions was especially noteworthy with economic issues since those are when negotiators usually revert to positional. They developed multiple options through developing criteria that reflected their interests. The facilitators were also important as they were able to continue negotiations along using integrative bargaining instead of letting the teams change strategies.

Kaiser Permanente

The case study of Kaiser Permanente and their use of interest-based bargaining has unique qualities that the other case studies do not have. Kaiser Permanente is a national company that combines two different business structures on the management side, while labor is comprised of tens of thousands of workers in different regions across the United States (Kolb, 2004; Levanthal, 2006; Eaton, Kochan, McKersie, Morgenstern, & Sharpe, 2008). This complex relationship requires satisfaction by each party with a bargaining process since they are both comprised of a large, diverse group of constituents. The first negotiation using IBB was an extension of an existing labor-management partnership that was brought by the union, not management, which then continued in following negotiations (Kolb, 2004, Levanthal, 2006; Eaton, Kochan, McKersie, Morgenstern, & Sharpe, 2008). Furthermore, this case study allows an examination of continued use of IBB which is different than the Northrop Precision and British Columbia Cool-Aid Society case study's that focused on their first time going through the process. I begin by first looking at the negotiations from 2000, which ultimately set the foundation for the 2005 negotiations (which will also be examined).

Before the 2000 negotiations began, labor and management had formed a partnership (LMP) several years earlier that helped address workplace issues and increase worker input into decision making (Kolb, 2004; Levanthal, 2006; Eaton, Kochan, McKersie, Morgenstern, & Sharpe, 2008). This partnership collaboratively addressed issues that arose. However, prior to 2000, it had acted independently of collective bargaining issues. Both labor and management leaders wanted to develop a national agreement for Kaiser Permanente that would encompass all labor and management throughout all regions across the United States by using interest-based bargaining. Their goal was to work to continue the progress that was being made through collaboration in the partnership.

Due to the size and diversity of their constituents, both labor and management faced serious challenges before IBB was implemented. Management had to agree to consider a wage issue that labor wanted addressed, and in exchange, labor would remove their ability to exercise power and agreed to not take any job actions (Kolb, 2004; Levanthal, 2006; Eaton, Kochan, McKersie, Morgenstern, & Sharpe, 2008). This removal of labor's power left them vulnerable to subsequent power moves by management if negotiations reverted to positional bargaining or became contentious. Throughout the discussions to implement IBB, as well as throughout the entire negotiation, labor and management used a neutral, third party moderator to increase trust and train both negotiating teams. This neutral third-party helped both labor and management who had to internally bargain to get their constituents to agree to try this during negotiations. Kaiser Permanente committed to implementing IBB into negotiations so much so, that they mandated that any person participating in negotiations had to go through training to understand what IBB was and what it would result in. This allowed the negotiators to have consistent expectations during the IBB process, and to focus on interests while simultaneously increasing trust between them. The partnership that had been put in place helped with the implementation of IBB as well, since there was already a structure for collaborative decision-making. During negotiations, they divided into 8 small negotiating teams that would focus on individual issues, and then report back to the main negotiating teams with their agreement, who could then accept or reject them (Kolb, 2004; Levanthal, 2006; Eaton, Kochan, McKersie, Morgenstern, & Sharpe, 2008). This ensured that both parties would be able to collaboratively work to develop interests and trust beyond the day-to-day operations. As negotiations neared the end and economic issues became the main topics of discussion, the increased trust they had developed throughout the entire process allowed them to overcome any adversarial approaches or contentious issues. The use of these negotiations, the implementation of the IBB process, and developing strong partnerships allowed for both parties to feel that interest on each side were successfully addressed.

In 2005, labor and management again met and used interest-based bargaining. They first divided the negotiation groups the same way that they did in 2000 (Kolb, 2004; Levanthal, 2006; Eaton, Kochan, McKersie, Morgenstern, & Sharpe, 2008). Before talks began, the negotiating teams had come up with areas where they both agreed on it being an important issue to address though they differed greatly on economic issues. Labor and management both enjoyed the increased cooperation that had developed, and wanted to strengthen their bond. However, the differences show that even in an existing, collaborative structure, the common distributive issues are viewed differently. Throughout the training period and continuing on into negotiations, both the smaller bargaining groups and the main bargaining group had a third-party facilitator with them. This use of a third-party may have been what allowed for 7 of the 8 bargaining groups to use IBB, and why over three-quarters of the participants reported being satisfied with their experience (Eaton et al., 2008). The only group that did not use IBB, and also reported a low level of satisfaction, was the group tasked with bargaining over benefits. In this group, management and labor had both given instructions to their negotiators to propose a position and not move significantly off of it – an action that is contrary to IBB. The benefit of IBB with this group was that they were able to have a meeting where they openly and honestly discussed issues. This eventually helped them come to an agreement using positional bargaining in the next negotiation session. When the benefit group is compared to another bargaining group that utilized IBB, it shows how they addressed similar situations. In the attendance group, labor and management received instructions on what they were to get accepted which is similar to what the benefits group. By using IBB, and convincing their constituents to trust them during negotiations, both parties were able to develop multiple options, leading to a solution they mutually agreed would address the problem.

After the smaller groups completed their work and presented their agreements and proposals to the main bargaining group, they continued using interest-based bargaining. During negotiations, they

focused on issues that the survey report found they mutually agreed upon, and were able to continue working collaboratively, building trust, and reaching agreements (Eaton et al., 2008). However, similarly to what was seen in the other case studies, the distributive issues where they disagreed the most were shown to cause the most tension between labor and management. When they negotiated the attendance group's suggestion, a management negotiator caused damage to the progress they had made by attempting to get the management team to propose a positional solution. Due to the trust developed already, management was able to avoid using this position, and instead, continued using IBB. This demonstrated the commitment to negotiations that had developed through the improved relationship that the negotiators wanted to protect. As they moved on to economic issues, this tension showed that the improvement in labor-management relations was able to help overcome adversarial occurrences. Nearing the deadline, they agreed to use positional bargaining. Labor and management leaders tried to discuss how this would be different than IBB to their teams (Eaton et al., 2008). The experienced negotiators who had used positional bargaining and IBB were ready for the different style, but on the management side, there were more managers who had only used IBB. This reinforces what Cutcher-Gershenfeld, Kochan, & Wells (2001) found that new negotiators are more willing to implement and continue with IBB (in this case, Kaiser Permanente had been using IBB for several years at this point). But, it also showed a shortcoming of negotiators in not understanding positional bargaining, as labor's wage proposal had caused many management negotiators to feel like their trust had been damaged (Eaton et al., 2008). Ultimately, they did have a meeting afterwards to openly discuss why they felt that way, resulting from improved relations brought on by using IBB. Management's wage proposal was also met with similar adversarial responses, and management negotiators needed to engage in internal negotiating to prevent the discussions from breaking down. Furthermore, this adversarial occurrence in bargaining caused some members of management to abandon the national collective bargaining agreement that had been developed during the 2000 negotiations. Thankfully, the lead management negotiator was able to convince her party to continue negotiating, stay with the national agreement, and to get more cohesion on their team.

These reactions evidence that even though IBB had made large strides with their relationship and cooperation, when adversarial approaches are used, it still requires a commitment to continue the IBB process. It is especially notable how fragile their relationship and commitment to IBB can be, as this issue caused there to be a struggle to continue. In the final negotiation session, they were able to work to find an agreement on wages that involved both labor and management having joint control (Eaton et al., 2008). Even though they used positional bargaining, and had issues within negotiations, they were still able to find cooperative solutions. After negotiations ended, survey data showed that labor and management were both satisfied with areas where there was more cooperation, but differed greatly in their views on how satisfied they were with the results of economic issues. The Kaiser Permanente negotiations allow for an examination of how IBB methods, even before negotiations begin, can be used to improve labor-management relations, and the commitment to overcoming tense negotiations.

CONCLUSION

After examining the literature and three case studies, it allows me to determine if my hypothesis was correct. I set out to examine if interest-based bargaining was viable alternative to positional bargaining that could improve labor-management relations, produce more innovative agreements, and improve overall party satisfaction. Interest-based bargaining does seem to have a greater ability to improve the relationship between labor and management than positional bargaining does. Interest-based bargaining is able to provide greater improvements, as it is structurally set up as a process that develops trust between labor and management. It allows for open discussion, and focuses on the merits of a proposal rather than the merit of the person. The potential to improve relations and aid in collective

bargaining was due heavily to IBB's ability to create an atmosphere where labor and management could be forthright when addressing issues. This was particularly evident in the Kaiser Permanente case study, where they were able to overcome a contentious point in negotiations (Eaton et al., 2008). Without IBB training and methods being implemented, it is less likely that labor and management would have trusted each other enough to be honest about these issues, while still remaining willing to continue negotiations. The improved labor-management relationship was also proved by the agreements that were reached in the case studies, as well as what was reported in the survey data. Many of the agreements focused on improving labor-management relations and working more cooperatively throughout the contract. At BCCAS, the labor-management relationship had initially been very adversarial. However, when they used IBB, they were able to form joint committees and work cooperatively on issues (Hunter & McKersie, 1992). Survey data showed that low levels of trust directly effects labor-management relations and collective bargaining (Cutcher-Gershenfeld & Kochan, 2004). Interest-based bargaining was able to improve these relations, and survey data showed that IBB was able to improve trust and the relationship (Barrett et al., 2007; Cutcher-Gershenfeld et al., 2001; Cutcher-Gershenfeld & Kochan, 2004; Cutcher-Gershenfeld & McKersie, 2009; Eaton et al., 2004). I believe that through the case studies and survey data, Hypothesis 1 has been shown to be true: Interest-based bargaining improves labor-management relations more than positional bargaining.

Interest-based bargaining is also more likely than positional bargaining to develop innovative solutions to issues deal with workplace cooperation and joint management. As shown in both the data and case studies, interest-based bargaining resulted in more agreements that included worker input into decision-making. This appears to be a result of the improved labor-management relations, continuing a cooperative relationship into the day-to-day operations, leading to an improvement during contract negotiations. However, interest-based bargaining does not seem to be effective in creating innovative outcomes for economic issues (particularly wages) or with negotiating such economic issues. Since economic issues are typically distributive – as they are resources that each side would like more of – positional bargaining was commonly implemented when negotiations approached this point. In the BCCAS and Kaiser Permanente case studies, it was shown that interest-based bargaining was able to develop innovative solutions to many issues that they faced. There was an increase in worker input, an increase in the number of joint-committees created, and, at Kaiser Permanente, they were able to form a labor-management committee to address wage issues (Kolb, 2004, Levanthal, 2006, Eaton et al., 2008). In the Paquet et al (2000) article, they found that IBB doubled the number of innovative agreements that positional bargaining saw, but these were mostly in labor-management relations and joint governance areas. Regarding economic issues, there were fewer innovative agreements that were produced by IBB. Cutcher-Gershenfeld et al (2001) found that management and labor both reported a preference for using IBB to develop solutions for increased worker input. With this in mind, I believe that Hypothesis 2 is mostly correct, and that interest-based bargaining does produce more innovative results in areas that are not economic-based. I am, however, unable to say if IBB produces innovative results with economic issues, as this is where negotiations most often reverted to positional bargaining.

Party satisfaction did not seem to improve when interest-based bargaining was implemented. There are several factors that affected interest-based bargaining from improving party satisfaction. One factor as determined by the literature was that both the lack of trust and adversarial relationships reduced the likelihood that negotiators would want to use interest-based bargaining. This lack of trust and fear of the implementation of power moves reduced party satisfaction, regardless of positional or interest-based bargaining. In the case studies, the parties reported being satisfied with certain aspects of IBB, though not necessarily all of it. Party satisfaction mostly seemed to depend on the ability of negotiators to develop agreements where there were not any concessions. However, the literature also showed that management and labor frequently differ on what they consider a gain or a loss, so it is difficult to find

agreements that are considered mutually beneficial and satisfactory for both parties. A positive finding in the literature was that new negotiators were not only much more likely to use IBB, but seem to want to continue its use. In addition to finding agreements that are not concessions, the negotiators must be able to convince their constituents to stick with IBB when negotiations become difficult. If this does not happen, there tends to be a decrease in party satisfaction, reducing the likelihood that IBB will be used in following negotiations. The survey data found that only 40% of respondents wanted to continue using it, and that IBB was mostly viewed with suspicion, even during negotiations (Cutcher-Gershenfeld & Kochan, 2004). In the Kaiser Permanente study, management reported being less satisfied with negotiations than labor, and required more internal bargaining than management did throughout the use of IBB (Kolb, 2004; Levanthal, 2006; Eaton et al., 2008). Therefore, Hypothesis 3 is not proven, and interest-based bargaining does not seem to improve party satisfaction more than positional bargaining. However, it seems difficult at this point to distinguish anything definitively that can fully improve party satisfaction. Survey data, as well as the Kaiser Permanente case study, showed that IBB experiences better reception and enjoys greater party satisfaction when it is used with new negotiators (Cutcher-Gershenfeld et al., 2001). Until there are more negotiators using IBB who are willing to commit to using it throughout negotiations, I do not believe IBB will be able to improve party satisfaction.

RECOMMENDATION

I believe there is a possibility for interest-based bargaining to improve collective bargaining if it is implemented and involved in the day-to-day operation of the workplace. During negotiations, interest-based bargaining should be used to first address non-economic issues, with positional bargaining then implemented to deal with economic issues. Interest-based bargaining, through training and the use of a third-party facilitator, will be able to improve the relationship between labor and management (as was shown in the case studies and survey data). I believe that the labor-management relationship is the most important factor in improving collective bargaining for both parties. As shown in the case studies, when the labor-management relationship improved, there were more improvements across other areas (Caverly et al., 2005; Kolb, 2004; Hunter & McKersie, 1992; Levanthal, 2006; Eaton et al., 2008). Kaiser Permanente and BCCAS were able to improve outcomes across a myriad of issues, and Northrop credited IBB techniques for improving their positional bargaining experience. Even if IBB was not used during negotiations, but there were trainings that introduced the techniques to labor and management, it improved how quickly an agreement was reached and decreased adversarial approaches. This is an important aspect of IBB because it is able to improve outcomes by introducing collaborative methods to negotiators. Additionally, the third-party facilitators are able to improve the labor-management relationship by building trust between the two parties. The survey data and case studies showed that facilitators play an important role in focusing negotiators on interests, rather than positions. The data showed that the increase in worker input during day-to-day operations helped improve trust through more cooperative interactions, which then helped during contract negotiations. This continuous relationship helps to foster working collaboratively, which also helps constituents who do not necessarily engage in negotiations see how IBB can be effective. Finally, I recommend using positional bargaining strategies for economic issues, as this is where it is shown to be most effective. The survey data and case studies both showed a preference for reverting to positional bargaining when economic issues were being negotiated. This becomes especially true in the eyes of labor, with data showing that they view issues in terms of positions, and want outcomes that are perceptible (Cutcher-Gershenfeld et al., 2001). The case studies showed that positional bargaining is effective with economic issues when it follows the use of IBB in other areas of negotiations (Caverly et al., 2005; Kolb, 2004; Hunter & McKersie, 1992; Levanthal, 2006; Eaton et al., 2008). This combination will be able to develop innovative

solutions without the risk that a positional bargaining session for one area will undo all the improvements made through IBB.

AREAS FOR FURTHER RESEARCH

Since interest-based bargaining is a newer negotiating style and is only implemented fully in a small percentage of negotiations, further research into how it is effective in actual bargaining sessions would be helpful. This would allow interest-based bargaining research to move from survey data and theoretical outcomes to actual results that were produced by using IBB. Positional bargaining has been used in the overwhelming majority of negotiations to date, so being able to increase IBB's visibility through case studies could help its increased utilization. Additionally, interest-based bargaining seems to use a psychological shift when being implemented. It seems to move people's thinking from that of competition to being willing to trust the other party enough where emotional issues do not halt negotiations. Further research into the psychological aspects and emotional effects of interest-based bargaining could provide a more defined picture of how it can be successful with future negotiation processes.

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