Collective Bargaining

COMM 203 Flex at the Sauder School of Business, University of British Columbia
Collective Bargaining

If a union is certified to represent a group of employees, both the employer and union are required by law to bargain in “good faith” with the intention of reaching a collective agreement. Collective bargaining refers to the process of negotiating the collective agreement. The terms and conditions of employment and other issues that are often included in collective agreements, and therefore the potential subjects of collective bargaining are listed in the reading. You should be familiar with what these are. This video will focus on the negotiation process. Every negotiation is unique, with a unique cast of characters, but there are many steps or parts of the process that are common to most negotiations.

A “typical” collective bargaining negotiation will start with a notice of intent to start collective bargaining. This is required, by law, and traditionally this is done by the union, although it could be done by management as well. This will usually happen at least a few months prior to the expiration of the existing collective agreement.

Both parties (that is, management and the union) will engage in extensive preparations. This is critical for success in the negotiations. Key aspects of this preparation include setting priorities or goals among the issues to be negotiated. Each side should have a clear idea of their most important goals for the negotiation. They should “cost” different issues, such as the cost of a 1% wage increase for all employees, or the cost of providing a new or improved benefit such as the cost of an addition paid holiday each year or a dental plan. This costing information will indicate the relative value of different proposals and facilitate trade-offs during the negotiation process. They should also establish a “target point” for each issue, that is what they would ideally like to achieve on that issue, and also a “resistance point” which is the minimum terms they would find acceptable for each issue.

When the parties first meet to bargain, traditionally the union presents initial proposals first, but either side could do this. Then management may present their initial proposals at the same meeting, but most often they break and management presents their initial proposals at the next meeting. Once they have all the issue proposed by both sides on the table, they set an agenda for how they will negotiate. Typically they focus on “language issues” first, and leave “cost issues” for later in the process. Language issues might include clauses like the grievance procedure to be used by the parties, or a seniority clause and how this will be applied to promotions and layoffs. These language issues generally take more time to negotiate as slight changes in words can have a significant impact on how the clause actually works or what it costs. The parties may need to get legal opinions about how specific language would be interpreted by an arbitrator. This all takes time, so typically these issues are discussed first. The cost issues, such as wage increases, benefits, and so on are very important, but they are easier to negotiate as the cost and relative costs are known.

Then the process of negotiation is a series of meetings where the parties go back and forth presenting proposals and counterproposal on each issue, and discussing the positions to make
sure they understand what the other party wants to achieve and also what they may have to concede to the other party to get an agreement. Many issues will be dropped along the way, or traded-off to get agreement on some other issue. In the latter stages of the process they will generally start proposing a total package of all the issues that are still being considered, until, hopefully, they reach agreement on a package that both sides can accept.

If they reach a settlement, this only a “tentative agreement”. Next, this tentative agreement is subjected to a ratification vote by all employees who would be covered by the collective agreement. If it is ratified, then the agreement is finalized. If there is no agreement before the existing contract expires, several things may happen. Often the parties agree to extent the previous agreement and continue bargaining if they believe they will be able to reach an agreement. They may request conciliation or mediation services from the labor relations board to help them reach an agreement. Or they may engage in a strike or lockout to try to force the other party to make further concessions. In some public sector negotiations, such as police and firefighters, strikes and lockouts are illegal and the parties would then typically go to binding “interest arbitration” to settle the dispute.

I have mentioned several times the parties are required to bargain in “good faith”. So what exactly does that mean? There is a large body of labor relations board and court decisions that clarify what this means, but a few fundamentals from this case law provide a good definition. First, the parties must meet and confer at reasonable times and places. If either side refuses to meet with the other, or will only meet at times or places unacceptable to the other side, this is not good faith bargain and is an unfair labor practice. They must present proposals and counter proposals, with the intention of reaching an agreement. Basically “intent to reach an agreement” requires that each side make some concessions from their initial proposals. Holding firm to your initial proposals without making some concessions is bad faith bargaining. Management cannot circumvent the bargaining agent by negotiating directly with employees. They may want to do this if they believe the employees would be willing to accept their proposal even though the union officials reject it. A certified union is the ‘exclusive representative’ for the employees and management cannot negotiate directly with employees. They must negotiate only with the certified union officials. This provides some basic guidelines for good faith bargaining. However, good faith bargain does not require that they reach agreement. Good faith bargaining is a requirement of the bargaining process, but it says nothing about the outcome of the bargaining. The behavioral theory of bargaining also provides a very practical understand of the process and how it works. There are actually four different processes going on during negotiations.

THESE INCLUDE THE FOLLOWING:

1. Distributive bargaining, which is what most people think of as negotiation, where one side’s gain is an equal loss to the other side. For example, negotiating wage increases is distributive bargaining as the wage gains received by the employees are an equal cost increase to the employer. Any price negotiations, such as when you buy a car or house are also examples of distributive bargaining.

2. A second process is integrative bargaining, or sometimes called mutual gains bargaining. This is more problem solving than negotiating but is often a key part of collective bargaining. Negotiating how to improve productivity is one example, as productivity
improvements can be good for both the employer through higher profits, and the union or employees through higher wages. Improving the grievance procedure is another example as a smoothly functioning process for handling grievances is beneficial to both sides. Often the parties spend a great deal of time in the negotiation process not dividing things up, but solving common problems.

3. A third process is called attitudinal structuring. This is focused on how the parties deal with each other, and typical goals might be to develop a high level of trust and respect in how the parties treat each other. If one party is disrespectful, calling them names, or abusive toward the other negotiators, any negotiations will be extremely difficult. So they may need to work on their relationship first before getting into any of the real issues.

4. Finally is intra-organizational bargaining. This is the negotiation that goes on within each party. This can be a major part of the negotiation for unions that represent a very diverse group of workers. There may be many factions or sub-groups within the union and they may have very different views on what should be the goals of the negotiation. Also, as part of the normal bargaining process, each side will “caucus” frequently. For example, if the other side has presented a new counterproposal, then your side will need to discuss this privately to determine your response to it. This should not be done in front of the other side at the bargaining table. A caucus may be no more than 5 minutes discussion in the hall, or it may require a break in the negotiations until the next day, or the next week. It is common for intra-organizational bargaining to take up the majority of the time in the process. Presenting counter proposals can often be done very quickly, but study and evaluation a new proposal from the other side, and how you are going to respond to it, could require a lot of time.

**Distributive Bargaining Model**

<table>
<thead>
<tr>
<th>Mgmt Initial Position</th>
<th>Mgmt Resistance Point</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union Resistance Point</td>
<td>Union Initial Position</td>
</tr>
<tr>
<td>Positive Contract Zone</td>
<td></td>
</tr>
</tbody>
</table>

The distributive bargain process can be represented by this diagram. Assume this represents a negotiation of a wage increase. Each party will have an opening or initial proposal. Each party
will also have a “resistance point” that reflects the minimum for the union, and the maximum for management that they would be willing to accept. If there is overlap between the resistance points, as shown here, then there is a positive contract zone. Both parties would be willing to make an agreement at any point within this zone. However, each party wants the best deal they can get, and so the negotiations are to determine where within the contract zone they will settle.

Distributive Bargaining Model

If there is a positive contract zone, they should be able to settle. But if there is no overlap in their resistance points, or a negative contract zone, then a settlement will not be possible. In this case a failure to reach an agreement is not a negotiation failure, it is simply that there is no common ground for an agreement. In labor relations, this could result in a strike or lockout. But after a period of time with a strike or lockout the parties may decide they were being unreasonable and change their resistance points with a positive contract zone emerging.

In this behavioral model of distributive bargaining, there are four basic strategies that each party will follow.

THESE INCLUDE THE FOLLOWING:

1. Disguise your own resistance point. You do not want the other party to know the minimum you are willing to accept as your target point will be much better than this point. The tactics to carry out this strategy include, “strategic misrepresentation.” That is, misrepresent what you expect to accomplish. Some call this bluffing, others call it lying, but it is present in all negotiations. That is why initial positions tend to be extreme. It hides what you are actually willing to settle for. You want to hide this until you have time to figure out what the other side is willing to settle at. A second common tactic is “laundry listing.” This is starting with a very long list of demands. You may be really interested in improvements on only 5 issues, but you make demands for 10 issues. This
hides your priorities from the other side, and also gives you issues to trade-off for concessions and agreement on the issues you are most interested in.

2. A second strategy is to move the other side’s resistance point in your favor. This is what all the rationalization for your proposals and tactical arguments are attempting to do, convince the other side that your proposal will actually be better for them than they may think it is.

3. The third strategy is to discover the other side’s resistance point. This may become clear from their pattern of concessions on each issue. If they have been making concessions but at some point make very small concession, and eventually refuse any further concessions you “may” be at their resistance point. I say “may”, because they also may still be bluffing.

4. The fourth strategy is to commit at the others resistance point. If you believe you know their resistance point on an issue, then you know the best deal you can get from them. Committing at this point requires you to be 1) very clear and unambiguous about your position on the issue, 2) be clear this is your final position and you will make no further concessions, 3) provide some threat of consequence if they do not accept it. Generally this threat is a breakdown of negotiations, leading to a strike or lockout in collective bargaining, but may simply be walking away with no settlement in purchasing or other negotiations. If you have correctly determined their resistance point and locked yourself in at that point, then you should have achieved the best deal possible. However, if your assessment of their resistance point was wrong and they refuse to accept your position, then you will need to somehow back out of your commitment to this position. This can be difficult to do and may result in a loss of your credibility as a negotiator.

I have presented this discussion of negotiations in terms of collective bargaining in labor relations, but this behavioral model of negotiations applies to ALL negotiations in business, international relations, and your personal negotiations.