

# Negotiate a labor contract and repair relationships at the same time

By Eric Svaren, Groupsmith, Inc.

The last three years have been tough on local governments. Unemployment in Washington state is up. The real estate market has corrected. Construction is down. Sales tax revenue has plummeted. Health care costs keep going up and up. State and federal government cuts are hitting local government. No one expected revenues to fall as much as they have, while demands for services increased.

Despite those problems, agencies still have to function, deliver service, and take care of on-going responsibilities—like hiring, managing IT, and negotiating labor contracts. In fact, most agencies are trying to change how they do business, because they doubt that revenues will return to the levels we saw earlier in the decade anytime soon.

I worked with one such agency in 2009 and 2010. They were feeling the pinch of declining revenues and demands to improve service. They also had very difficult relations with the labor union that represented a majority of their staff—and their current contract had already expired.

In this situation, both management and labor wanted a different working relationship. The distrust and negativity was taking too great a toll on everyone. In light of their difficult relationship and the external pressures on the agency, they decided to try something different in negotiating a new contract: Interest-based bargaining.

## What is interest-based bargaining?

Interest-based bargaining (IBB) is a negotiation technique where management and labor identify their unique and shared interests and together create proposals for addressing those interests. In IBB, the parties work together to identify and address issues; it's an approach based on collaboration, rather than combat.

In traditional (adversarial) bargaining, the goal is to give as little and to get as much as possible. You come up with positions that you want the other party to agree to. Many of these positions are unrealistic that you plan to later concede. In IBB, the goal is to address the interests of each party. You identify the interests that you want addressed in the bargaining process. Any positions that emerge from discussion are explored to reveal the underlying interests.

Adversarial bargaining is characterized by bargaining across the table with breaks for caucus meetings—where bargaining teams meet separately from each other to have private discussions and to revise positions. In IBB, the two bargaining teams work together, as one team, to explore and understand interests and develop options. More work is done in joint meetings, and less is done in caucus.

In IBB, negotiation opens with discussion of an issue or topic, followed by each party's interests concerning that topic. Then, both teams work together to come up with ideas and solutions to address the issue or topic. Contrast that with adversarial bargaining, where negotiations begin with statements of position, which are followed by exchanges of offers and counteroffers, often with frequent deferrals and breakdowns.

From the get-go, adversarial bargaining amounts to an argument and sometimes even a fight. IBB is more like a conversation or dialogue.

Does IBB lead to bad deals? All bargaining can lead to bad deals, if the negotiators aren't prepared and know clearly what their goals are. In adversarial bargaining, you've got to know your bottom-line position. In IBB, you have to really understand what *interests* you want addressed.

Identifying interests is often very hard for negotiators who are used to adversarial bargaining. Let's look at how to distinguish between interests from positions.

### **Interests vs. positions**

Positions are demands about what should happen. You "take it or leave it." In effect, positions are statements about *how* a problem should be solved. Conversely, interests explain *why* an issue is being raised or a position is being taken. Interests are the concerns, needs or principles behind an issue.

Here's an example. Suppose you are bargaining over what hours a utility customer service center will be staffed. Management's position might be that shifts need to be staggered so the center is open Saturdays and during lunchtime. Labor's position might be that staggered schedules are off-the-table and that management should add additional staff.

Their interests tell a different story. Labor's interests might be to maintain employees' safety at work, to preserve employees' time with families, and provide good service. Management's might be to satisfy customers (reduce complaints), respond to commissioners, or to raise the percentage of utility accounts that are current. (Notice that both parties have at least one shared interest: customer service. Shared interests are very common in IBB.)

As I mentioned earlier, identifying interests can be difficult for a first-time IBB negotiator. It's not as easy as you might think. If you have high trust with the other side in bargaining, they can help you figure out what your interests are. In other situations, you may want help from an impartial party, like a colleague in another agency, or a professional mediator or facilitator.

### **The IBB process**

In its most simple form, interest-based bargaining follows five basic steps. In practice, I have seen groups go back and forth on these steps, without necessarily following the sequence. Still, these steps help you understand what IBB looks like in action.

1. **Select an issue.** First, the group selects an issue or topic to work on. This might be “staffing levels,” “absenteeism,” or “vacation requests.” The first task of the group is to make sure everyone understands what the issue is and why it needs to be addressed. You might be surprised how often a topic is “obvious” to one party but totally mystifying to the other. It’s important here to take the time to understand the scope of an issue before trying to solve it. What are the boundaries of the issue? Who’s affected by it? Does anyone have any relevant data (for example, absenteeism statistics) that illustrates the problem?
2. **Identify interests.** Here’s where each party shares their interests. The goal here is to understand each other’s interests, not to argue them. Once you’ve heard from all parties, then the group can identify shared (mutual) interests. For example, in most cases, both parties want to ensure the financial solvency of the organization. If the organization closes, it can’t serve its mission or provide jobs. Having shared interests is especially helpful for maintaining collaboration between both sides.
3. **Develop options.** In the spirit of joint problem-solving, the group works together to brainstorm options that would address the issue and also serve the interests of the parties. Now, a lot of people use brainstorming but use it badly. They interrupt the process to “correct” someone else’s ideas. Other times, they won’t share an idea of their own for fear of being criticized. It’s essential to be open and suspend judgment in order for brainstorming to really work. Once you have a brainstormed list, the teams work on combining and refining options down to a short list. In some cases, you might decide to conduct research (e.g., benchmarking other organizations, or getting some expert advice) to better understand an option. One common research source is other agencies’ labor contracts. Sometimes, it might make the most sense to adopt someone else’s solution.
4. **Apply criteria to options.** In order to pick one option, you need to understand what criteria or standards the option needs to meet. Common criteria require that options are feasible (it can actually be implemented), beneficial (addresses interests), and acceptable (union members and management leaders will accept it). In bargaining, you might have criteria you apply to all options (regardless of topic) or you might come up with standards for a specific issue. Once you have the criteria, you rate each of the options against the criteria to see which come out best. You might go back and revise or combine options to come up with the best one.
5. **Choose an option.** Once you have done the rating and further polished the options, it’s time to make a decision. As with all groups, this can be tricky. Like a judge polling a jury, I like to go around the room and hear from everyone which option they like best and why. When I facilitate, the goal is usually to get consensus, which I define as everyone can “live with” the decision. As a last resort, you can call for a vote (if you have agreed in advance to allow votes). I don’t find voting works too well in IBB because a lack of consensus can mean there is more to talk about (like an unidentified interest or a problem with the option).

## The results

Remember the agency I mentioned at the beginning of this article? Where both labor and management wanted to negotiate a new contract and improve their working relationship using

interest-based bargaining? Well, they reached a deal and improved their relationship. They agreed on a three-year contract. They also solved a whole bunch of operational and personnel problems in the process—including many that weren't part of the contract. People who were reticent and hesitant in the beginning opened up. Trust levels slowly grew higher and higher. It wasn't all peaches and cream, though. They had the tough conversations with each other. The group stayed together and on-task even when one side's constituency rejected the first deal. While there are still challenges, the labor and management have a much better and productive relationship.

Growing up, I enjoyed a game called "Mastermind." On the box, there was a slogan, "A moment to learn, a lifetime to master." In a way, that sums up my experience with interest-based bargaining. While the idea is fairly simple and straight-forward, putting it into practice takes patience, motivation, and flexibility. At the end of the day, though, it's worth the effort because I believe IBB leads to more durable contracts, stronger relationships and better communication.

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