

A Question of Balance...  
The Art of  
Contract Negotiations

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Where we are going...

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- ◆ A PELRA Primer
- ◆ A Quest for Serenity
- ◆ The Courtship Ritual
- ◆ Two Approaches in Contrast
- ◆ Traditional Bargaining
- ◆ Interest Based Bargaining
- ◆ A Hybrid to Consider?
- ◆ Questions
- ◆ Wrapup

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A PELRA Primer - Purpose

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- ◆ MS 179A.01 to 179A.25 “to promote orderly and constructive relationships”
- ◆ Grants public employees rights to organize
- ◆ Requires public employers to meet and negotiate
- ◆ Establishes special rights, responsibilities, procedures, and limitations regarding public employment relationships - to protect employees, employers, and the public

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### A PELRA Primer - Definitions

- ◆ *Unit* - a classification of employees (teachers, etc.)
- ◆ *Exclusive representative* - a “certified” employee organization authorized to meet and negotiate with the employer on behalf of all employees in the unit.
- ◆ *Meet and Negotiate* - mutual obligation to meet at reasonable times with the “good faith intent” to enter an agreement on terms and conditions of employment.
- ◆ *Strike* - a “concerted action in failing to report for duty...for purposes of inducing, influencing or coercing a change...”

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### A PELRA Primer - Employee Rights

- ◆ Express views so long as they do not interfere with duties of employer
- ◆ Organize: form and join (or not)
- ◆ Fair share nonmembers of exclusive representative
- ◆ Meet and Confer (policy matters other than terms and conditions of employment)
- ◆ Meet and Negotiate terms and conditions

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### A PELRA Primer - Employer Rights

- ◆ Inherent managerial policy - no requirement to negotiate (organizational policy, budget, organizational structure, personnel selection and placement, etc.)
- ◆ Expressly restricts adoption of contract language which “limits (employer’s) right to select persons to serve as supervisory employees...or requires the use of seniority in their selection.”

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**PELRA - Unfair Labor Practice (Employee)**

- ◆ Restricting employer rights under PELRA
- ◆ Improper involvement in the election of board representatives who will meet and negotiate
- ◆ Refusal to meet and negotiate in “good faith”
- ◆ Engagement in an unlawful strike

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**PELRA - Unfair Labor Practice (Employer)**

- ◆ Restricting employee rights under PELRA
- ◆ Involvement/interference in formation, existence, administration of an employee organization
- ◆ Hiring practices related to employee involvement in employee organization
- ◆ Refusal to negotiate in “good faith”

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**PELRA - Negotiations Procedures**

- ◆ Written notice given by exclusive representative at least 60 days before expiration of current agreement
- ◆ Joint negotiations is permitted (arena bargaining)
- ◆ All negotiations sessions are public meetings except as called out specifically by the Commissioner

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**PELRA - Rules, Rules, Rules...**

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- ◆ Mediation
- ◆ Arbitration
- ◆ Strike authorization
- ◆ Core contract provisions
- ◆ Contract deadlines (lifted this year)
- ◆ Scope of negotiations

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**A Quest for Serenity!**

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**□ Grant me the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference.**

□ Reinhold Niebuhr

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**The Courtship Ritual - Choices and Relationships**

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- ◆ Was the “date” set up or self selected?
- ◆ Have we established ground rules?
- ◆ Is this a dutch treat?
- ◆ Will we do much dating and dancing?
- ◆ Are we serious (exclusive)?
- ◆ What about the engagement?
- ◆ What is in the “final” vows?
- ◆ When will we renew our commitment?

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## Two Basic Approaches...

- ◆ Traditional (Positional) Bargaining
- ◆ Interest Based (Principled) Bargaining

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## Key Definitions - Both Types

- ◆ *Interest*: A concern expressed by either party. The reason the issue is being brought up. Interests may be separate or mutual (concern by both parties).
- ◆ *Issue*: The problem at hand; the subject under discussion.
- ◆ *Position*: A proposed solution to an issue or problem. How the issue should be resolved, according to either party.
- ◆ *Proposal*: An "official" offer made by either party which reflects that entity's position(s). These are typically framed as a part of traditional negotiations.
- ◆ *Option*: A potential solution to the problem expressed by either party. These are typically explored as a part of IBB.

IBB is focused on issues and options. This is diametrically opposed to traditional which is focused on positions and proposals.

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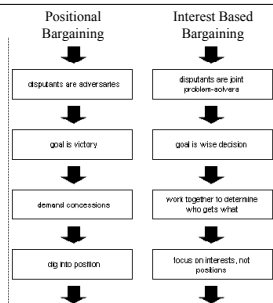
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## The Ritual: Side by Side...




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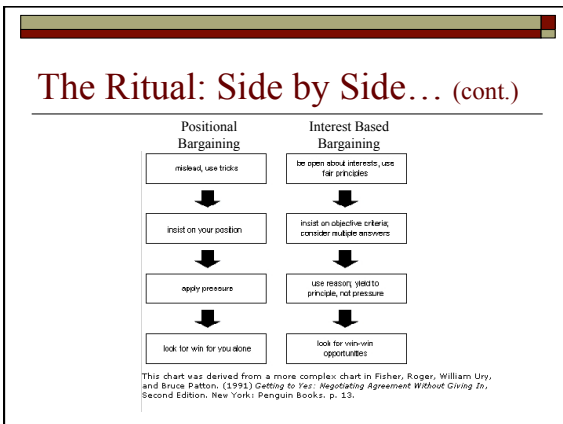
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- ### Traditional (Positional) Bargaining Basics
- ◆ Structured and predictable process
  - ◆ Strategy involves “fair” exchange
  - ◆ Fixed ideas or positions held/defended
  - ◆ Movement toward compromise can be move to the middle; extreme (padded) positions often adopted
  - ◆ Separates issues/interests: interests clearly the focus
  - ◆ Compromise may be best aim rather than agreement on issues (mission)

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- ### Traditional (Positional) Bargaining Basics
- ◆ Teams
    - Management
    - Union
  - ◆ Roles
    - Chief negotiator
    - Bargaining historian
    - Legal counsel??
  - ◆ Mechanics
    - Exchange proposals
    - Discussion
    - Closed caucus
    - Counterproposals
    - Agreement
    - Impasse resolution
    - Implementation

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**Interest Based Bargaining Basics**

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**Step 1: Identify the problem**

- ◆ What is the issue or problem?
- ◆ Why is it a problem?
- ◆ What are its possible causes?
- ◆ What are the effects on the organization?

**Step 2: Discuss all interests behind the issue**

- ◆ What are management's interests (the supervisor's interests)?
- ◆ What are labor's interests (the employee's interests)?
- ◆ Which are mutual, conflicting interests?

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**IBB Basics, cont.**

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**Step 3: Set criteria**

- ◆ What are the standards or criteria for a good solution?
- ◆ What are the priorities for the criteria?

**Step 4: Develop solutions (options)**

- ◆ List all potential solutions.
- ◆ Evaluate solutions versus criteria list.
- ◆ Agree on solution(s) that best meet(s) criteria

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**Interest Based Bargaining Structure**

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- ◆ Teams
  - Management
  - Union
- ◆ Roles
  - Team discussion leader
  - Discussion historian
  - Discussion participant
  - Legal counsel??
- ◆ Mechanics
  - Identification of issues
  - Prioritization of issues
  - Development of working plan w/issues
  - Open "caucus"
  - Identification of options
  - Agreement on solutions
  - (Impasse resolution)
  - Implementation

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## Getting to Yes, the bible of IBB

- ◆ Roger Fisher, William Ury, Harvard Negotiation Project 1981 – “Principled Negotiation”
- ◆ They praised the second edition in 1991: John T. Dunlop, Averell Harriman, Ann Landers, Elliot Richardson and Cyrus Vance
- ◆ Three ways to measure negotiation method:
  - ❖ Does it produce a wise agreement?
  - ❖ Is it efficient?
  - ❖ Does it improve or “hold harmless” the relationship?

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## Getting to Yes, cont.

### Four principles of “Principled Negotiation”

- ❖ Separate the people from the problem.
- ❖ Focus on issues, not positions.
- ❖ Generate a variety of possible options before deciding.
- ❖ Insist on objective criteria

### Three phases of bargaining:

- ❖ Analysis (What is the problem?)
- ❖ Planning (What do we do about it?)
- ❖ Discussion (Working with the other side.)

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## Evaluate Options/Proposals

- ◆ Negotiability
- ◆ Need/supporting rationale
- ◆ Costs
- ◆ Organization impact/ripple effect
- ◆ Benefits
- ◆ Comparables
- ◆ Application in specific situations (test drive)
- ◆ Clarity of language
- ◆ Enforceability of language
- ◆ Alternative approaches

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## A Hybrid: Adapting the IBB Approach to Traditional Bargaining

### Preparation Phase

- ◆ Make sure your side is committed to using the process
  - Before bargaining team is picked, get approval to use IBB to ensure it will not be derailed.
- ◆ Make sure the other side agrees to use the process
  - Reflect the agreed approach in ground rules.
- ◆ Orient everyone on IBB; training is available; make time to “practice” the process

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## Adapting the IBB Approach, cont.

- ◆ Incorporate traditional preparation techniques with IBB
- ◆ Drill down hard on interests
- ◆ Identify criteria
- ◆ Invent options – stop short of proposals
- ◆ Use IBB within the team as well as with the other side
- ◆ “Proposals” can be crafted in the form of criteria. Determine “easy” issues versus “tough” issues; identify issues most susceptible to quick, amicable resolutions
- ◆ Decide where IBB will fit best
- ◆ Consider IBB for non-financial language; traditional for the rest!

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## Parting Thoughts

- ◆ Best part of using traditional is that the “rituals” provide a “safe” process; IBB can be riskier
- ◆ Worst impact of traditional may be the negative effect on the relationship
- ◆ IBB is flexible enough to use as a:
  - ❖ Comprehensive process
  - ❖ A “part time” tool in conjunction with traditional
  - ❖ An intra-team technique for identifying your most important needs to develop traditional proposals
- ◆ Knowing the primary interests of both parties is essential – IBB helps
- ◆ The end is really the beginning of the next round!

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## Resources

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- ◆ Getting to Yes, 2<sup>nd</sup> edition, Roger Fisher, William Ury, Bruce Patton, Penguin Books, 1991
- ◆ The Bargaining Book, 5<sup>th</sup> edition, Phillip A. Varnak, FPMI Solutions, Inc., 2003
- ◆ Minnesota School Board Association Management Services Manual (hard copy or web-based services)
- ◆ Minnesota Statute 179A.01-179A.025 (PELRA)

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