

# Labour-Management Negotiation : Some Insights into Strategy and Language

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## Résumé de l'article

Les négociateurs tant du côté patronal que du côté syndical ont le choix d'adopter une stratégie d'opposition ou de solution de problèmes pour mettre fin à un litige, mais il se peut fort bien qu'ils aient à faire des concessions, et c'est là un processus qui est moins clairement compris. On peut s'attendre à ce que des négociateurs en situation d'opposition, par exemple, annoncent leur position, fournissent peu d'information et accompagnent le tout de menaces. Les négociateurs qui utilisent l'approche « solution de problèmes » vont aussi faire part de leurs besoins, mais en termes d'intérêts et non de positions : ils vont alors échanger de l'information au sujet de leurs priorités, faire des offres multiples et faire preuve d'un certain support. Alors que ces deux stratégies de négociation peuvent être reconnues par leurs comportements contrastants, le processus de « concession » est moins évident. Concéder est ce qui survient lorsque qu'on renonce à la compétition, un tel renoncement se traduisant par l'absence ou la réduction des comportements d'opposition. On peut s'attendre à ce que des engagements fermes à l'endroit d'une position cède la place à la flexibilité et à l'ambiguïté.

Des données puisées de l'observation d'une négociation patronale syndicale fournissent des indications sur la façon dont les négociateurs discutent d'un enjeu, comment ils font des concessions et dans quelle mesure ils s'engagent dans un processus de solution de problèmes. La ronde de négociations observée est celle qui se déroulait dans un grand hôpital du secteur privé situé à Perth, en Australie-Occidentale, entre la direction et deux syndicats regroupant tout le personnel, sauf les infirmières. Les enjeux de cette négociation couvraient l'ensemble des conditions d'emploi.

L'auteur a assisté à toutes les sessions formelles de négociation, aux rencontres des parties et il a effectué des entrevues avec les négociateurs-clés. L'essence de la stratégie d'opposition consiste pour la partie adverse à maintenir sa position. On découvre que le fait de maintenir une telle fermeté implique une simple réaffirmation face à la position opposée de l'autre partie. On procède à l'argumentation des énoncés de position par des tentatives de clarification, mais sans plus. La vigueur du langage ou l'absence de langage n'indique pas la force d'une position ; en effet, le fait de refuser de discuter d'un enjeu équivaut parfois à une expression de fermeté.

Cette étude de cas laisse croire aussi qu'une action de l'ordre de la solution de problèmes implique des suggestions d'ordre pratique plutôt qu'un échange ouvert d'informations et d'idées. Les négociateurs peuvent donner un signe d'ouverture en tenant des propos du genre : « Je peux saisir d'où vous venez en abordant l'aspect de l'équité salariale ». De nouvelles propositions prennent la forme d'une simple suggestion : « Que pensez-vous de l'introduction d'une prime dans l'échelle des techniciens ». Cependant, le ton des échanges peut demeurer compétitif. On ne peut considérer ces échanges comme étant de l'ordre de la solution de problèmes, quoique ce soit la façon dont certains enjeux trouvent une solution.

La stratégie d'opposition connaîtra le succès seulement si la partie adverse fait des concessions. Il ne s'agit pas pour autant d'une totale capitulation, mais l'accord ne sera pas atteint, à moins que l'une ou que les deux parties cheminent vers une réduction de leurs différences. Cependant, à cette étape, les négociateurs font face à un dilemme : comment laisser croire à une concession sans encourager l'autre partie à devenir encore plus en opposition ? L'étude de cas suggère que les négociateurs n'attirent pas l'attention sur le moment où ils cèdent du terrain ; le cheminement vers la position de l'autre partie ou l'accord avec cette dernière se fait alors plutôt rapidement et sans trop d'histoires.

Les négociateurs peuvent même fournir des indices à l'effet qu'un point litigieux a été résolu sans le dire en utilisant pour ce faire différentes formes de langage. À l'ordre du jour de la plupart des séances de négociation paritaire, on trouvait un certain nombre de points à aborder. Le modèle des échanges consistait dans le cas du négociateur syndical à mettre de l'avant des arguments à l'appui de sa position, ce qui entraînait une réponse de la part du négociateur de l'établissement. Suite à des échanges subséquents sur un point en litige, le négociateur patronal pouvait affirmer que la solution proposée ne lui créait pas de problème. Ce langage laissait croire au négociateur de la partie adverse que la direction concédait ce point et que l'enjeu avait trouvé sa solution. Une autre manière d'indiquer qu'une entente existait était de faire la suggestion qu'une disposition de la convention soit rédigée à titre indicatif, plus précisément, de façon qu'on puisse y revenir pour ajouter quelques termes. Ce genre de situation apparaît aux yeux des personnes impliquées comme une tentative d'entériner un accord plutôt qu'une occasion pour une partie de réitérer sa position. Une autre façon chez les négociateurs de faire part de leur volonté de modifier leur position consistait à recourir aux termes suivants : « nous y songerons », « nous verrons » ou « nous vous reviendrons là-dessus ». Ceci laissait croire qu'à la prochaine rencontre on présenterait une position modifiée. Le fait pour l'une ou l'autre partie de reconsidérer ainsi un enjeu était la manière la plus usitée de mettre fin à la discussion et d'arriver à un accord.

Nous avons ainsi mis au jour deux modes de concessions. D'abord, des négociateurs peuvent arriver à un accord, mais en utilisant peu de mots. Ensuite, des négociateurs peuvent introduire un assouplissement de leurs positions d'une séance de négociation à une autre. Dans aucun cas ce processus ne peut-être considéré comme un recul ou un retrait. Ceci laisse croire plutôt que ces concessions silencieuses se présentent comme un mécanisme linguistique pour amorcer un changement tout en sauvant la face.

Il faut poursuivre la recherche pour découvrir les raisons qui incitent les négociateurs à adopter une stratégie particulière et la façon dont ils mettent en pratique cette stratégie à la table de négociations. Une considération importante est à l'effet qu'ils doivent demeurer vigilants face à des variations de langage, face à une simple suggestion faite à l'intérieur d'une position autrement très compétitive. Ils doivent également apprendre à se satisfaire au départ d'une concession implicite, au lieu de forcer l'adversaire à la rendre explicite.

# ***Labour-Management Negotiation***

## ***Some Insights into Strategy and Language***

**RAY FELLS**

*Management and union negotiators have the choice of adopting competitive or problem-solving strategies to find acceptable outcomes but they may also have to yield, a process which is less clearly understood. Competing, problem solving and yielding have to be conveyed to those sitting across the bargaining table. Using material from a transcript of an Australian labour-management negotiation, negotiators are seen to rely on simple positional statements rather than argument to convey their commitment, while problem-solving activities appear to be squeezed in between other more competitive interactions. Giving ground is done quietly and without much fuss, concessions are muted or foreshadowed rather than made explicitly.*

Over the years a number of writers have described and analyzed the rich complexity of management-union negotiations. For example, Peters (1955) drew on his own experience to describe the practice of collective bargaining in the United States and to offer guidance on how negotiations could be conducted more effectively. Walton and McKersie (1965) also drew upon the experience of practitioners and extracts from actual negotiations. Their analysis of the distributive and integrative processes within negotiation has provided the foundation for extensive research (Lewicki, Weiss and Lewin 1992). An earlier paper in *RI/IR* examined the way in which negotiators implement what Walton and McKersie called a mixed bargaining strategy (Fells 1998; Walton and McKersie 1965: 161–169). Similarly, Douglas (1957, 1962) recognized that labour-management negotiations go through phases, an insight which has provided the basis for many other phase models (Holmes 1992). Morley and Stephenson

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(1977) interpreted Douglas' phases in terms of Walton and McKersie's distributive and integrative bargaining and suggested that these two strategies were sequential rather than distinct alternatives. This relationship between the competitive strategy and the (generally preferred) cooperative approach has been at the heart of much of the research into labour-management negotiation.

This article seeks to contribute to our understanding of how industrial relations negotiators negotiate. The focus is on *how* the strategies of competing, yielding and problem solving are conveyed across the bargaining table: How is it done? What language do negotiators use? The related question of *why* parties pick a particular strategy, although important, is beyond the scope of this analysis.<sup>1</sup> Drawing upon a case study of management-union negotiation, this article seeks to make a contribution in two respects. Firstly, the analysis will include an examination of yielding as a distinct strategy and this will go some way towards balancing the more usual emphasis on the competing and problem-solving strategies. Secondly, by presenting some dialogue from the negotiators, the paper will illustrate how each of the strategies finds expression at the bargaining table.

The competitive strategy follows a well-understood script (Friedman 1994: 4-5; Kervin 1989: 214-222); it involves seeking information from the other party (but not giving much in return) and presenting a firm, committed position. Interactions are role-driven and contentious. The strategy expects the other side to give in and agree. In fact, the competitive strategy will not succeed unless concessions *are* made, yet the process by which negotiators concede receives less attention in the literature. Contending negotiators may not be particularly interested in conceding and this may not be necessary if integrative bargaining is totally successful. Nevertheless, without concessions at some point it is likely there will be no agreement at all. In order to increase our understanding of the full range of negotiation strategies, it is therefore instructive to explore how negotiators shift their ground from one position to another. Do they yield openly or do they have other ways of coping with the loss of face associated with giving ground?

Workplace negotiations can also be viewed as a problem-solving group (Warr 1973) or as a process of consensus (Fells 1998), though in both these examples there was also a competitive dimension to final stages of reaching an agreement. In recent years the mutual gains approach has been developed to increase cooperation in management-union negotiations (Cutcher-Gershenfeld, McHugh and Power 1996; Heckscher 1993; Susskind and

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1. Those interested in the issue of strategic choice may find the dual concerns model useful (see Pruitt 1983; Pruitt and Carnevale 1993; Rubin, Pruitt and Kim 1994 and also Lewicki, Hiam and Olander 1996).

Landry 1991). By reframing the parties' attitudes prior to the negotiations and giving them new interaction skills, the mutual gains bargaining process seeks to pre-empt the emergence of any competitive dynamics, thereby leaving the negotiating table free for the development of cooperative processes and high quality solutions. However, in exploring why there was not more of this mutual gains bargaining, Friedman (1994) found that industrial relations negotiators had developed a different way of managing the tensions between competitive and cooperative processes. They compete on the front stage across the bargaining table while building informal avenues of cooperation 'backstage'. Even so, the question remains as to how negotiators cooperate *across the bargaining table* to develop an agreeable solution.

Questions of how negotiators interact across the bargaining table and the words they use take us to the heart of how negotiations are conducted. We can anticipate that contending negotiators will, for example, state their position, provide only limited information, tend to make threats and be unlikely to reciprocate any conciliatory moves by the other party (Pruitt and Carnevale 1993; Rubin, Pruitt and Kim 1994; Walton and McKersie 1965; Weingart et al. 1990). Problem-solving negotiators would also state their needs but do so in terms of interests, not positions; they will exchange information about their priorities, make multiple offers and generally show support rather than make threats (Fisher, Ury and Patton 1991; Thompson 1991; Olekalns, Smith and Walsh 1996; Walton and McKersie 1965; Weingart et al. 1990). While competing and problem solving can be identified by their contrasting behaviours, the process of yielding is not so clear. Nor is it clear that yielding is an overt strategy.<sup>2</sup> Yielding is what you do when you have given up on competing and so it is characterized by an absence or diminution of competitive behaviour. We can anticipate that express commitments to a position will give way to flexibility and ambiguity (Putman and Jones 1982: 272; Rubin, Pruitt and Kim 1994: 190–191).

These different insights into negotiation have been drawn primarily from research in laboratory settings. Industrial relations writers, such as those referred to above, draw upon exchanges between negotiators to enrich their descriptions of bargaining strategies and yet there are relatively few studies where the actual dialogue of management and union negotiators is the focus of analysis. It was Douglas' analysis of transcripts of labour-management mediations which gave rise to the notion of phases in negotiation. One of these transcripts (The Atlas Case, in Douglas 1962) was

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2. Yielding, by others, is often viewed as being 'cooperative', as in the phrase, 'that Ray Fells is a good negotiator, he's so cooperative' meaning that I'm an easy target for pressure.

revisited by Francis (1986) while Stephenson and his colleagues (Morley and Stephenson 1977; Stephenson, Kniveton and Morley 1977) had access to transcripts of two workplace negotiations. Using different techniques, both Francis and Stephenson and his colleagues found shifts in the pattern of interactions between negotiators. Tape recordings of teacher-school board negotiations enabled Theye and Seiler (1979) to note differences in socio-emotional interaction between those sessions where agreement was reached and those where it was not, while analysis of a management-union negotiation by Donohue, Diez and Hamilton (1984) found that management and union negotiators used different tactics. A teacher-school board negotiation (Putnam and Wilson 1989; Putnam, Wilson and Turner 1990) and a nurses' joint consultative council (Hamilton 1999) also provided opportunities for researchers to explore how negotiators formulate their arguments as they try to persuade each other. Obtaining transcripts of actual negotiations is not easy, but when they become available, it would seem that they provide new perspectives on how negotiators actually negotiate.

### ***THE CASE STUDY***

This is a case study of an enterprise negotiation between the management at Murdoch Hospital, a large private hospital in Perth, Western Australia, and two unions (the Hospital Salaried Officers' Association and the Miscellaneous Workers' Union) which, between them, represented all staff other than registered nurses. The hospital's negotiating team was led by the Chief Executive Officer. He was assisted by an advisor from the employer association and by other managers from the hospital. On the union side, the negotiations were led by three full-time union officials (one from the Salaried Officers' Association and two from the Miscellaneous Workers' Union). These lead negotiators were supported by lay representatives from the two unions. It was the second major negotiation over employee pay and conditions at the hospital (the first was reported in Fells 1995). This researcher was present at the formal negotiation sessions and at many of the management and union meetings.

The negotiations involved sixteen joint meetings spread over six months. Initially the two unions negotiated together but they eventually concluded separate agreements. The issues under negotiation covered the whole spectrum of terms and conditions of employment. Early in the negotiations, the parties compiled an agenda of 44 items and more were to emerge later. In addition to the central issue of a pay increase, particular attention focused on the annualized hours system. This was a system whereby staff could, within limits, be asked to extend or shorten their shifts

in order to accommodate changing levels of activity in the hospital and the actual hours worked were averaged over the year.

The early negotiation sessions involved each side stating its position on an item before moving onto the next. As the annualized hours issue came to the fore, one union held a ballot to canvass the views of its membership, the result being that the members wanted no further changes to the system. The negotiators' attention then turned to the question of the pay increase but a deadlock was quickly reached, so they focused on a number of issues relating to the employment conditions of the operating theatre staff. At this point the union representing clerical and administrative staff began to negotiate separately with management and eventually reached an agreement. Although some progress was made in the second set of negotiations, now confined to ward and other ancillary staff, the union membership took industrial action in the form of a one-day stoppage. Further intensive negotiation resulted in an 'in principle' agreement which was then endorsed by a membership meeting. However, some issues resurfaced as the parties sorted out the details of their agreement and further negotiations were necessary. Although addressing different issues, the two negotiations were conducted in parallel and were concluded at about the same time.

One of the major problems for a researcher wishing to study negotiation is gaining access. Even where the parties agree to a researcher being present, it is usually based on personal trust. The presence of tape recorders may stretch that trust too far and so the researcher has to rely on his or her own transcribing skills. Further, it is usually not practical to check the dialogue with those involved: to do so immediately after a meeting would be an intrusion in the process; to do so weeks after negotiations have concluded would be pointless. Notwithstanding these limitations, the transcript of a real management-union negotiation provides insights into the process of negotiation which can not be obtained in other ways. In the present case, the researcher sat alongside the negotiators at the joint meetings and in their private sessions. Handwritten transcripts were made of the joint meetings. Semi-structured interviews were also conducted with the negotiators once agreement had been reached.

### ***BEING COMPETITIVE: STATING POSITIONS AND CLARIFYING***

The competitive strategy involves the negotiating party stating its position as clearly as it can with a view to convincing the other party that the only option open to them is to yield. In this case study, the two unions flagged a number of issues at the first meeting. Single statements were

sufficient for the issues to become items on the agenda and by the fourth meeting the agenda had extended to 44 issues.

One major issue, which related to the amount of time between shifts, will be taken as representative of the way in which issues were presented, debated and resolved. Both management and the unions agreed there should be a ten-hour break between shifts and there was a clause to that effect in the existing agreement. However the rostering and annualized hours systems also required flexibility in hours worked so it would be inevitable that, on occasions, the shift break would be less than ten hours. As will be seen, the differences between the parties related to how this situation should be addressed. An annotated transcript of the opening discussion on the issue is provided in Table 1.<sup>3</sup>

TABLE 1  
Discussion on the Ten-Hour Shift Break Issue, Meeting 2

|            |  |
|------------|--|
| Manager 1* | Overtime [indicating the next item on the list].   |
| Union 1    | The ten-hour break [between shifts] is not being observed and it is a real problem. We think that the way around it is to write something in the clause that if the break is not 10 hours then it is paid at the overtime rate; as it is, overtime only comes in after 96 hours. |
| Emp assn   | That comes with the form of annualized hours [indicating that what is happening is a consequence of what was agreed in previous negotiations and so is consistent with management's position that this is not an issue].   |
| Union 1    | We need to look something between 96 and 80; people feel that 96 is way over the top and they will never get any overtime.   |
| Emp assn   | We should put this issue in annualised hours [a suggestion which reflects management's position that this is not an issue].  |
| Manager 2  | It could be done through accumulated banked hours.   |
| Union 1    | Perhaps. We want a ten-hour break and then overtime rates [i.e. double pay].   |
| Emp assn   | This was an issue which was removed in the previous agreement [implying that it therefore should not be raised now in isolation].  |
| Union 1    | But it's a real problem, it is not being observed [it is an issue to be addressed].  |
| Manager 2  | Why does it happen?  |
| Union 1    | It happens when they are on call and on roster. Staff don't know they have the right to claim the ten hours and get the roster changed.  |

3. Throughout this paper, words in brackets have been added to indicate the sense of the statement when this is not readily clear from the plain words of the transcript.

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|           |  |
|-----------|--|
| Manager 1 | That's our problem to fix [acceptance of an administrative problem, but not the actual issue being negotiated over]. |
| Manager 2 | On call is a different issue.  |
| Union rep | We need to address on call and overtime.   |
| Union 2   | We need to get the ten-hour break.   |
| Manager 2 | Does it mean you must always have a ten-hour break?  |
| Union 2   | After the last period of overtime on call, then you must have a ten-hour break before the next rostered shift.       |
| Union 1   | If a break is observed then there would be no need for double pay [refuting union claim for double pay].             |
| Emp assn  | We don't want it to apply to on call. We will come back to it.   |

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\* Manager 1 is the lead negotiator, manager 2, 3 or 4 are other managers. Union 1, 2 are the union officials. Emp assn is the employer association representative and Union rep is a union lay representative.

In raising the issue of the shift break, the union stated and clarified its position. In fact, these two behaviours, stating one's position and clarifying it, form the bulk of the exchanges between the two sides.<sup>4</sup> The management negotiators also stated their view, namely that the issue has been dealt with and resolved before and therefore it is no longer an issue. There was little by way of amplification or presenting a cogent argument in support of their positions. The union negotiators state and re-state what they are claiming; the management negotiators meet this claim with the position that it is not really an issue to be addressed. This position was conveyed though a combination of tactics. The first, adopted mainly by the employer association negotiator who had been present at the previous negotiations, was to fend off the issue. The second approach was to clarify what the extent of the problem might be; Manager 2 seemed more willing to accept that there might be a practical problem that needs to be addressed but according to Manager 1, "That's our problem to fix."

Throughout the discussion, the parties were competing on the issue. They had opposing views and their positions were incompatible. They state and clarify but give no indication that progress would be made on the issue.

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4. The description of each statement is based upon a coding schema designed to embrace both the function and content of the interaction (Neu 1988). The nature of the issues under investigation did not require multi-category coding and so a simple ten-element categorization, based primarily on elements of Fisher, Ury and Patton's (1991) principled negotiation approach, was used. Reliability of transcript coding was achieved through the use of two independent coders in addition to the author. Developing appropriate codes is an iterative process and, in this case, an even simpler categorization of position-related (state, restate, justify), suggestion-related (make, suggest) and clarification (make, seek) would account for virtually all the coded interactions.



The only way to have reached agreement would be for one side to yield but there were no signs that that was going to happen at this stage in the negotiation.

In meeting six, the union negotiators proposed a number of redrafted clauses they felt would deal with their concerns. One of these related to the shift break issue and the proposed clause essentially claimed payment at overtime for the ensuing shift if the break between shifts was less than ten hours. The management negotiators took note of all the union proposals without much comment and then adjourned to consider them. On their return, they went through their responses. On the shift break issue, the response was, "Ten-hour break, if not observed then next shift at double [a summary reading of the union claim]. Our response is that the existing clause is sufficient which says it shall have a ten-hour break between shifts; it's us setting it right, it simply should not happen." There was no discussion, a union negotiator queried, "are we debating or just outlining?" and was met with the response, "No, it's best just to outline the package". The management negotiator merely replied to each of the union claims in turn, and expected the union negotiators to take his responses back to their members for consideration. There was no further discussion of any substance and the meeting closed with the parties standing firm on their positions.

The idea of two parties competing over an issue perhaps conveys the impression of grandstanding and forceful statements (Douglas 1962: 15). Even allowing for the fact that the negotiators in this case were fully conversant with the issues, the statements are not what might be expected from a negotiator seeking to present and justify a claim (Lewicki, Saunders and Minton 1999: 186–196). On some other issues, the discussion did involve more information exchange to clarify the nature and extent of the problem but even then the level of argumentation and reasoning in support of a particular position did not increase. Essentially, the patterns of interaction were much the same as over the shift break issue and this was typical of how issues were raised and how the parties came to recognize their differences.

This examination of the shift break issue suggests some characteristics of a competing strategy as it is presented at the bargaining table. The essence of the strategy is that the contending party will not shift its position. Conveying this firm stance involves simple restatement in the face of the other side's opposing position. The position statements are augmented by attempts at clarification, but little else. Forcefulness of language (or the lack thereof) would not appear indicative of strength of position; indeed, being *unwilling* to discuss the issue (from the example of management in their response to the union's claim on shift breaks) is an expression of

firmness. Indeed, appearing willing to talk about one's offer further might convey the impression that the offer is 'open for negotiation', an impression that would undermine the competing strategy.

### ***YIELDING: MUTED AND FORESHADOWED***

The competing strategy will be successful only if the other party yields. This yielding need not be a total capitulation and, as will be shown, competing and yielding can go hand in hand at the bargaining table. Nevertheless, agreement will not be reached unless one or both parties move to narrow the differences between them. However, negotiators face a dilemma at this point: how can they indicate a concession in a way that will not encourage the other party to become even more contentious? The case study negotiations suggest that negotiators will not draw attention to when they are giving ground. The process of moving towards the other party's position or agreeing with them is done rather quietly and without too much fuss.

Negotiators can indicate that a point has been agreed without actually saying so if they use different forms of words. In most of the meetings there were a number of issues to be dealt with. The pattern of interaction was that the union negotiators put up arguments in support of their position and the hospital negotiators responded. After further exchanges on the issue, the management negotiators might say they had "no problem," which the union negotiators recognized as an indication that management had conceded the point and the issue was resolved. Consequently, discussion turned to the next item on the agenda. Another way of indicating agreement was to suggest that a clause be drawn up, as in "can we come back with some words?" In these situations, writing a clause was seen as a way of encapsulating what had been agreed rather than providing an opportunity for the party to present its position again. By using expressions such as these, the yielding was muted rather than explicit.

Another way in which the negotiators indicated their willingness to shift position was to say something like "we'll think about that," "we'll go away and look at it" or "we'll come back to you." This typically foreshadowed a changed stance being presented at the next meeting. The undertaking by one or other of the parties to revisit the issue was the most common way in which discussion on an item was brought to a close. Sometimes the negotiators were a little more positive. The management response to the union's claim in relation to another issue—accrued days off—was, "what we are saying to you is that we are not unsympathetic" (meeting 11). They were not yet agreeing to the union's claim but were signalling that they had taken the union's points on board. When the parties next met, the management negotiators had a new proposal, based on the union's

proposition. The explanation of the new position concluded with “are you happy with that?” The union negotiator responded, “ok,” and they moved on (meeting 12).

What the foreshadowed yield suggests is that negotiators do not shift positions in a meeting where the climb down would be obvious, but shift positions from one meeting to the next, or from before an adjournment to afterwards. In this way, if a negotiator has been arguing for ‘X’ and then after an adjournment argues for ‘X-1’, this is a new stand-alone position, not a concession. We can see an example of this in the discussions on the shift break issue. In meeting 11 the two management negotiators who had direct responsibility for managing this issue (Managers 2 and 3) both use the language of ‘no problem’ to indicate preliminary acceptance, while at the same time a limit was set on how far they would go. The foreshadowed yield on the issue became a formal offer in next meeting. Thus, meeting 11 gives rise to the following exchange:

Manager 1 But if it happens again you will prosecute us; its a bloody good deterrent.

Union 1 If you want that, ok. I’m saying you just give them double time for the differential, that is like time in lieu.

Manager 3 I don’t have a problem with that, it’s not a big deal.

Manager 4 We don’t want to encourage people to have it happen.

Union 1 But it does.

Manager 3 It’s the unexpected. Do you have a problem?

Manager 2 No, I just don’t want penalties in the agreement; I’ve no problem with giving people time in lieu at double time but I’m against the concept of the necessity of having penalties.

Then, in meeting 12, one of the management negotiators expresses the new position in the following way:

Manager 2 The request to be paid overtime for an extended shift from ten to twelve: the penalty we are prepared to write in is to give them the time back at the overtime rate if the 10-hour break is not observed.

The process of foreshadowing a shift in position can also be seen in the exchanges on the issue of long service leave (Table 2). The unions had claimed ‘Long-service leave: government conditions’ which was a clear comparability argument to bring this private hospital in line with the public sector. It was a long-standing union ‘policy’ claim but very quickly the union negotiators revealed the essence of what they wanted from the negotiations—that they would accept a position whereby employees could take pro rata long-service leave after ten years, the same as in other private hospitals. The exchanges concluded with a foreshadowed yield, “we will

look at that” and this became formal at a subsequent meeting: “Long-service leave. Fifteen years still stands; review option to pro rata after ten [reading the minutes]. We will do that.” A short exchange followed, “It’s not as good as we hoped for.” “But it’s better than you’ve got now” and with this, everyone understood that agreement had been reached.

TABLE 2  
Discussion on the Long-Service Leave Issue, Meeting 3

|           |   |
|-----------|---|
| Union 2   | Long-service leave. We would like the government’s seven years [i.e. leave after 7 years service rather than 15].   |
| Emp assn  | Is that a bit of an ambit; is it that you are getting down the end of the list and thinking up what you can put in?   |
| Union 1   | We would settle for ten, pro rata; there are private hospitals which do it [the union’s substantive claim: employees can take part of their leave after ten years]. |
| Emp assn  | But only those which are ex-public sector and they are trying to move away from it.   |
| Union 1   | But it still occurs. But members do bring it up; fifteen years is a long time to wait. It has never been improved.  |
| Manager 1 | You work out a percentage as to what you think it is worth to us and put it to us.  |
| Union 1   | It would not cost you anything for fifteen years.   |
| Manager 1 | We won’t consider it [i.e. going to 7 from 15].   |
| Union 1   | So you won’t consider it? Not even the proposal that we could take it pro rata after ten?   |
| Manager 1 | We will look at that.   |

There are, however, difficulties which can arise in processes of making concessions and in indicating acceptance of the other’s offer. One of these difficulties is when a compromise offer is not clear. An example of this occurred in the discussions over the shift issue when one of the union negotiators makes what is, in effect, a new position, “Just give us time off” (meeting 11). Very quickly, this statement was clarified by the lead negotiator, “I’m saying you just give them double time for the differential, that is like time in lieu”. ‘Time off’ could have been interpreted as meaning an equivalent time, which would have been a significant concession by the union, but by making it clear that ‘time off’ meant double the amount of time the union official’s clarification defined the extent of their willingness to move.

As can be seen above, it was this new union position that management responded to by foreshadowing its preparedness to yield and by

making a new offer in the next meeting. However, on hearing this new offer, the union negotiators were not willing to agree without consulting the membership so they couched an implicit acceptance of management's offer with a reference back to the union's original claim, "We were asking for somewhat more than that, for the same as the RN's [registered nurses] so I'll have to take that back." The issue did not return to the bargaining table. The union made a new claim by letter which was a refinement of the basic proposition which had been implicitly 'agreed' upon. This was then accepted by management through the process of writing it into the draft agreement.

Further difficulties in yielding can also be seen in the way the negotiators finally agreed upon the size of the pay increase on the day after the strike. (The relevant dialogue is found in Table 3.) Management's pay offer was unchanged at 5% and 3% but the exchanges on pay at this meeting opened with a sign of some flexibility in the union's position, "The members wanted \$40 and hoped you would come back with something closer. They are firm on that but not firm on it up front or over the period." The management negotiators sought to understand what was meant by this but the ensuing discussion was not very enlightening. They could sense, however, that they were in a new situation and so indicated the need to adjourn (to give them time to reassess). At this point the union's new position came out on the table through two statements by the union officials. Firstly, one of them indicated where management should improve its offer (in the size of the second increase): "The members are looking for a reassurance; 5 and 3; they are looking for a reassurance; 3 is not enough." Then almost as a throw-away line in the context of everyone packing their papers to leave, the other union official indicated what *would* be an acceptable offer: "I went through my notes of the meetings last night; they were strong on 5 and 5". By this stage, and without the union actually articulating a new (lower) claim, the management negotiators knew that if they offered 5% and 5% then they would not be drawn into making any further concessions. After the adjournment, a new offer of 5 plus 5 was made. The union negotiators did not actually agree but by turning attention to issues of implementation and not challenging the figures on offer, it was clear that the issue was resolved—another example of a muted yield.

TABLE 3

#### Closing Discussions on the Pay Issue, Meeting 14

|         |   |
|---------|---|
| Union 2 | It's like we said yesterday. The members wanted \$40 [approximately 10%] and hoped you would come back with something closer. They are firm on that but not firm on it up front or over the period. |
|---------|---|

- 
- Manager 1 Now you've rephrased that. What do you mean?
- Union 2 What they said was they wanted \$40 but if the hospital put back to us an option spread over then they said 'we'd like to look at it'.
- Manager 1 Now you are saying something different, what do you mean?
- Union 2 The members want \$40 up front but said that if you put an offer across they said they wanted us to take it back so they could look at it.
- Manager 1 If [the other union] agree for it all as a package, then we are saying its \$34.60 over 18 months [a reference to the parallel negotiations as an alternative way of presenting the offer].
- Union rep Do we have to do all this again in 18 months!
- Union 2 I don't know what else I can tell you; the direction from our members was unanimous and clear.
- Manager 1 You've now changed the position; I'm not trying to be difficult, you said \$40 up front, now you say there is a possibility of spreading it.
- Manager 2 Perhaps we should adjourn.
- Union 2 The members are looking for a reassurance; 5 and 3; they are looking for a reassurance; 3 is not enough.
- Union 1 [as everyone is getting up to leave] I went through my notes of the meetings last night; they were strong on 5 and 5. It was put up at our meeting.
- 

### ***PROBLEM SOLVING OR 'SQUEEZING IN' SUGGESTIONS?***

The integrative problem-solving approach envisages an open exchange of information and preferences and the generation of options prior to any final decision being made (Fisher, Ury and Patton 1991; Lewicki, Hiam and Olander 1996; Walton and McKersie 1965). The experience of the Hospital negotiations suggests a rather more pragmatic move to new suggestions.

The issue of payment to anaesthetic technicians provides an example. The issue had been raised in several meetings and was viewed by the union as "a major issue." The union position was that some of the enrolled nurses were doing work the equivalent of technicians and should be paid accordingly. The hospital's position was that the technicians had skill certificates and so were paid at the higher rate. It was an argument around two principles: pay for work done as opposed to additional recognition for additional skills. Consistent with its position of principle, the hospital offered to pay an allowance to any nurses with the certificate but this proposition was not acceptable to the union. Within this debate, two of the negotiators started to build a bridge of common ground and the exchanges are an example of how an offer might get put on the table.

Prior to the meeting, the union negotiators had developed a couple of possibilities. It then became a question of debating the issue for a while to see if there was any flexibility in management's position. During the discussion one manager makes a mixed statement, "We must continue to recognize the qualification [i.e. stating own unchanged position]. I can see where you are coming from on the pay equity side..." [i.e. some openness to the union's argument]. In saying this the manager did not yield any ground but did provide an opening that the union negotiator began to respond to with an indication of flexibility, "[interrupting] There's a bit of room to move", but the manager continues to make her point: "... but I'm opposed to that, we must recognize an incentive for training." Having signaled some flexibility, the union negotiator made this more explicit through two suggestions:

Manager 2 [continuing]... but I'm opposed to that, we must recognize an incentive for training.

Union 1 What about building an incentive into the technician's scale?

Manager 3 The enrolled nurses scale?

Union 1 Another choice is to see if they will look at those rates, there are increments, for example, if no certificate, then level 1 and 2; if with a certificate, then 1, 2, 3 or 4.

The discussion concludes with the negotiators reasserting their difficulties though the language of Manager 2 gives some indication that the union's point has been taken:

Manager 4 What will happen is that if you made that distinction then they would not touch the equipment [i.e. those on levels 1 and 2 would not do any of the anaesthetist technician's work]. Some work has to be done to get the knowledge.

Manager 2 What [union 1] is saying is why can't we build in recognition for that [the increased work]; I've no problem with that but still feel there should be recognition for gaining extra qualifications.

Manager 1 We have recognized that by paying them at level 3; we would be happy to help them get the certificate but it makes a mockery of the whole structure not to recognize the training.

Union 1 But I've just said an option for a certificate is through 1 to 4 and no certificate 1 to 2. What *would* be a mockery is if two people are doing the same job but get different pay.

In the following meeting the parties' positions were essentially unchanged. Then came the day of industrial action and in the meeting which followed management put forward a revision of the union's proposal to use increments to recognize non-certificated skills and this formed the basis of how the issue was settled.

By no stretch of the imagination could these brief exchanges be regarded as problem solving. In terms of the problem-solving approach, the negotiations would be at the stage of generating and exploring options. In this case generating options occurred away from the bargaining table and as there was no overt and agreed move into an option phase. The suggestions were almost 'squeezed in' as soon as there was a glimmer of receptivity from the management side. There was no open exploration and the negotiators were soon back to restating their positions. It was an example of unilateral problem solving (Fells 1986) combined with firm flexibility (firms on ends, flexible on means) and heuristic trial and error (Pruitt 1983; Pruitt and Lewis 1977). Although not problem solving, this short exchange *did* nevertheless lead to solving the problem.

A second example demonstrates how elements of the workplace context can constrain the development of a problem-solving approach. The issue is that of productivity payments, a problem that might provide an opportunity for more cooperation and 'mutual gain' than the anaesthetic technicians' issue. The possibility of introducing productivity payments emerged in one meeting (meeting 7) while the Hospital was defending its pay offer:

- Union 1     Is there a productivity increase? There has been a large increase in productivity and efficiency but our members never got any recognition. Maybe that is something we could look at.
- Emp assn     We would be happy to look at that if we can find an appropriate measure, throughput, hours per patient day.
- Manager 1    All it's done is get us up to speed where it ought to be. A new hospital opens at a loss; for you to believe the productivity is so that we've been running to the bank, it's not right.

Both parties discussed the productivity payments issue in their subsequent private sessions. This issue clearly had the potential to offer a way through their differences on wages and it re-surfaced in a similar fashion in the next meeting when the parties were again debating the Hospital's offer. The union negotiators indicated that their membership had authorized them to explore productivity as a basis for a second, later pay increase during the life of the agreement. Management were prepared to look at it because a well-constructed pay system based on performance has advantages but the discussion stayed at a general level without any commitments being made. As can be seen from the following dialogue, an underlying competitiveness emerged when the issue arose again later in the meeting:

- Manager 1    We consider the 8% to be reasonable; we can link this to productivity so if there is clearly an improvement in productivity then we can review it in six months time and consider making an adjustment once we can see it has been gained.



- Union 1 But it will take a lot of work, we need to look at performance indicators.
- Emp assn Yes it will take a lot of work to get it right but our point is that it is there [i.e. on offer].
- Union 1 But where's our starting point? That's fine but as we do not have it on the basis of 4% and 4% we need something more.
- Emp assn But you were saying you were confident that productivity will increase so you should be confident with it.
- Union 1 We are not going into it when we are unsure how it will work.
- Manager 1 But you want it all one way; it is unsure for us too but it is one way.
- Union 1 I have been instructed to get an appropriate rate for annualized hours so I am looking at this in two parts, the increase and then any productivity arrangements.
- Emp assn But we don't know what 'appropriate' is.

The discussion moved to other matters and the productivity issue did not resurface until the closing stages of the negotiation (that is, after the day of industrial action) when the main elements of the package had been agreed. The negotiators agreed that they should look at the productivity question during the life of the agreement.

Arguably, the failure of the parties to explore this issue and develop a resolution around it could be seen as a foregone opportunity, an example of leaving 'value on the table' and of thereby leaving themselves no option other than hard and costly distributive bargaining. This does not match the rhetoric of cooperation which has encouraged a greater role for management-union negotiations in the Australian industrial relations system (Dabscheck 1995; Hilmer 1989; Keenoy and Kelly 1998). The productivity issue fell by the wayside because it was brought to the bargaining table at a relatively late stage in the negotiations and as an attempted compromise on the pay issue, not as an issue in its own right. The relatively short discussion of the topic reflected the fact that neither side was prepared to step back from the differences between them and establish what would be a major new agenda item, notwithstanding the mutual benefits that might be been obtained. For its part, management felt that its offer was a good one and that the membership would accept it. The union approach was influenced by its agenda and by the difficulties a constituency has in embracing a major shift in the focus of the negotiations (Ancona, Friedman and Kolb 1991). The union negotiators had been dealing with a number of specific grievances of which pay was only one and the focus was on resolving the grievances, not broader issues such as performance measures. When the parties periodically sit down to renegotiate their agreement, it is

inevitable that the union membership will raise issues of immediate concern. If these are not seen to be addressed through the negotiation process, then it will not be easy for employees to take on board any longer term 'integrative' issues. While the negotiators do have to 'separate' themselves from the constituency position in the search for an agreement, that separation has its limits, particularly in a union that cultivates membership involvement in the bargaining process.

### ***CONCLUSION***

The task of reaching an agreement through negotiation is a complex one, particularly in the case of management and union negotiators who have to consider their constituencies and the on-going relationship between the parties as well as the issues in hand. Resolving the issues, however, remains the primary task and a number of strategies are available to negotiators. They have a choice of standing firm on an issue or engaging in some form of problem solving. They may also have to forsake a previously held position and give some ground. While the literature on negotiation provides a framework for the competitive and problem-solving strategies, less attention has been given to how negotiators yield their position and yet this is an integral part of any negotiation.

While the limitations of conclusions from just one case study must be acknowledged, the analysis of the negotiations at Murdoch Hospital indicates how these strategies might put into effect at the bargaining table. The negotiations at the Hospital were essentially distributive in nature structured around claims and counter-claims on a long list of issues. The competing strategy was in evidence, as would be expected. The dominant activities were to state and re-state the position, and to clarify. Firmness was expressed through re-statement rather than by the presentation of carefully constructed argument. Arguably, more fulsome explanation of one's position might give opportunity for further clarifying discussion which, in turn, might reveal opportunities for cooperation. However, it might also provide an opportunity for the other party to exploit the situation. Being competitive — aiming for the other party to come into agreement with you — is therefore characterized by statements of position, and not much discussion of them.

In this context, yielding, or moving from a previously declared position, becomes difficult. Yielding by either party during the course of a management-union negotiation might best be regarded as a (probably reluctant) manoeuvre rather than a 'strategy.' It complements the distributive or competitive strategy but the experience in this case study suggests that yielding is too important a process to be viewed simply in

terms of an *absence* of competitiveness. Further research is needed into *why* negotiators come to a realization that some ground must be conceded if progress is to be made. In this case we can infer it was a combination of experience, appreciation of the other's resoluteness and reaction to constituency influence. Yet *how* concessions are made, the language of negotiators, is an equally important issue.

Negotiators generally expect that there will be some 'give and take' but when the time comes for some 'give' it is not easy to do so. Two forms of yielding were identified. Firstly, negotiators may agree, but not in so many words. Secondly, negotiators may foreshadow a shift in their position from one session to the next. In neither case does the process involve an explicit back down. This suggests that these muted or foreshadowed yields are linguistic devices for indicating movement while saving face. The influence of contextual factors such as the presence of constituency may influence how concessions are made; management negotiators might feel able to state that they have 'no problem' with the other side's proposals while union negotiators have to be more circumspect. It might also be found that the language is idiosyncratic in that individual negotiators develop their own stock phrases which managements then learn to recognize as meaning 'I know I have to shift my ground but don't ask me to say so now'.

One important implication is that negotiators must be alert to variations in language. For example, they must be alert to a single suggestion made amongst an otherwise competitive statement. Or they may need to be content, initially at least, with a inferred concession rather than force it into the open which might have the effect of causing the other negotiator to retreat to the previously declared position. Similarly, negotiators might use the foreshadowing approach to encourage a concession. Sometimes it becomes clear that the other negotiator realizes they have run out of arguments to defend their position. Rather than press them, it might be more conciliatory and constructive to suggest something like "perhaps that is an issue which you can bring up again at the next meeting." If conveyed correctly, it would signal: 'I'm making it easier for you to make that concession which you know you are going to have to make'.

Finally, genuine problem solving appears difficult to achieve in a workplace negotiation unless the parties plan to do it from the outset. In an inherently competitive negotiation, any 'integrative' bargaining will tend to be a creative compromise within the competitive dynamic rather than a wholly new approach, as demonstrated by the exchanges over the anaesthetic technicians. This case suggests that negotiations about the negotiations themselves would be useful (Cutcher-Gershenfeld 1994), but also that not too much in terms of a mutual orientation should be anticipated.

In most workplace negotiations, the issues will not be new to the parties. Therefore, it is not a case of disputing parties coming to the realization, as a first-time discovery, that productivity is an issue that might meet their underlying interests and concerns. Experienced negotiators know the potential and pitfalls associated with most of the realistic solutions that are available to them and this provides a challenge when trying to develop an interest-based rather than positional approach to the negotiations. The emphasis in Australia, as elsewhere, is for more cooperation in management-union negotiations but the workplace context would not seem to encourage it.

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## RÉSUMÉ

### **La négociation syndicale-patronale : un regard sur la stratégie et le langage**

Les négociateurs tant du côté patronal que du côté syndical ont le choix d'adopter une stratégie d'opposition ou de solution de problèmes pour mettre fin à un litige, mais il se peut fort bien qu'ils aient à faire des concessions, et c'est là un processus qui est moins clairement compris. On peut s'attendre à ce que des négociateurs en situation d'opposition, par exemple, annoncent leur position, fournissent peu d'information et accompagnent le tout de menaces. Les négociateurs qui utilisent l'approche « solution de problèmes » vont aussi faire part de leurs besoins, mais en termes d'intérêts et non de positions ; ils vont alors échanger de l'information au sujet de leurs priorités, faire des offres multiples et faire preuve d'un certain support. Alors que ces deux stratégies de négociation peuvent être

reconnues par leurs comportements contrastants, le processus de « concession » est moins évident. Concéder est ce qui survient lorsque qu'on renonce à la compétition, un tel renoncement se traduisant par l'absence ou la réduction des comportements d'opposition. On peut s'attendre à ce que des engagements fermes à l'endroit d'une position cède la place à la flexibilité et à l'ambiguïté.

Des données puisées de l'observation d'une négociation patronale-syndicale fournissent des indications sur la façon dont les négociateurs discutent d'un enjeu, comment ils font des concessions et dans quelle mesure ils s'engagent dans un processus de solution de problèmes. La ronde de négociations observée est celle qui se déroulait dans un grand hôpital du secteur privé situé à Perth, en Australie-Occidentale, entre la direction et deux syndicats regroupant tout le personnel, sauf les infirmières. Les enjeux de cette négociation couvraient l'ensemble des conditions d'emploi. L'auteur a assisté à toutes les sessions formelles de négociation, aux rencontres des parties et il a effectué des entrevues avec les négociateurs-clés.

L'essence de la stratégie d'opposition consiste pour la partie adverse à maintenir sa position. On découvre que le fait de maintenir une telle fermeté implique une simple réaffirmation face à la position opposée de l'autre partie. On procède à l'argumentation des énoncés de position par des tentatives de clarification, mais sans plus. La vigueur du langage ou l'absence de langage n'indique pas la force d'une position ; en effet, le fait de refuser de discuter d'un enjeu équivaut parfois à une expression de fermeté.

Cette étude de cas laisse croire aussi qu'une action de l'ordre de la solution de problèmes implique des suggestions d'ordre pratique plutôt qu'un échange ouvert d'informations et d'idées. Les négociateurs peuvent donner un signe d'ouverture en tenant des propos du genre : « Je peux saisir d'où vous venez en abordant l'aspect de l'équité salariale ». De nouvelles propositions prennent la forme d'une simple suggestion : « Que pensez-vous de l'introduction d'une prime dans l'échelle des techniciens ». Cependant, le ton des échanges peut demeurer compétitif. On ne peut considérer ces échanges comme étant de l'ordre de la solution de problèmes, quoique ce soit la façon dont certains enjeux trouvent une solution.

La stratégie d'opposition connaîtra le succès seulement si la partie adverse fait des concessions. Il ne s'agit pas pour autant d'une totale capitulation, mais l'accord ne sera pas atteint, à moins que l'une ou que les deux parties cheminent vers une réduction de leurs différences. Cependant, à cette étape, les négociateurs font face à un dilemme : comment laisser croire à une concession sans encourager l'autre partie à devenir encore plus en opposition ? L'étude de cas suggère que les négociateurs n'attirent pas l'attention sur le moment où ils cèdent du terrain ; le cheminement

vers la position de l'autre partie ou l'accord avec cette dernière se fait alors plutôt rapidement et sans trop d'histoires.

Les négociateurs peuvent même fournir des indices à l'effet qu'un point litigieux a été résolu sans le dire en utilisant pour ce faire différentes formes de langage. À l'ordre du jour de la plupart des séances de négociation paritaire, on trouvait un certain nombre de points à aborder. Le modèle des échanges consistait dans le cas du négociateur syndical à mettre de l'avant des arguments à l'appui de sa position, ce qui entraînait une réponse de la part du négociateur de l'établissement. Suite à des échanges subséquents sur un point en litige, le négociateur patronal pouvait affirmer que la solution proposée ne lui créait pas de problème. Ce langage laissait croire au négociateur de la partie adverse que la direction concédait ce point et que l'enjeu avait trouvé sa solution. Une autre manière d'indiquer qu'une entente existait était de faire la suggestion qu'une disposition de la convention soit rédigée à titre indicatif, plus précisément, de façon qu'on puisse y revenir pour ajouter quelques termes. Ce genre de situation apparaît aux yeux des personnes impliquées comme une tentative d'entériner un accord plutôt qu'une occasion pour une partie de réitérer sa position. Une autre façon chez les négociateurs de faire part de leur volonté de modifier leur position consistait à recourir aux termes suivants : « nous y songerons », « nous verrons » ou « nous vous reviendrons là-dessus ». Ceci laissait croire qu'à la prochaine rencontre on présenterait une position modifiée. Le fait pour l'une ou l'autre partie de reconsidérer ainsi un enjeu était la manière la plus usitée de mettre fin à la discussion et d'arriver à un accord.

Nous avons ainsi mis au jour deux modes de concessions. D'abord, des négociateurs peuvent arriver à un accord, mais en utilisant peu de mots. Ensuite, des négociateurs peuvent introduire un assouplissement de leurs positions d'une séance de négociation à une autre. Dans aucun cas ce processus ne peut-être considéré comme un recul ou un retrait. Ceci laisse croire plutôt que ces concessions silencieuses se présentent comme un mécanisme linguistique pour amorcer un changement tout en sauvant la face.

Il faut poursuivre la recherche pour découvrir les raisons qui incitent les négociateurs à adopter une stratégie particulière et la façon dont ils mettent en pratique cette stratégie à la table de négociations. Une considération importante est à l'effet qu'ils doivent demeurer vigilants face à des variations de langage, face à une simple suggestion faite à l'intérieur d'une position autrement très compétitive. Ils doivent également apprendre à se satisfaire au départ d'une concession implicite, au lieu de forcer l'adversaire à la rendre explicite.