Bargaining Theory Meets Interest-Based Negotiations: A Case Study

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This is a case study of the 2005 national contract negotiations between Kaiser Permanente and the Coalition of Kaiser Permanente Unions. Given the scale and complexity of these negotiations, their successful completion provides an exemplar for collective bargaining in this country. In 1997 Kaiser Permanente and the Coalition of Kaiser Permanente Unions formed a labor management partnership, and negotiations were structured around the principles of interest-based negotiation (IBN). Drawing on direct observation of all parts of the bargaining process, interviews with individuals from Kaiser and the Coalition of Unions, and surveys we conducted after bargaining was completed, we conclude that the parties employed a mix of interest-based and traditional negotiation processes across an array of integrative and distributive issues. We find that IBN techniques were used extensively and successfully to reach mutually satisfying agreements when the parties shared interests. When interests were in greater conflict, the parties resorted to more traditional, positional tactics to reach resolution. Strong intraorganizational conflicts limited the use of IBN and favored the use of more traditional positional bargaining. While a high level of trust enabled and supported the use of IBN, tensions that developed limited the use of IBN and required surfacing and release before either IBN or more traditional positional processes could proceed effectively. The use

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of IBN tools helped the parties apply the principles underlying the partnership in which these negotiations were embedded. We conclude that IBN served as a way of applying or operationalizing integrative bargaining and affected the process dynamics in ways the Walton and McKersie theory predicted. As such we see IBN as techniques that neither displace nor render obsolete other aspects of bargaining theory or practice but that show considerable promise for helping collective bargaining to address the complex issues and challenges found in contemporary employment relationships.

Introduction

Over the past decade a quiet experiment has been playing out in U.S. collective bargaining. Interest-based negotiations (IBN), a structured approach to problem solving (Fisher and Ury 1981), has been used by over half of union and management negotiators in the private sector (Cutcher-Gershenfeld and Kochan 2004; Cutcher-Gershenfeld, Kochan, and Wells 1998). Despite the prevalence of this form of bargaining, there are few studies of the IBN process or of the ways IBN connects to other aspects of labor management relationships. (cf. Cutcher-Gershenfeld, Kochan, and Wells 2001; Friedman 1994; Hunter and McKersie 1992; Mnookin, Friedman, and Cutcher-Gershenfeld 2001; Paquet et al. 2000). This stands in sharp contrast to the extensive case studies that documented the rise of new bargaining norms and practices post–World War II (cf. Douglas 1962; Dunlop and Healy 1953; Healy 1965; Selekman 1947; Slichter, Healy, and Livernash 1960; Stevens 1963). We seek to fill this void by using a unique mix of participant observation, survey, and interview data to provide both a rich description of a large and complex IBN process between Kaiser Permanente (KP) and the Coalition of Kaiser Permanente Unions (CKPU) and an analysis of the interrelationships between IBN and more traditional bargaining practices.

IBN: A New Theory or an Application of Integrative Bargaining?

Interest-based negotiation was made popular by Fisher and Ury (1981). They proposed replacing positional negotiations (negotiations where labor and management begin by overstating their real positions, followed by a series of offers and counter-offers en route to an agreement) with a set of techniques for (1) identifying issues and interests critical to each party, (2) gathering and sharing information needed to analyze problems, (3) generating
options for resolution, and (4) choosing options that offer the highest mutual gains for the parties. An implicit debate has arisen among proponents and critics of IBN with some of the former seeing it as a new and universally applicable theory and process of negotiations (Fisher and Ury 1981) and the latter (Barrett and O’Dowd 2005) seeing it largely as a more limited but practical set of tools for operationalizing and applying the concept of integrative bargaining first introduced by Walton and McKersie (1965). The critics argue, moreover, that a complete theory of contemporary negotiations requires consideration of how IBN practices interact with other dimensions of negotiations, namely, distributive bargaining, intra-organizational bargaining, and attitudinal structuring. The question therefore arises whether the use of IBN techniques interact with these other dimensions in ways similar to those predicted in the Walton and McKersie model, alter these interrelationships, or replace them and serve as a new guide to collective bargaining.

While the use of IBN has grown steadily over the past several decades, the most recent survey data show some decline in its acceptance, especially on the union side (Cutcher-Gershenfeld, Sleigh, and Pil 2006). Some of the decline in support no doubt reflects the dilemmas often encountered. For example, the parties may find it difficult to utilize interest-based approaches on distributive issues such as wages and benefits, and constituents may view the process as placing their leaders in too close a relationship with the other side. Both of these dilemmas arose in these negotiations—thus allowing us to highlight how negotiators address them in an interest-based process.

In addition to addressing these analytical points, the scale and complexity of these negotiations highlight important issues challenging the institution of collective bargaining today. On the union side, ten diverse unions representing forty-four (bargaining units and eighty-six thousand union members worked together in coalition). The management side was separated into two distinct structures of the Kaiser Health Plan and Hospitals and the Permanente Medical Groups. The scope of these negotiations went far beyond the mandatory and normal bounds of collective bargaining to address critical organizational and workforce issues that most employers (e.g., staffing levels and service quality) and most unions (e.g., accountability for performance of work place teams) would decline to discuss. Moreover, because the negotiations were embedded in an ongoing labor management partnership (LMP), the case provided a window on how the parties dealt with the conflict between styles of interaction suitable for sustaining a partnership and those needed to negotiate a new agreement.
Research Methods

The participant observation study of the 2005 KP negotiations was part of our larger ongoing research of the KP LMP that had been in place since 1997. Our team of six was given full access to the 2005 negotiations, including joint sessions and almost all union and management caucuses and meetings. Most of the time, two or more members were present at sessions. Each of us took notes and circulated them to the research team, along with our interpretations. We also shared meals, breaks, drinks, and downtime with participants—interactions that often produced valuable data and interpretive comments on events of the day.

We conducted two Web-based surveys to capture participants’ views of the negotiations. The first survey asked questions about the first phase of bargaining, which occurred in eight bargaining task groups (BTGs). Participants were surveyed about the BTG process after the BTGs had completed their work. Responses were obtained from 194 of the 262 participants surveyed, for a response rate of 74 percent.

A postnegotiation survey was also conducted of all labor and management representatives involved in national and/or local negotiations, as well as delegates to the union coalition’s bargaining council, members of the KP regional president’s council, and the Kaiser Permanente Partnership Group (KPPG). Responses were obtained from 207 of the 437 surveyed for a response rate of 45 percent. These observational and survey data were supplemented with postnegotiation interviews of participants in the negotiations as well as management and union leaders who played key decision-making roles at critical stages of the process.

The Setting

As noted in the introduction to this symposium, Kaiser Permanente is a complex organization with two parallel organizational units joined at the top in a partnership structure. Kaiser Foundation Health Plan and Kaiser Foundation Hospitals is a nonprofit unit that provides insurance and hospital services, and the Permanente Medical Federation is made up of multiple for-profit clinics and medical providers. Both units are grouped into seven regions (Northern California, Southern California, Northwest, Colorado, Ohio, Southeast, and Middle Atlantic) and are coordinated at the top by the Kaiser Permanente Partnership Group (KPPG), consisting of the CEO, several regional presidents, and other executives of the Health Care and Hospital Plan and by the president and several regional medical directors of the Permanente Medical Federation.
The bargaining structure governing these negotiations called for eight BTGs, each composed of approximately thirty union and management representatives, to analyze specific topics, and to make recommendations to the main bargaining table, called the common interest committee (CIC). The CIC consisted of approximately forty management and union representatives and was co-chaired by Leslie Margolin, KP’s chief operating officer, and Peter diCicco, executive director of the Union Coalition—both of whom had served in the same capacities for the 2000 national negotiations. The CIC was responsible both for reviewing and processing (accepting, modifying, or rejecting) the recommendations of the BTGs and for negotiating wages and other economic terms of the agreement. The management negotiating team reported to the Health and Hospital Corporation (the Kaiser side of KP) and medical directors of the Permanente Medical Federation who sat on the KPPG. The agreement also had to be approved by the Kaiser Health and Hospital Corporation board of directors. Thus there was no single line of authority in the management structure overseeing bargaining. The union bargaining team needed to achieve ratification of a tentative agreement by the Coalition bargaining delegates council and ultimately by a majority vote of rank-and-file union members. Teams from Restructuring Associates Inc. (RAI) and the Federal Mediation and Conciliation Service (FMCS) facilitated the entire process.

The 2005 negotiations were heavily influenced by the evolution of the LMP that has been in place since 1997 and by the experiences of the parties when negotiating their first national agreement in 2000 (McKersie, Eaton, and Kochan 2004). That negotiation had been deemed a success and the question before the parties was whether it could be repeated. A big ongoing question was Kaiser’s role and future as an integrated health-care insurer and provider, given the state of the nation’s healthcare system. And in the background loomed a potentially very significant development in the labor movement—the threat and then actual split in the AFL-CIO, which involved a number of member unions in the Kaiser Coalition. This possibility became even more ominous because the decision date for whether one or more of the Coalition unions would leave the Federation was July 2005—coincident with the time when KP and the Coalition would be in contract negotiations.

The Partnership Context. As noted in the companion paper on the LMP, over its first seven years, the parties had worked their way through a series of crises, challenges, and successes that partnerships typically experience, including transitions in top KP management, financial ups and downs in different regions, the negotiation of the first national collective bargaining
agreement, and ongoing difficulties in diffusing partnership principles and processes throughout a large, complex, and decentralized set of regions and organizational units. The experiences of working through these various issues, and the accumulated successes and frustrations in the minds of management, union leaders, and representatives served as a key backdrop for the 2005 negotiations. On the one hand, the chief negotiators and other members of their teams had developed a very high level of trust and mutual respect from their experiences in responding to partnership crises and challenges. On the other hand, each of the participants approached negotiations with their own opinions about the state of the partnership (positive or negative) and determined to use the negotiation process to address problems facing the partnership. Chief among these are those listed in Figure 1.

**Potential Difficulties.** Going into the negotiations, there were significant obstacles to using IBN principles. Specifically, the two parties had very different expectations about a wage settlement. It has long been recognized that employees tend to look at current or past financial performance and comparable wage settlements while employers tend to focus on future market projections and competitive pressures (Rees 1952). KP was coming off two years of very good financial performance. In 2004 KP recorded a

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**FIGURE 1**

**KEY PARTNERSHIP ISSUES AND CONCERNS CARRIED INTO NEGOTIATIONS**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Description</th>
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<tbody>
<tr>
<td>Accountability</td>
<td>Enhanced accountability of management, physicians, and union leaders for using partnership principles and processes to carry out the basic work of delivering health care.</td>
</tr>
<tr>
<td>Backfill</td>
<td>The need for an adequate number of people (employees, union representatives, and management personnel) to carry out their LMP activities and still perform everyday work.</td>
</tr>
<tr>
<td>Capacity</td>
<td>The need to develop the skills and roster the personnel required to deliver health care and improve the quality of work life by using Partnership principles and processes.</td>
</tr>
<tr>
<td>Diffusion to the Workplace</td>
<td>The need to move the Partnership from upper levels down to the workplace, and to make it a continuous rather than an episodic activity.</td>
</tr>
<tr>
<td>Operations-Performance Focus</td>
<td>The need to shift from a labor-relations-focused partnership to one focused directly on the operational tasks of delivering high-quality health care.</td>
</tr>
<tr>
<td>Measurement</td>
<td>The need to put in place clear metrics for measuring the performance of the Partnership on critical organizational and workforce outcomes.</td>
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$1.6 billion margin of revenues over costs. Many union members and negotiators believed that money would not be a problem in 2005. In their view, because the partnership helped achieve these profits, employees should share in them. At the same time, KP management stressed that future revenue and market projections suggested difficult years lay ahead.

**Labor Movement Tensions.** As mentioned earlier, the 2005 negotiations coincided with the climax of a debate over the future of the AFL-CIO. By the time bargaining began, three prominent member unions in the Kaiser Coalition—the Service Employees International Union (SEIU), the United Food and Commercial Workers (UFCW), and the Teamsters’ Union (IBT), along with several other unions not in the Coalition—were moving down a path that would culminate in decisions to leave the AFL-CIO. The final decision to stay or leave was expected to come in July 2005 at the national AFL-CIO convention. This would leave the Coalition with some unions that had left the AFL-CIO to form a new federation, and some that had remained in the AFL-CIO. These internal tensions (discussed more fully in the companion paper in this symposium) were an important part of the intra-organizational context that the Coalition carried into negotiations.

**Priorities and Expectations.** Going into negotiations, labor and management held priorities that were different or contradictory. Table 1 summarizes the

<table>
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<th>TABLE 1</th>
<th>UNION AND MANAGEMENT BARGAINING PRIORITIES</th>
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<tbody>
<tr>
<td></td>
<td>Top or high priority—number ( (N) ) and percentage ( (%) )</td>
</tr>
<tr>
<td></td>
<td>Union</td>
</tr>
<tr>
<td></td>
<td>( N )</td>
</tr>
<tr>
<td>Strengthened and advanced the LMP</td>
<td>133</td>
</tr>
<tr>
<td>Reflect different market conditions in different regions( ^a )</td>
<td>65</td>
</tr>
<tr>
<td>Increase respect and trust between labor and management</td>
<td>130</td>
</tr>
<tr>
<td>Increase labor’s accountability for organizational performance( ^a )</td>
<td>101</td>
</tr>
<tr>
<td>Reduce wage differentials in different regions( ^a )</td>
<td>122</td>
</tr>
<tr>
<td>Reflect KP’s projected revenue and intensified competition</td>
<td>103</td>
</tr>
<tr>
<td>Share KP’s financial successes in recent years( ^a )</td>
<td>123</td>
</tr>
<tr>
<td>Use LMP problem solving and interest-based principles</td>
<td>129</td>
</tr>
<tr>
<td>Address both KP and workforce interests</td>
<td>136</td>
</tr>
<tr>
<td>Increase management’s accountability for LMP( ^a )</td>
<td>139</td>
</tr>
</tbody>
</table>

\( ^a \) Differences significant beyond 0.05

**Source:** Postnegotiation survey.
priorities labor and management negotiators reported (in a postbargaining survey) that they carried into the 2005 negotiations. Together these data illustrate the mixed motive nature of these negotiations. For example, labor and management negotiators assigned a high priority to increased accountability to the LMP and to improving KP’s delivery of high-quality health care. Fully 94 percent of union representatives and 95 percent of management representatives assigned a high priority to addressing the interests and needs of both KP and the workforce. Nearly 90 percent of labor and management representatives also shared the goal of increasing trust and respect for each other in negotiations. Both labor and management (92 percent and 85 percent, respectively) gave a high priority to using the negotiations process to strengthen their partnership. Management especially wanted the partnership strengthened in order to make good on the goal of delivering better operating results—see Figure 2 and the themes of accountability, performance focus, and measurement.

Also going into the negotiations, 85 percent of the union representatives placed a high priority on “sharing KP’s recent financial successes” compared to 46 percent for management representatives. These different economic expectations were not necessarily clear to the participants, and in fact caused some surprise during the final days of bargaining when the parties first presented their economic proposals.

Each party also held other important goals that were not shared. For management, recognizing future market and financial conditions and differences in market conditions across regions were significantly higher priorities. For union leaders, reducing differentials across regions and sharing in the financial successes of Kaiser were higher priorities. Taken together, these priority ratings indicate that the parties carried a mix of common and conflicting interests into the negotiations.

The Negotiation Process

*Phase One: The BTGs at Work.* In the 2005 negotiations, there were two distinct phases of bargaining. The first phase took place in eight BTGs. The BTGs met for a total of fifteen days over the course of four months. Each BTG was charged with developing a set of written recommendations that the Common Issues Committee (CIC) would take as a starting point in the second, more intense phase of bargaining. Each BTG had approximately four members from the CIC, which provided leadership in the BTGs as well as continuity between the two phases of bargaining. Each of the eight BTGs had one facilitator from Restructuring Associates Inc. and at least one from
FMCS, a scribe to take detailed notes, and access to a joint labor management data team that was available to produce data on a wide range of topics.

All of the out-of-town participants stayed in the same hotel, groups took snack breaks and ate their meals together, and often met informally in the hotel bar for late-night conversations.

The BTGs met five times in three-day sessions. The initial three days were devoted entirely to training participants in the IBN concepts and processes. Many of the participants in 2005 bargaining had at least some experience with this model, either from the 2000 round of negotiations or from other partnership activities where they had been schooled in interest-based problem solving and consensus decision making.

Overall, the BTGs used IBN techniques extensively and effectively. Table 2 summarizes BTG member survey data indicating that IBN processes dominated over traditional negotiations in seven of the eight BTGs.

Table 3 reports satisfaction levels of 80 percent or more among members of the seven BTGs in which IBN techniques dominated compared to a 35-percent satisfaction level among members of the BTG (benefits) in which more traditional positional processes dominated. Our observational data are largely consistent with the survey data but provide a richer account of the dynamics observed within and across the groups. To illustrate the dynamics, we focus here on three BTGs with different mixtures of common and conflicting interests.

**Performance Improvement.** The “performance improvement” BTG was charged with addressing a critical and broadly shared partnership objective:

<table>
<thead>
<tr>
<th></th>
<th>Much more interest (%)</th>
<th>Somewhat more interest (%)</th>
<th>No difference (%)</th>
<th>Somewhat more traditional (%)</th>
<th>Much more traditional (%)</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attendance</td>
<td>85</td>
<td>10</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>20</td>
</tr>
<tr>
<td>Benefits</td>
<td>14</td>
<td>21</td>
<td>45</td>
<td>17</td>
<td>3</td>
<td>29</td>
</tr>
<tr>
<td>Performance-based pay</td>
<td>56</td>
<td>33</td>
<td>11</td>
<td>0</td>
<td>0</td>
<td>18</td>
</tr>
<tr>
<td>Performance improvement</td>
<td>58</td>
<td>32</td>
<td>11</td>
<td>0</td>
<td>0</td>
<td>19</td>
</tr>
<tr>
<td>Service quality</td>
<td>87</td>
<td>9</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>23</td>
</tr>
<tr>
<td>Scope of practice</td>
<td>56</td>
<td>28</td>
<td>16</td>
<td>0</td>
<td>0</td>
<td>25</td>
</tr>
<tr>
<td>Work–life balance</td>
<td>75</td>
<td>25</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>20</td>
</tr>
<tr>
<td>Workforce development</td>
<td>43</td>
<td>43</td>
<td>14</td>
<td>0</td>
<td>0</td>
<td>21</td>
</tr>
<tr>
<td>Overall</td>
<td>54</td>
<td>25</td>
<td>17</td>
<td>3</td>
<td>5</td>
<td>189</td>
</tr>
</tbody>
</table>
developing a plan to improve the delivery of health care services. Group members agreed that partnership principles (teamwork, for example) had not fully diffused to front-line physicians, managers, nurses, and other employees in their day-to-day work—and they shared a determination to move in this direction. This BTG was composed of a mix of front-line employees, a physician, budget experts, regional managers, and union leaders. The first phases (after completing training) of the BTG were spent identifying data needs and benchmarking examples of effective team-based organizations and then analyzing materials and data collected from these examples along with data on a number of prior successes and failures at teamwork within the KP partnership. A long list of issues that needed to be addressed to make decentralized teams work at KP was then generated via a brainstorming process. Subgroups then worked on specific issues such as the problem of backfill (staffing to allow time for partnership work) and accountability. In the final phase each subgroup reported its recommendations to the full BTG for discussion and a consensus vote.

This BTG produced a detailed plan for introducing unit-based teams throughout KP that included provisions for training and backfill, as well as standards for holding management and labor leaders accountable for complying with this plan. Ninety percent of the participants in this BTG indicated that they made extensive use of IBN processes, and 80 percent indicated they were satisfied with their process.

*Attendance.* The need for the “attendance” BTG stemmed from a significant problem of employee absenteeism in some of the regions. This issue was extremely important for management; many saw it as a make-or-break issue for the survival of the LMP as a whole. One regional medical director

<table>
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<th>TABLE 3</th>
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<tr>
<td>Satisfactory with Process for Reaching Agreements</td>
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<tr>
<td>Very satisfied (%)</td>
</tr>
<tr>
<td>Attendance</td>
</tr>
<tr>
<td>Benefits</td>
</tr>
<tr>
<td>Performance-based pay</td>
</tr>
<tr>
<td>Performance improvement</td>
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<tr>
<td>Service quality</td>
</tr>
<tr>
<td>Scope of practice</td>
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<tr>
<td>Work–life balance</td>
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in particular was intent on pushing through a refashioned sick-leave program that among other things pared down the number of sick days an employee could take. Though he was not present at negotiations, he had given his representatives on the BTG clear instructions on what he wanted changed. Yet his representatives participated in an intense interest-based process that committed them to reaching a different solution to the problem—a solution that labor felt would work in addressing absenteeism. Throughout negotiations, this issue involved significant intra-organizational bargaining among management as they juggled their commitments to their directors back in their regions with their commitments to fashioning an attendance program through an interest-based process. Labor, on the other hand, came to negotiations worried that management would insist on drastic attendance changes that would devastate morale and fail to solve the underlying forces driving the attendance problem—which they saw as the high stress of the work environment and management’s arbitrary decisions around granting personal leave. Specifically, they were worried that management would revert back to the practice of lumping together vacation time and sick leave. Thus, while this BTG dealt with an issue that was important to both parties, their interests and analyses of the problem going into bargaining differed significantly.

In the end, this BTG successfully tackled a difficult distributive issue of high priority for management by using IBN methods and facilitation. The group proposed an entirely new attendance policy that both sides felt would reduce absenteeism. There were two major breakthroughs in the process. The first was the realization that any solution to employee absenteeism needed to create a culture where sick leave would be seen as “insurance” rather than as an “entitlement.” The second, more solution-oriented breakthrough—introduced in a brainstorming session by a union staffer—was the idea of reorganizing sick leave in such a way that employees could exchange their unused sick days for something else of value. The hope was that this would deter employees from using their sick leave for additional vacation time and would address one of the biggest problems facing front-line managers: workers calling in sick at the last minute. Once this breakthrough was achieved the parties worked together to address additional management concerns about people calling in sick when denied personal days and union concerns that management was punitively denying personal days. As the data in Table 3 indicated, 90 percent of the participants in this BTG were satisfied with the process used to reach their agreement and 95 percent indicated they made extensive use of IBN processes. One member described their feeling of accomplishment noting: “We knocked it out of the park. Our goal was to come up with an alternative. We did this.” Thus, this
BTG used IBN techniques to address an issue with high emotional content, substantial importance, and considerable differences in starting premises if not in stated positions.

Benefits. The “benefits” BTG was also charged with addressing a number of high-priority and contentious issues. Union members were committed to avoiding any benefit reductions, improving the dental plan, and eliminating a number of cross-regional and cross-occupational differences in pension benefits. Management members of the BTG were instructed by CIC leaders to avoid any increases in defined pension plans but to consider inaugurating a defined contribution pension plan, if the line could be held on the defined benefit plan. As the data in Table 2 indicate, the process was more traditional in this BTG than in any of the others. Only 35 percent indicated extensive use of the IBN processes. Substantial time was spent in caucus, and progress was slow. The day before the BTG process was to be completed the parties still had not resolved their major issues. In an effort to make progress, BTG members agreed to meet for dinner to discuss their process. Over the course of the dinner several participants spoke in highly emotional terms accusing their counterparts of not listening to them and not hearing their interests or their determination to represent the concerns of their constituents. This dinner discussion provided the cathartic release of tensions that was needed to allow the parties to accelerate progress on the last day and to reach a consensus set of recommendations. A rather traditional process was used the last day to resolve their differences. Co-leaders of the group agreed that proposals would be presented and listened to in their entirety prior to any discussion, and the two sides caucused extensively to process and debate proposals and to shape counterproposals. Once agreement on the broad outlines of a recommendation was achieved the parties delegated smaller subgroups to translate them into specific proposals and language. Not surprisingly, the participants in this BTG rated their process as much more distributive or traditional and were significantly less satisfied (58 percent), with their process for generating agreement than were participants in the other BTGs.

The contrasting dynamics of these three BTGs illustrate the strengths and limits of IBN tools for dealing with integrative and distributive issues. The “performance improvement” group—similar to the other five BTGs that worked on problems of shared interest—made substantial use of IBN processes and generated recommendations that would eventually become the most prominent postcontract partnership initiative: the formation of joint labor management unit based teams throughout the organization. In the attendance BTG, labor and management representatives came to the group
with strong and conflicting positions and constituency expectations. It took a creative reframing of the issues and skilled facilitation and trust-building experiences to transform the negotiations to a more interest-based process. Ultimately, a solution emerged that no one had thought of coming into negotiations. Yet, as will be seen below, the regional director who had sent his representatives to negotiations with very specific recommendations around a new sick-leave policy strongly resisted the solution that the attendance BTG fashioned. Thus, the attendance BTG not only demonstrated that IBN can be used to transform a positional or highly distributive issue into one where those at the table are convinced they have identified a mutually acceptable or beneficial solution, but that novel solutions might require additional negotiations—away from the table—when leaders with veto power resist IBN-generated proposals. This raises the challenge of how to deal in negotiations with parties on both sides who are not at the table and not involved in the interest-based process. Finally, the benefits BTG demonstrated more than any of the others the limits of IBN when parties enter with strong positions on economic agenda items, see significant long-term issues at stake, and are subject to close monitoring and control by superiors and/or constituents outside of those at the negotiating table. In this case, IBN played a limited role.

**Phase II: CIC Negotiations.** After the BTGs had completed their work, the CIC met for two weeks of negotiations. The goal was to complete negotiations of the contract in the first week, leaving a week for drafting contract language and tying up loose ends before the Coalition’s union delegates were scheduled to convene to review the agreement. Initially, the problem-solving, deliberative manner of the BTGs carried over to this phase, using a standard procedure: the co-leads from each BTG presented their recommendations, followed by discussion, a sense of the meeting poll, and then a consensus vote. The tenor of these discussions was decidedly less positional than would be the case for traditional negotiations at the main table. In fact, it was often hard for an observer to tell, without checking the identity of a participant, whether a union or management person was speaking. For example, as the dialogue below illustrates, union representatives were voicing concerns similar to management around the issue of ensuring effective implementation of key provisions of the proposed agreement.

*Hospital Manager:* We should be talking about structure, how to move the Partnership forward, how to reward people. On the Permanente side, what will be the commitment to department-based teams?
Union Rep: We need a timeline; if not, nothing will happen.

Union Rep: Department-based teams should be uniform in terms of principles, with local tailoring.

Problem solving and a thorough discussion of tough issues characterized many sessions. An example of this occurred around the issue of backfill; namely, ensuring that there would be adequate replacement staff so that employees could take time away from their work for partnership activities. Agreement had been reached that more resources would be committed to staffing so that representatives could attend partnership meetings during work hours. The principle already was in place; however, the problem was how to make it happen on the front lines. Again, in the discussion it was hard to distinguish a management voice from a labor voice.

Mgmt Staff: For the start, we need to do what I would call “gap analysis” so we can include the requirements for backfilling in the budget.

Hospital Mgr: This will be much harder on the Permanente side than hospitals.

Union Rep: Will assembling funds for backfilling cut into resources available for wages and benefits?

Hospital Mgr: Backfill has to be worked into budgets.

Union Staff: Considering all the joint staffing that is involved, who will do this?

Hospital Mgr: Does backfilling as a subject get us into the bigger issue of joint staffing?

Union Rep: We should be trying to solve this problem right now, and come up with something that can be implemented this fall.

Union Rep: This will not be easy. Rates have already been set for 2006, but perhaps the budget cycle is still open.

Physician Rep: Many of the changes that we want can be done with better scheduling.

Union Rep: I find what we are working on here is a good concept, really good.

Throughout the deliberations, the participants used a frank sharing of concerns, illustrating a working rapport. The discussion of how to deal with the multiple roles that union stewards perform in the partnership illustrates this type of interchange.

Union Rep: We are proposing the concept of Contract Administrator—one person per thousand members. We will rotate these Contract Administrators, and it will free up stewards to work in a partnership way.

Union Rep: Our stewards have been schizophrenic, and are always torn between being a good partner and being a strong representative.
HR Staff: Let me say that our HR consultants face the same dilemma, e.g., working on grievances and traditional matters, and at the same time reaching out to become a partner.

The intensity of the discussions increased as the parties began taking up issues where their interests clearly diverged. Still, discussions focused on substantive concerns without either union or management representatives voicing positions or demands. For example, the dialogue over the recommendations of the “service quality” BTG regarding minimum requirements for promotion illustrates the tension that arose over whether to base promotions on seniority or on management’s desire to select employees who demonstrated competence in delivering high-quality service.

Union Rep: I wonder about the objectivity of tests. I’m having a hard time saying that for internal transfers we require a minimum level of service. I cannot stand in front of 8000 members and say that seniority will not get you the transfer if you do not meet minimum qualifications of service.

Mgmt Rep: As long as we have objective measures, it should be all right.

Union Rep: Why not emphasize OJT?

Mgmt Rep: For employees on the inside, they should always be working on service skills so we should be able to establish a go/no-go for an inside transfer.

Mgmt Rep: I want to be able to select the best employee, not the most senior. I have a problem if what is good for the new employee (the minimum qualifications regarding service) is not good for the internal employee.

Union Rep: I’m in favor if we put it in the job description and are specific about how it is measured, especially in terms of ongoing evaluations.

Mgmt Rep: We should be using the technical plus behavioral competence, and if we have teams doing interviewing, it should be OK.

Another instance involved refining the nature of labor’s involvement in decision-making. Here a breakthrough occurred in terms of understanding decision making in a partnership environment.

HR Staff: Are we talking about involving labor through the department-based teams in all aspects of the business? For example, payment of bills?

HR Staff: The report from the Red team sounds to me like they are advocating co-management.

Hospital Mgr: We need to have an off-line discussion about what we mean by integration and the elimination of parallel structures.
Union Rep: We want to be involved, but not to co-manage.

Union Rep: We are not talking about co-management. We are talking about co-leadership.

In sum, the process for this phase of negotiations followed IBN principles, which helped the parties articulate their interests and fashion consensus solutions to problems. However, work became more difficult as the group turned to the contentious issue of employee attendance and the sick leave program.

Renegotiating Attendance Recommendations. Toward the end of the first week, the co-leaders decided it was time to take up the recommendations of the attendance BTG. As the quotes below illustrate, these discussions involved highly intense and emotional interchanges among CIC members, between CIC members and managers and physician leaders back in their regions, and at a crucial point among the highest-level executives and medical directors.

Mgmt Rep: Attendance is the single most important issue for management in these negotiations . . . we won’t be able to achieve a national agreement without some movement on this. I don’t say this as a threat or an ultimatum, just my best read of the tea leaves and my attempt to be as open as possible.

Union Rep: So we have a reaction to your saying, “unless we have a culture change around attendance in one year, we’ll have to revisit this.” We can take this discussion forward, but it needs to be in a context of all our goals that haven’t been met yet.

Union Rep: Your saying “If we don’t get X we’ll back out”—which is what we are hearing now—this isn’t interest-based negotiating.

The issue of “ultimatum bargaining” came up later in discussions on attendance.

Mgmt Rep: How are we bargaining in an ultimatum sense?

Union Rep: I know one regional medical director who will pull out of the Partnership if this doesn’t happen. We’ve been hearing this for the past year.

Mgmt Rep: We hope you don’t feel that this is what we [the management negotiators] are doing.

Union Rep: No, but we are operating under that shadow.

As we noted earlier, building consensus for the attendance proposals required overcoming significant opposition from one of the medical directors. He indicated strong opposition to the BTG recommendations and instructed
his representatives on the CIC to propose his preferred alternative, a cut in sick leave from fifteen to eight days per year in return for a 2-percent wage increase. The management representatives on the CIC were reluctant to put this new proposal forward so late in the negotiating process. After considerable discussion, the management team decided to work with the BTG recommendations rather than risk a breakdown in trust with their union counterparts by appearing to back away from IBN principles and processes. But it took intensive internal and high-level management negotiations and a sidebar deal to share the risks and costs of the proposed approach to achieve the acquiescence of the medical director (most concerned with the attendance issues) to the negotiated agreement.

The time required to resolve this issue took a toll on the rest of negotiations. Not only did it put the CIC schedule far behind, but labor representatives were resentful of the time and attention they devoted to an issue of such importance to management. As a result, the first week of the CIC negotiations ended without taking up other aspects of the economic package.

**Deadline Bargaining.** One week before the deadline, negotiations moved from California to Atlanta for five days. Although initially these days were planned as a time to draft the final agreement, the economic package had yet to be negotiated. Indeed, the final days took the form of traditional deadline bargaining, with high drama, emotion, and extremely intense internal negotiations within both the management and union organizations.

**Day One: Developing Initial Proposals.** The first day was spent in separate union and management caucuses with each side working on their opening proposals for the economic package. Margolin tried to prepare the management caucus for what would likely be a new, more traditional phase of negotiations by telling the group that this week would be very different from the others.

We are under time pressure and now only getting into the guts of the economics. The interest-based process doesn’t lend itself to dealing with this part of it, but we should still hold onto what we’ve learned. But it’s important to remember that they will and we will get more positional.

Despite Margolin’s speech, many people on the management team appeared unprepared for the switch to more traditional bargaining that she forecasted. While all of the union officials on the Coalition side had extensive experience in bargaining, many on the management side had never been involved in negotiations and up to this point had understood bargaining from start to finish as adhering to interest-based principles.
There were divisions within the management caucus that reflected the differences in market conditions across the different regions, and similar divisions existed in the labor caucus. Discussion of what to include in the union’s opening offer was free flowing and disorganized, as each participant introduced a particular issue he or she wanted considered. Rather than presenting a realistic first offer, this proposal lumped in everything that the Coalition hoped to achieve, with everyone treating the Coalition’s opening on economics as a “wish list.”

Evening Updates: Internal Bargaining at Work. Margolin and other key members of the management team held phone call conferences every evening with the regional presidents group (RPG) and KPPG, updating them on the negotiations. On the first evening call, Margolin reported that while economic proposals had not yet been exchanged, there would likely be a sizable gap between management and union positions. RPG and the KPPG members voiced strong concerns about the impact of negotiations on future budget and financial projections, and they stressed the need for regional differences in across-the-board wage increases. Leaders from Southern California made it clear they wanted a less costly settlement than Northern California.

As these phone conversations continued, frustration increased among the management team members in the room. It was clear that there was no consensus within management over either what management should initially propose or what they should stick to as their bottom line for the economic package. After the call ended, members of the management that had participated in the call vented their frustrations. One captured the sentiment in the room succinctly: “They (top management) just don’t get it. Here we are trying to get this done and they are still trying to control things without knowing what will work and what is totally unrealistic.”

Day Two: A Proposal and Response. Much of second day of the final week was again taken up with separate management and union caucuses. After lunch, management worked on drafting an initial proposal. In midafternoon, diCicco asked to see Margolin privately. After about ten minutes, Margolin returned to the management caucus and reported that the union Coalition was ready to present its offer and that she could only describe it as “extreme.” It would be totally unrealistic and way beyond anything anyone in the room expected the union to propose, even as an initial proposal.

The union and management negotiating teams came together in the late afternoon, and labor representatives presented their opening proposal. After the union’s presentation, Margolin gave a dramatic speech. She started by saying that she honestly didn’t know how to respond, and that
the proposal was shocking and stunning and radically different from what they had expected. She said it was like they (union and management) were living in separate universes. She also said that labor’s proposal missed the point of an interest-based process—that it did not address the interests of either side because if this proposal were accepted many regions would immediately go out of business and even California (the strongest region) would eventually get hit. She said if this was really where labor was in its thinking, then “I don’t see why we’ve bothered to engage 400 people over the past five months.” Then she talked about how she had worked harder on this than anything else in her life, and how she did not plan on coming back after Friday if things continued this way. Finally, she said it seemed foolish for management to present its proposal after what they just heard. The management team then left for caucus.

Reactions to this joint session were profound. A number of the management representatives were visibly upset by the union proposal and made comments such as, “We’ve been betrayed.” On the union side, several veteran negotiators were equally surprised by what they viewed as an overly emotional reaction by Margolin to their opening offer. Some thought that she was putting on a show for her team. Others thought this was just a normal start to real negotiations. As one union veteran put it: “So we’re high and they’re low; what’s the big deal? That’s bargaining isn’t it?”

The joint session and Margolin’s speech and its reaction provided the cathartic and catalytic effect of getting the tension building within each team out on the table. It sent a message that there was a great deal of work to be done if the parties were to get an agreement by the deadline.

Post-Cathartic Recovery. Early that evening a small group of union and management representatives met and each person talked about the reactions (shock at labor’s proposal and shock at management’s response). Margolin and diCicco decided it was best to take this conversation public, and asked their teams to reconvene in a joint session at 10 p.m. Managers talked about how they took the interests of both sides into consideration while labor didn’t seem to care about Kaiser. They criticized labor for not prioritizing any of the BTG recommendations, for the huge equity requests, for proposing increases in benefit plans when union member surveys showed members were happy with their benefits across regions, and overall for presenting a plan that added up to a 23 percent increase in the first year. Labor talked about what they saw as a breakdown in communication (they weren’t aware they were supposed to prioritize) and countered the argument that they didn’t care about Kaiser as an organization. Most ended their remarks by saying they thought they could still come to agreement.
Day Three: Management’s Initial Proposal. On Wednesday morning management made its opening proposal to the union. The presentation was short. As one management negotiator described it: “It was as ridiculous (low) as the union’s (high).” Labor asked lots of questions after the presentation. The fundamental issue was why the offer was less than in 2000. One union leader made a comment that sounded like an ultimatum: “Kaiser took some risks five years ago and it proved successful. If Kaiser isn’t willing to take risks this time around, then we’re not willing to take the risk of a long-term contract.” This comment referred to the fact that the economic settlement in 2000 was viewed by many as “generous” but given the improvement in operating performance during the intervening years, the union viewed the “investment” as having paid off.

When the union Coalition met in caucus to discuss the management proposal, this same union leader opened by saying: “Now is a time to draw a line in the sand. We need to give them the opportunity to change—see if the political will is there—and if we need to we can extend bargaining.” For the first time there was open discussion of the possibility of the union walking out of bargaining.

What was happening outside the room during these caucuses was as important as what was happening in the room, as Margolin and a small management team met several times with a small group of union leaders. She then used some of the private information from these sessions to suggest to her full management team what might be possible and acceptable. After Margolin suggested changes in their offer, there was resistance from several management team members—indeed, discernable splits among management present at the table were evident. One key leader said that if it were up to her, she wouldn’t sign the contract. Discussion also turned to the question that had surfaced in some previous management conversations: Should they continue with national bargaining? Margolin pointed out that many of the regions would fare worse if national negotiations broke down and each region went back to separate local negotiations (as had been the case before 2000).

Internal Management Negotiations—Building to a Crisis. That night’s phone calls with the RPG and KPPG turned out to be as dramatic and intense as any internal management discussion any of us, researchers and management participants alike, had ever experienced. Margolin noted that while progress was being made there were still considerable differences between labor and management proposals and that she needed a clear authorization from top management on the amount of money available to deal with the issues of central concern to the union. The conversation then began to heat
up as various KPPG members voiced their concerns when told the money already on the table would not be sufficient to get an agreement. Southern California leaders wondered aloud whether they would be better off negotiating separately. Others on the phone call indicated that they could not see how they could meet their financial goals if they agreed to what the union was proposing. KPPG members suggested changes to the most recent proposal. These suggestions were not well received by the members of the management bargaining team. They saw it as second guessing their judgments. At one point Margolin put the phone on mute and said to her colleagues in the room: “Somebody has to tell them this is not a picnic.”

Bargaining team members pointed out that they were using their best judgments and that the Coalition had modified proposals considerably in the past day. Others pointed out that negotiations are inevitably a back and forth process and that the KPPG leaders simply had to trust that the senior managers sent to negotiate were doing the best job possible. Several KPPG members reiterated their concerns about reaching an agreement that would allow them to meet their budget objectives and to reflect market differences across the regions. Bargaining team members responded by noting they had indeed gotten labor to accept the need for some differentials but that there was no way to move labor off the view that they should at least settle for what they did in the 2000 contract.

After considerable back-and-forth dialogue, KP CEO George Halvorson summed up the options: Go forward as is; Negotiate separate contracts with each union, or; Stay with a national contract except that Southern California Medical Group goes it alone.

He went on to say:

I’ve seen organizations with labor unrest and the cost of labor wars is horrible; they undermine morale. It is also a tough time to argue we are poor. If we are going to argue that then let’s get back to traditional bargaining about work rules, etc. The peace we have had with the partnership has been golden. I sympathize with concerns expressed about absenteeism and quality but instead let’s think of what we can do with labor and use this as an opportunity to make change.

After more heated exchanges Halvorson asked Margolin, “What do you need to get this done?” After hearing her response he polled each of the KPPG members to see if they were willing to authorize the amount Margolin thought would be needed and got agreement to go forward.

**Push to Agreement.** Thursday, the movement toward a final agreement began in earnest. diCicco began the morning union caucus by outlining on a flip chart what he saw as a potential framework for an agreement. There
was considerable discussion of his outline. At the same time a number of side conversations were occurring among key management and union leaders. One critical conversation took place on Thursday that various people referred to as the “balcony talk,” where key members of the two teams discussed the allocation of equity adjustment monies across the regions and conditions that would govern a midterm wage reopener.

When union leaders returned to their caucus and presented the results of this side conversation, non-SEIU union leaders exploded, as they believed that SEIU was only addressing its own interests at the expense of the others. This led to long discussions of how to rearrange the economic package to address the equity concerns of the other unions. At one point Margolin cycled back to reiterate that there was no more money available—management’s best offer was now on the table. It was up to the Coalition to find ways to allocate it equitably.

Meanwhile, members of the management negotiating team were getting more and more upset, having to endure long periods waiting for the union Coalition’s response to their last offer. Some were threatening to give up and leave. Frustrations were high. The deadline for calling union delegates—due to arrive the next day for the contract ratification vote—had passed. It was now moving into the middle of Friday night.

A final obstacle to an agreement then developed. Those who were drafting language governing equity adjustments ran into a problem with allocating funds to regions outside of California. After several hours of back and forth discussion of what to do, a breakthrough suggestion was made by one of the union delegates to set up a fund—allowing monies to be allocated by joint labor and management agreement. The drafting team thought this would work. Having overcome this final hurdle, at 3:30 a.m. Saturday, only hours before the first union delegates would be arriving in Atlanta, the parties declared they had reached a tentative agreement. The union delegates approved the terms of the new agreement and forwarded it to the membership for ratification. The new contract was accepted by a large majority.

While the parties reached agreement at the self-imposed deadline, a major accomplishment given the increasing number of contracts today that are not settled until well after the deadline (Cutcher-Gershenfeld, Sleigh, and Pil 2006), some significant loose ends remained to be settled. The allocation of equity monies as between California and the other regions needed attention and many details of the Taft-Hartley Trust Fund to support training needed to be settled. In fact, these matters required several months of post-settlement negotiations before the 2005 round could be viewed as “done” and copies of the agreement printed and distributed.
Significance of the Agreement

The agreement’s provisions called for a first year across-the-board increase of 5 percent for Northern and Southern California, Colorado, and the Northwest and 4 percent for the other regions. The second and third years of the agreement called for 4 percent across-the-board increases in Northern and Southern California, Colorado, and the Northwest and 3 percent in other regions. A wage reopener was scheduled to take place in year three to set the across-the-board increases for years four and five of the five-year contract. A targeted 3 percent per year was established for performance sharing improvements, continuing the process and levels negotiated in the 2000 contract. The agreement also called for a workforce development fund, equity adjustment monies, and monies set aside for designated hard-to-fill positions.

From the Coalition’s standpoint, the economic dimensions of the settlement achieved some important objectives—reducing differentials across regions for people doing the same work; addressing equity issues; avoiding reductions in health or pension benefits (during a time when this has been a common feature of bargaining in so many other negotiations around the country); continuing the principle of performance sharing; and creating a trust fund for training.

KP’s management was successful in maintaining several key principles and achieving a balance between the centralization and decentralization imperatives: having wages still tied to regional/local market conditions, holding the line on increases to the defined benefit pension program, developing a defined contribution pension program, securing union commitment to creating a flexible benefit program, putting money into hard-to-fill positions, designing a new attendance program, outlining the principles for unit-based teams and continuing the pay for performance program at the same level as in the 2000 contract.

Beyond the specific gains in the agreement, the 2005 negotiations are noteworthy in several other respects. First and foremost they provided the concepts and tools for moving the partnership into a more significant role in taking responsibility for delivering high quality medical care on a day-to-day basis. Unlike most negotiations that are limited to economic issues and leave matters of the workplace (such as productivity), to other players, these negotiations addressed implementation issues, especially in matters affecting teams and organizational outcomes. The presence of three physicians as both members of the CIC and leaders in their respective BTGs attested to this linkage between negotiations and operations.

Table 4 reports the degree of satisfaction with the agreement reported in the postnegotiation survey by labor and management representatives.
Union and management respondents both registered high levels of satisfaction with the effects of the national negotiations on the LMP (71 percent of union respondents and 62 percent of management respondents), use of problem solving and interest-based principles in negotiations (68 percent for union and 67 percent for management respondents), and the increased respect and trust gained between labor and management (about 60 percent for both labor and management respondents).

Significant differences in satisfaction are observed in union and management responses to the other questions. Overall, union representatives tended to be more satisfied with the process and the results of national negotiations than management representatives. Specifically, union members express more satisfaction regarding the reduction in wage differentials across regions. Management representatives were significantly less satisfied with the extent to which the settlement reflected regional differences or KP’s projected revenue and future competition, and their perception of the extent to which labor was willing to accept accountability for organizational performance. Thus, while the parties shared a satisfaction with the negotiation process, they differed in their satisfaction with the results. Postnegotiations interviews further confirmed another point: The ultimate effects and degree of

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**Table 4**

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<th>Item</th>
<th>Union</th>
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<td>Reflected different market conditions in different regions</td>
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<td>Increased respect and trust between labor and management</td>
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<td>Used LMP problem solving and interest-based principles</td>
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<td>Addressed both KP and workforce interests</td>
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<td>Increased management's accountability for LMP</td>
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* Differences significant beyond 0.05.

Source: Postnegotiations survey.
satisfaction of the parties will be determined by the extent to which the changes in practices agreed to and codified in these negotiations are implemented in a timely and effective manner. Thus, these negotiations are best understood as part of the larger, ongoing LMP in which they are embedded.

Bargaining Theory and IBN

What can this case tell us about how IBN relates to Walton and McKersie’s bargaining theory and about the practice of collective bargaining today? We will summarize the lessons we take away from this case by reviewing how the four subprocesses in the Walton and McKersie model interacted with IBN processes and tactics.

*Integrative Bargaining.* The IBN processes used in this case serve as a modern-day application of the concept of integrative bargaining. By focusing the first phase of the negotiations on subcommittees (the BTGs), the full benefits of integrative bargaining could be realized. For the most part the subjects assigned to the BTGs contained considerable common ground—the only exception being benefits.

These negotiations could not have been conducted without the intensive work of the BTGs. It was in these subcommittees where the procedures of IBN were used to their fullest. And as noted earlier, participants in BTGs that made the best use of the IBN methodology were the most satisfied with the process and the extent to which the recommendations were incorporated into the final agreement.

As a result of extensive training, a joint data team, effective facilitation and strong leadership by the co-chairs, the BTGs generally were able to reach their recommendations by following interest-based procedures. The heavily reliance on the work of the BTGs in effect reversed the locus of activity between “front stage and back stage” (Friedman 1994) that is typical in traditional negotiations where the visible part of negotiations is characterized by distributive bargaining and the extent to which integrative bargaining takes place it happens off line. Here for most of the negotiations the front stage was occupied by integrative bargaining and to the extent that there was any back-stage dealing it occurred between key leaders and involved economic issues, i.e., distributive bargaining.

Significantly, the use of IBN tools provided a reinforcing link between the ongoing LMP and the 2005 negotiations. The extensive use of IBN processes by the BTGs was enabled in part by the high degree of trust that had developed among the key players. Throughout the negotiations we observed
numerous examples of the payoffs to the deep trust, open and honest communications, and mutual respect that the lead negotiators and other management and labor representatives carried over from their prior working relationships. This is one of the most important dividends of the parties’ decade-long LMP.

Presumably, the relationships developed among the many participants in the negotiations will strengthen the partnership as it moves forward. Illustrative of this is the comment made by one hospital administrator about the opportunity that the negotiations afforded for him to develop a strong relationship with his counterpart.

It’s all about relationships. I took the time during the negotiations to get to know the union leader from our region. We had some lunches. We had some away time from the CIC. I have an appreciation of where he is coming from. I actually believe that he has an appreciation of where I am coming from too. It’s not that we’re going to agree on every issue but I trust him and I would like to think he trusts me as well. I think that’s a big outcome from the 2005 negotiations.

The BTG phase of the negotiations (as with the work of all subcommittees) posed an important challenge for the parties; namely, keeping “things coordinated.” Without guidance subcommittees develop proposals that cannot be accepted by the main table leading to considerable frustration. Coordinating the work of the BTGs in order to avoid these disconnects between their recommendations and the realities present at the main table—and with the exception of benefits this task was handled effectively—was facilitated by having members of the CIC serving as co-chairs of the various BTGs. And this overlap also produced a substantial carryover of the problem solving approach to the early deliberations of the main table—even to some degree when economic items were addressed.

*Distributive Bargaining.* The process shifted to a heavy use of distributive bargaining for the final week of negotiations. Some elements of distributive bargaining had emerged during the CIC negotiations when the parties addressed the attendance issue. But in the final week when the agenda moved to the economic package, distributive bargaining dominated. The union’s opening offer was extremely high; management’s was extremely low; and neither side expected that the final settlement would be close to either of these initial positions. These positional tactics elicited strong emotional responses within both labor and management teams that, when surfaced, illustrated the close connections between attitudinal and distributive subprocesses.
Significantly, the surfacing of the tension was instrumental for moving the distributive process along. By registering management’s deep disappointment and anger over what was viewed as a break from the integrative-interest-based tone of bargaining up to that point, the management chief negotiator signaled that a pivotal stage had been reached in the negotiations. The option was to deal with these feelings explicitly by making progress in negotiations or risk a breakdown in the talks. In the absence of the high level of trust that the parties had built up through years of working together in the partnership and in the IBN processes up to that point in negotiations, a breakdown in negotiations would have been likely. Because of their mutual trust, the parties were able to continue communicating informally and to structure a means for coming back together, allowing members of both negotiating teams to express their feelings, and then to move on to the task of closing the gap between their stated positions.

Looking back at the dynamics that unfolded over economic issues it is possible that convergence might have been fostered more effectively by early agreement on standards for comparison. Interest-based negotiations are sometimes referred to as “principled negotiations,” meaning that issues that prompt the taking of positions can be resolved more efficiently by applying principles—in this case, the application of criteria such as wage increases in comparable negotiations, ability to pay, and budget projections. Nevertheless, even employing the best tools of interest-based bargaining the handling of economic issues always will pose challenges and in these negotiations labor remained suspicious right to the end of the external labor market salary studies KP was using.

Even though the final stages of negotiations resembled traditional bargaining, some fundamental differences were evident. No strike vote was taken and the deadline that the leaders selected was positioned to fall several months ahead of the actual expiration of local and national agreements. In fact, the overall design and schedule of meetings for the 2005 negotiations had been carefully thought through by the planning team that started its work a year before negotiations were due to begin.

Intra-organizational Bargaining. The intense intra-organizational bargaining that took place within both management and union organizations/coalitions as the deadline approached affected the negotiations process as the Walton and McKersie theory predicted. The interrelationships among the negotiation subprocesses that played out in these final stages can be illustrated in several ways. First, the pressure of the looming deadline and the strong distributive stance of both union and management teams provided the pressures needed to force a resolution of internal differences.
Within management, the union’s strong initial position could be used by the management bargaining team to communicate to KPPG members that insisting on a three-way regional division of wage increases, holding back money needed to deal with equity issues, and mandating across-the-board increases that were less than what had been agreed to in 2000 would produce a breakdown in negotiations. Conversely, until these internal differences were resolved, management could not modify its initial position or move toward a more integrative, problem-solving mode in formal or informal negotiating sessions. On the union side, the strong emotional stance of management to the union’s initial proposal was needed to drive the process of internal union prioritizing and negotiating over how to distribute the equity adjustment money that would become available. At one critical moment, the management chief negotiator had to be called into the union caucus room to convey clearly to the union team that the best and final offer was on the table and that no more equity money was available; the Coalition would have to figure out how to allocate the money within this fixed amount. Conversely, the existence of these deep divisions within the Coalition clearly required management to offer sufficient funds to allow the union negotiators to resolve their internal equity issues.

One other topic requires attention: the communication dilemma presented by IBN; specifically, the need to keep constituents informed and aligned with expected outcomes. This issue is especially pertinent on the union side of the table. Rank-and-file members often view the closeness of their leaders inherent in IBN with suspicion (Friedman 1994). The stage of the IBN process that creates the most difficulty in this respect is generating options. Members need to know the agenda and issues but if brainstorming of potential solutions is to be effective subcommittees (in this case the BTGs) must be free to bring forward ideas that may not be feasible in the last analysis. If rank-and-file members are too conversant with the content of subcommittee deliberations, unrealistic expectations can develop and/or members of the subcommittees will feel constrained by pressures from constituents.

A balance between these two realities was achieved in these negotiations. Frequent briefings, progress reports, web postings, and hotlines provided the members with sufficient information to keep them informed while at the same time the 400 participants in the bargaining process operated with considerable discretion and space for exploring options without necessarily committing to them.

**Emotions and Attitudinal Structuring** As Fisher and Shapiro (2005) suggest, emotions played a key role in these negotiations. Specifically, trust (and distrust) intersected and influenced all phases of bargaining. Clearly the
base of trust that had developed among those who had worked together over the years in the LMP enabled the high degree of problem solving observed in the BTG processes. It also enabled the chief negotiators to continue to communicate in off-line meetings throughout the process, especially during the tense final days of hard bargaining. The base of trust also was used strategically to enable the cathartic release of tension without leading to a walkout after the union coalition presented its first economic proposal. In contrast, the distrust that existed among some members of the union coalition and among some members of the management negotiating team and higher-level decision makers slowed the process of intra-organizational bargaining and limited the ability of the parties to use purely interest-based processes. The pressures of hard distributive bargaining and the looming bargaining deadline could only finally overcome these internal substantive and emotional differences.

Summary and Implications for Research on the Bargaining Process

In summary, what we observed in this case was a mixture of interest-based and traditional positional negotiations, influenced by and interacting with intense intra-organizational conflicts and bargaining and the surfacing periodically of tensions and strong emotions that were kept from imploding the negotiations by the strong base of trust. IBN worked best and was used most extensively on issues where the parties shared common concerns. In this way it could be viewed as simply a way of operationalizing or applying the concept of integrative bargaining, albeit by using contemporary IBN tools such as reframing issues, joint research and information sharing, brainstorming, and joint development of options and consensus-based solutions. With respect to the attendance BTG, IBN tools were able to find an integrative solution (for those at the table) on a highly divisive issue wherein the parties entered the process with fixed predetermined positions. In this case, however, the integrative solution ran into significant opposition from a key and powerful constituent (a regional medical director). Ultimate resolution of the attendance issue required a mix of IBN and traditional intra-organizational bargaining. Distributive bargaining, complete with classic positional tactics worked best for dealing with the issues where the parties’ basic interests were in deepest conflict and, importantly, where chief negotiators were faced with deep and difficult-to-resolve conflicts within their organizations. The pressures of a deadline and the reality of hardened positions by the other party were essential to resolving these internal differences sufficiently to allow compromises in the final days and hours of bargaining.
Thus, at least in this case, IBN did not replace traditional practices of negotiations. Neither did IBN operate only on purely integrative issues. Instead, what we observed was a mixed process that drew on the best features of both conventional positional and newer IBN approaches to negotiations. Indeed, in this case the IBN processes that preceded the consideration of economic issues may have enhanced the efficiency with which distributive bargaining that took place as the deadline approached. The trust engendered as a result of the intensive work of the BTGs helped the parties achieve closure after the unsettling opening round on economics. Similarly, the chief negotiators could draw on the mutual trust they had built up over years of using interest-based processes to solve problems in the LMP as they worked to revise internal expectations needed to close the gap between their initial positions on economic issues.

Is this case unique or representative of how collective bargaining is being practiced in other settings today? Clearly the size, complexity, and resources devoted to this case are larger than most bargaining relationships. The scope of issues addressed went well beyond the standard wages, hours, and working conditions to address issues such as quality and methods for delivering medical services. The negotiations took place in the context of an ongoing LMP. These features may limit the generalizability of the case, yet as noted earlier, over half of union and management negotiators report they have used interest-based processes in recent years. Thus, there appears to be significant experimentation with these principles and tools occurring in contemporary collective bargaining that would support the type of empirical research needed to determine the generalizability of the results reported here. Indeed, we hope presentation of this case sparks renewed interest in research on collective bargaining.

References


