

ALIGNING TRADITIONAL COLLECTIVE BARGAINING WITH NON-TRADITIONAL LABOR RELATIONS

**Principal Authors:
Rob Kirkner
And
Steve Sharfstein**

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Rob Kirkner, Program Manager, Employee and Labor Relations, U.S. Department of Commerce and Steve Sharfstein, Director of Labor Relations, U.S. Environmental Protection Agency are cited as the “Principal Authors” of this paper to recognize the time and effort they gave in drawing together their own ideas and the collective thoughts of senior labor relations practitioners who attended two *ILRF* retreats in Shepherdstown, WV in July 2000 and January 2001. However, the views set forth in this papers are not necessarily those of any one individual or of any Federal department or agency.

Aligning Traditional Collective Bargaining with Non-Traditional Labor Relations

Collaboration and consensual methods of employment dispute resolution have emerged in federal sector labor relations as an alternative to traditional, rights-based collective bargaining. In many circumstances, such alternative methods of negotiation result in both more acceptable agreements and a more satisfying process for reaching agreement. However, in other circumstances, the more traditional statute-based method of negotiations remains the more relevant approach. A workshop at the Labor Relations Directors' Retreat in Shepherdstown, West Virginia focused on "What works? When? and Why?" The group's goal was to examine and discuss the variables which should be taken into account in guiding parties to identify when alternative approaches are most likely to be successful and when traditional approaches have the better likelihood to result in a mutually satisfactory outcome.

The need for reflection on the partnership/traditional bargaining dichotomy is the direct result of President Clinton's 1993 Executive order (E.O. 12,871) on Labor-Management Partnership. While in no way superceding the basic Federal Service Labor-Management Relations Statute, which has regulated federal collective bargaining since 1979, the Executive Order directed parties to establish partnership councils, conduct training on interest-based bargaining and alternative dispute resolution, and engage unions in pre-decisional involvement (PDI). In many respects, implementation of the Executive Order required a seminal change in the historic role of union and management.

In January 2001, President Bush issued a new Executive Order (E.O. 13,203) which repealed the prior Order and eliminated the mandatory partnership provisions that had been in effect. However, the new Order in no way eliminated the parties' voluntary option to exercise the type of labor-management process, including collaboration, that is most effective for them. In fact, the repeal of the prior Order makes it even more important for the parties to strategically analyze the collective bargaining relationship and be able to recognize circumstances which determine whether a traditional or collaborative labor-management interaction is more likely to be effective. Experience since 1993 has demonstrated that factors such as organizational culture, the parties' relationship, the personality of union and management leaders, and the specific issue being addressed dictate which form of labor-management interface may be most appropriate.

Knowledgeable practitioners have recognized that non-traditional strategies will never invalidate the need for traditional collective bargaining in some situations and in some bargaining relationships. Not only does the Federal Service Labor-Management Relations Statute remain in full force and effect, but parties understand that the foray into pre-decisional, collaborative arrangements never waives the right of either side to revert to the statutory process for traditional negotiations. Traditional collective

bargaining is the bedrock of union-management relations. The late John Sturdivant often observed that partnership was a high-wire act which had both significant rewards and risks. It was the presence of a safety net in labor parlance, the collective bargaining agreement, and the rights granted by the Statute, that enabled the parties to practice their high-wire routine to the point where the rewards were maximized and the risks minimized. Even in very mature bargaining relationships with established partnerships, experienced labor practitioners understand that traditional collective bargaining will continue to operate side-by-side with non traditional approaches. Those who embrace collaboration as a panacea for all situations may be creating unrealistic expectations. The prevailing view is that better outcomes are more achievable when the engagement strategy fits the situation at hand.

The Need for Alignment

Federal departments and agencies are experiencing change at an ever-accelerating rate. Faced with shrinking budgets, smaller workforces, and rising demand for performance excellence and accountability, successful agencies are continually upgrading their business and employment practices to keep pace with technology advances and shifting priorities. In unionized environments, changes can be integrated only after management and unions have resolved all relevant employment issues. Collective bargaining, whether by traditional or non-traditional means, is the system for implementing those workplace changes.

The engagement strategies used by management and labor to effectuate change must serve a dual purpose. While the negotiation should yield results that are acceptable to both parties, the process must be consistent with the parties' relationship needs. Typically, labor relations effectiveness is apparent in outcomes that sustain or improve organizational performance, enhance worker satisfaction, and improve the parties' relationships with each other and their constituents. If engagement strategies are not synchronized with the totality of circumstances, the parties are likely to experience high frustration with the process and low satisfaction with the outcome. Unrealistic expectations or the lack of a common understanding between the parties of the proper alignment of traditional and non-traditional approaches may weaken both substantive outcomes and the parties' relationship.

How then do the parties integrate these approaches? More specifically, what factors influence the determination to pursue a collaborative strategy and which militate toward use of traditional collective bargaining? Since no two labor-management relationships are the same and "no one size fits all," the parties are encouraged to regularly discuss and jointly decide how non-traditional and traditional strategies fit into their culture, the issues to be addressed, and the expectations of management and bargaining unit constituents.

Assessing the External Environment

Understanding the impact of external events is an important step in determining an appropriate strategy alignment. The most influential factors in the external environmental are national political imperatives and the policies of the national labor unions.

Although most agencies are under the executive branch, the actions of all three branches can have repercussions for Federal agencies and labor unions. As mentioned, labor-management partnerships flourished under the provisions of the 1993 Executive Order. Under the Order, and an October 1999 Memorandum reaffirming the principles contained in the Order, President Clinton put significant, and unprecedented, pressure on agency heads to change the historic way in which Federal labor relations was transacted. The Order provided a framework for the use of collaborative strategies, created managerial expectations for more collaborative labor-management dispute resolution, and imposed reporting requirements in order to provide a measure of accountability for Executive Order implementation.

Likewise, the 2001 Executive Order issued by President Bush has been interpreted as a sharp political rebuke of the partnership process and many agencies are citing the new political direction as support for curtailing prior partnership activities and collaborative interactions. By directing agencies to rescind policies and documents implementing the prior Executive Order, other than formal collective bargaining agreements, the political dimension of the external environment again influences the parties' approach to the choice of labor management strategies.

Other national political actions have also had an influence. For example, the congressionally mandated funding cuts that resulted in the loss of 360,000 Federal jobs since 1992 stalled the momentum toward partnership and collaboration in some organizations that were forced to layoff employees. In some instances, unions could not be perceived as collaborating in the laying-off of their bargaining unit members. In a few cases, employees sacked unions that were perceived as too management friendly in favor of unions that were more confrontational in protecting employees against such management actions. The judicial branch has also had an impact on aligning traditional and non-traditional bargaining. When several Federal circuit courts upheld the Federal Labor Relations Authority decision that the Executive Order did not constitute a binding election to negotiate over permissive subjects under Section 7106(b)(1) of the Statute, the balance between mandatory versus permissive use of traditional and non-traditional methods was established. This has had a major impact, suggesting more of an *ad hoc* determination regarding alignment of processes than a legally determined one.

Although most union locals function with relative autonomy, the general policies of the national labor organization may influence a union's willingness to engage in non-traditional strategies. For example, one prominent national union did not endorse the

1993 Executive Order on partnerships based on the belief that its members preferred a traditional, rights based approach to collective bargaining. As a result, many locals declined employer invitations to engage in strategic partnerships, placing limits on the use of non-traditional strategies by both parties. On the other hand, the strong support for partnership and other non-traditional strategies from the major unions which participated in the National Partnership Council, led to the formation of many successful partnerships at agency levels and below.

Organizational Considerations

Organizational influences on the parties' choice of engagement strategy include cultural, structural, and systemic factors. Cultural considerations may be manifested in management's attitude toward the union, the degree of union involvement in decision-making, and the union's attitude about its own role in the organization. Non-traditional strategies, like PDI and partnership, are used with greater effect in organizations with a strong history of union involvement in policy and decision-making. Perhaps this is because the parties' persistent and proactive engagements have shaped a more complete understanding of each other's interests. In many agencies, unions view themselves not only as the employees' voice with management but also as advocates for the organization's viability and agents for positive change. Collaborative strategies will not be as successful in organizations where unions have not been involved in substantial policy issues and labor relations interactions have been grievance focused. Likewise, organizations with a culture of authoritarian management practices and low worker involvement will struggle with non-traditional approaches to labor interactions. In these situations it is likely that trust has not been nurtured and both parties perceive the union's role as management's natural adversary.

Organizational politics on both sides can influence strategy alignment. Lack of top-level management or union support for non-traditional strategies will make it difficult for parties with a history of adversarial dealings to transform their relationship and build the basic trust needed to support processes, such as partnership, PDI, and ADR. Similarly, alienation of mid-level managers or union officials can undermine the parties' efforts to expand the use of non-traditional strategies. Constituent attitudes also color organizational politics and influence the choice of strategy, particularly among the unions who, because of their democratic nature, must act in consonance with the general will of their members. Engaging in a collaborative strategy can be risky for unions with dues paying members who favor a more confrontational approach with management. This is very often the case in circumstances where a relatively low percentage of employees pay dues and are active in the internal management and leadership of the union.

Variations in collective bargaining structure also must be considered in choosing a strategy. Some agencies have a single bargaining unit covered by one collective bargaining agreement. Others may have an agency-wide agreement but it covers several independent bargaining units. Still others have multiple units and agreements.

For example, the Department of Defense has hundreds of independent bargaining units operating at local levels, sometimes having several units at a single installation. Given these variations, some parties have established labor-management partnerships at multiple organization levels, with partnership councils functioning above and below the level of exclusive recognition. Partnership structures range from one organization and one union to multiple organizations and multiple unions. Some organizations with multiple unions have entered partnerships with some but not all unions representing their employees. These structures invariably impact on the alignment of traditional and non-traditional processes. The more that multiple independent bargaining units exist, the less likely it is that alternative, PDI involvement is practical on national level policy decisions.

Depending on the structure, change implementation may be delayed as issues are "partnered" (or opened for PDI union involvement) at higher levels and then "partnered" again or negotiated at other organization levels. If employee acceptance or durable solutions are among the parties' bargaining objectives, then a non-traditional approach may be more effective even though reaching an agreement may take longer. On the other hand, a traditional, more rights-based strategy may be better suited to circumstances where the parties' interests are in direct conflict, local parties are reluctant to cede their independent legal rights, or swift implementation is the overriding objective.

Historic Labor Relations Considerations

Factors within the scope of the labor-management relationship have a direct, causal impact on the alignment of traditional and non-traditional approaches. The manner in which the parties' deal with conflict, the nature of the issues before them, and their expectations with respect to process and outcomes are among the most prevalent.

A history of dealing with conflict in an adversarial manner will predispose the parties to resolving disputes using competitive, traditional strategies. While the wear and tear of prolonged adversity may eventually give rise to a desire for a more collaborative approach, negative baggage will constantly intrude on their good intentions, causing them to backslide into behaviors that have become ingrained. Sometimes, the parties carry so much excess baggage that leadership on both sides has personalized disputes and remain fixated by making each other pay for perceived historic wrongs. Assessing blame is not an attribute associated with partnership or collaborative approaches to conflict resolution.

It has been accurately said that labor relations is very much a human enterprise. Arguably, the success of a labor relations system depends more than anything else on how well the union and management representatives get along with each other and with their constituents. Indeed, their success as representatives often depends on their ability to maneuver in the "no-man's land" between constituents and adversaries. Collaborative strategies will develop faster and more fully where the parties have the

support of their constituents and a history of getting along on a personal level. The parties come to know what to expect of each other and develop a certain measure of trust and mutual reliance. Poor interpersonal relations breed acrimony and frequently lead to the rapid escalation of otherwise innocuous disputes.

With a strong, sustained commitment (and facilitator assistance), parties can transform an adversarial relationship into one that relies on joint problem solving and consensus in resolving disputes. However, parties with a history of cooperation will find the move toward collaboration somewhat easier. As they gain momentum, their goal should be to expand the use of non-traditional strategies and reduce their reliance on traditional methods of dispute resolution. But even in matters where the parties feel the need to revert to a traditional approach, their "new" problem solving skills can enrich the old process.

Ad Hoc Issue Considerations

The nature of the issue is probably the most influential factor in determining the most appropriate choice of strategy. Generally, there is a positive correlation between compatibility among the parties' interests and their ability to reach mutually satisfying outcomes using non-traditional means. Typically, non-traditional processes like interest-based bargaining (IBB) and ADR yield better outcomes when the underlying interests are either shared or relatively compatible. There is a greater likelihood of mutual gain when interests are not in conflict, and it is not necessary for one party to benefit at the expense of the other. Examples of compatible interests often involve quality of work life issues, such as alternative work schedules, flexiplace, and diversity considerations. On the other hand, the parties are more likely to adopt or resort to a competitive strategy when interests are in conflict. For example, issues which involve budget reductions or large scale organizational reorganizations are often ones where management has unpopular decisions to make and unions must be responsive to negative employee perceptions of the decision. Anytime the union is faced with a decision which will negatively impact a segment of its population, it is hard-pressed to become a partner. Traditional methods, where it can be perceived as resisting the negative organizational change, will enhance its credibility as protecting unit employees.

Although the parties may agree to use collaborative strategies in all situations except where their interests are in direct conflict, the supplemental use of PDI and other collaborative strategies can help reduce the number of issues and minimize the potential for conflict even where interests are competing. Notwithstanding the approach that will be used, open communications and sharing of information can enhance the quality of decision-making even in matters where management has no bargaining obligation. At best, PDI and partnership may preclude a need for further bargaining. At worst, the parties have a preview of each other's concerns and can approach traditional bargaining in a less personal, hostile manner.

Participant expectations for fairness and a positive outcome also may influence the parties' choice of strategy. The parties will favor the strategy that promises a better outcome. Traditional collective bargaining is better suited to situations where, in order to move the organization forward, one side must win at the other's expense. Although a powerful opponent may prefer a traditional approach as a means of leveraging its power or protecting its rights, a non-traditional strategy may provide a means of neutralizing an opponent's potentially harmful power advantage. If the parties' bargaining strength is relatively balanced or they have agreed not to resort to power, then they may be more successful using a non-traditional strategy.

Conclusion

Consensual methods of employment dispute resolution and traditional collective bargaining will continue to exist as parallel systems in Federal sector labor relations. At the operating level, they will have to be properly aligned in order to serve agencies and unions effectively and deliver results that move the organization and labor relations forward. Just how they are aligned in an organization depends on the unique configuration of environmental, organizational, labor relations, and interpersonal factors. Proper alignment has to be addressed jointly by the parties from both a strategic and tactical perspective for the benefit of both. Knowing which approach meets both the specific issue at hand and the longer-term relationship interests of the parties is crucial to effective use of both traditional and non-traditional approaches. The failure to make smart decisions about labor-management processes will retard effective and timely decision-making, increase the parties' frustration with a bilateral decision-making process, and possibly damage any legitimate opportunities to recognize the fruits of collaborative, alternative approaches to negotiations and dispute resolution.

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