

International Training Centre of the ILO, Turin

JOINT UNION / MANAGEMENT NEGOTIATION SKILLS

**TRAINING FOR SOCIAL PARTNERS ON
NEGOTIATION SKILLS
4 DAY WORKSHOP**

TRAINING PACKAGE

MAY 2009

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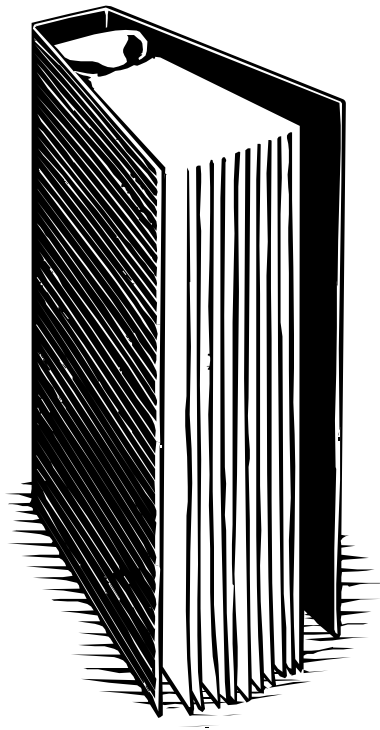
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PARTICIPANT'S WORKBOOK

INTRODUCTION

This training package was designed by John Brand and Felicity Steadman for the Social Dialogue Programme of the International Training Centre of the ILO (ITC/ILO). It is based on their experience over many years of practice in facilitating negotiations between unions and management, mediating disputes and training in South Africa and abroad.

It has been tested by the ITC/ILO in a number of courses conducted in Africa, Asia and the Pacific, Europe, Latin America and the Caribbean. It has been translated into French, Spanish, Portuguese and Bahasa Indonesia and adapted to specific contexts.

OUTCOMES STATEMENT

- **Context:** in the capacity as a member of a negotiating team
- **Skill:** be able to negotiate effectively and achieve mutual gain outcomes
- **Assessment criteria:**
 - That the obstacles to good negotiation are fewer;
 - That the preparation for negotiation is more effective;
 - That the negotiation process is more productive;
 - That the outcomes of negotiation are of greater value and of mutual gain;
 - That the behaviours of the negotiators are more conducive to optimum outcomes.

WORKSHOP OUTLINE

1. INTRODUCTION

- 1.1 Welcome and introduction
- 1.2 Language
- 1.3 Housekeeping
- 1.4 Background to the workshop
- 1.5 Outcomes statement
- 1.6 Participant introductions and objectives
- 1.7 Training methodology
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- 1.9 Workbook
- 1.10 Groundrules for the workshop

2. PROMOTING SOCIAL DIALOGUE

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7. THE MANDATING DYNAMIC

8. PREPARATION FOR MUTUAL GAIN NEGOTIATION

9. GUIDELINES FOR MUTUAL GAIN NEGOTIATION

10. PRACTICING NEGOTIATION SKILLS

- 10.1 Listening
- 10.2 Paraphrasing
- 10.3 Helping people save face
- 10.4 Dealing with anger and emotion
- 10.5 Dealing with ego
- 10.6 Generating options
- 10.7 Negotiation role-plays

11. PRACTICING NEGOTIATION SKILLS (cont)

- 11.1 Negotiation role-plays
- 11.2 Behaviours of effective negotiators

12. ILO CONVENTIONS AND RECOMMENDATIONS

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14. CLOSURE

- 14.1 Reflections
- 14.2 Evaluation

PROMOTING SOCIAL DIALOGUE

What is Social Dialogue?

According to the ILO working definition, Social Dialogue includes all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. It can exist as a tripartite process, with the government as an official party to dialogue or it may consist of bipartite relations only between labour and management (or trade unions and employers' organizations), with or without indirect government involvement. Social dialogue can be informal or institutionalised, and often it is a combination of the two. It can take place at the national, regional or enterprise level. It can be inter-professional, sectoral or a combination of these. The main goal of social dialogue itself is to promote consensus building and democratic involvement among the main stakeholders in the world of work. Successful social dialogue structures and processes have the potential to resolve important economic and social issues, encourage good governance, advance social and industrial peace and stability and boost economic progress.

The Enabling Conditions of Social Dialogue

In order for social dialogue to take place, the following must exist:

- Strong, independent workers' and employers' organizations with the technical capacity and the access to relevant information to participate in social dialogue;
- Political will and commitment to engage in social dialogue on the part of all the parties;
- Respect for the fundamental rights of freedom of association and collective bargaining;
- Appropriate institutional support.

The legal framework for social dialogue

Since 1919 the ILO has adopted a broad range of international labour standards. The ILO's standards take the form of international labour Conventions and Recommendations. The ILO's Conventions are international treaties, subject to ratification by ILO member States. Its Recommendations are non-binding instruments typically dealing with the same subjects as Conventions, which set out guidelines to orient national policy and action. Both Conventions and Recommendations are intended to have a direct impact on working conditions and practices in every country of the world. They are adopted each year at the Conference of the ILO. Member states are represented by their government and workers' and employers' organisations at this conference. All conventions are open to ratification by the member states.

International labour standards are to be submitted to the competent national authority as the international body adopts them. Ratification of ILO Conventions is an expression of solidarity with other member states in agreeing that international Since the declaration on fundamental principles and rights at work was adopted in 1998, it is expected that all members, even if they have not ratified the conventions in question, have an obligation to respect, promote and realise, in good faith and in accordance with the ILO-Constitution, the principles concerning the fundamental rights which are the subject of those conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining ;
- (b) the elimination of all forms of forced or compulsory labour ;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

Convention 87 (adopted in 1948) concerns freedom of association and protection of the right to organise. Convention 98 concerns the application of the principles of the right to organise and to bargain collectively (adopted in 1949).

**ILO conventions and recommendations
related to social dialogue**

Convention No. 87 concerning freedom of association and protection of the right to organise (1948)

Convention No. 98 concerning the application of the principles of the right to organise and to bargain collectively (1949)

Recommendation 119 concerning termination of employment at the initiative of the employers (1963)

Convention No. 135 concerning protection and facilities to be afforded to workers' representatives in the undertaking (1971)

Recommendation No. 143 concerning protection and facilities to be afforded to workers' representatives in the undertaking (1971)

Convention No. 144 on tripartite consultations to promote the implementation of international labour standards (1976)

Recommendation No. 152 concerning tripartite consultations to promote the implementation of international labour standards and national action relating to the activities of the ILO (1976)

Convention No. 151 concerning protection of the right to organise and procedures for determining conditions of employment in the public service (1978)

Recommendation 159 concerning procedures for determining conditions of employment in the public service (1978)

Convention No. 154 concerning the promotion of collective bargaining (1981)*

Recommendation No. 163 concerning the promotion of collective bargaining (1981)

Recommendation No. 92 concerning voluntary conciliation and arbitration (1951)

THE ROLE OF TRAINING IN PROMOTING SOCIAL DIALOGUE

When we talk about training, we generally consider three levels of influence: *knowledge*, *skills* and *attitudes*.

Training makes it possible to expand *knowledge*, to make new concepts and theoretical tools accessible, which can help us to analyse facts and situations in a rational way.

Training can develop new *skills* or strengthen and improve existing capacities and competencies.

Training can also influence *attitudes* and behaviour. Training can help to open minds, stimulate different approaches, raise awareness and generate commitment.

These three levels can easily be related to the promotion of social dialogue.

Expanding Knowledge

Social dialogue does not operate in a vacuum. It has to address significant issues if it is to be effective and if the social partners are to develop confidence and trust in the process of social dialogue. All those involved in social dialogue (workers, employers and government) should be adequately prepared for it. To be able to discuss, to analyse, and to take decisions, they should have a profound knowledge of the subject matter. Inadequate knowledge means inadequate capacity to negotiate and to represent the interests of the different groups concerned.

And training can be an important tool to this end.

Appropriate training can strengthen their capacity to participate actively in the decision-making process related to economic and social policy.

Training can help to expand knowledge and vision of social dialogue. An international organization like the ILO is a unique observatory of trends, experiences and pilot approaches. Training can facilitate the access to this evolving international heritage of knowledge by promoting cross-fertilization, sharing of experience, systematic case studies and lessons learned. The best way to learn is from each other's experience. Training can provide a conducive environment and a structured framework that will facilitate such exchange.

Strengthening Skills

Social dialogue is not only a matter of knowledge and will-power: there are techniques, methods and skills that can be extremely useful for establishing effective social dialogue. Training in the whole field of techniques for prevention and resolution of labour conflicts - in particular concerning negotiation, conciliation and mediation - can provide substantial support to the advancement of social dialogue.

Promoting open attitudes

The third level is the most difficult to manage, but also the most important in social-related fields.

You may know *what* to do and *how* to do it, but if you are not deeply convinced about it, about *why* to do it, you will never do it. The same applies to social dialogue; you can have all the skills, competences and knowledge necessary to promote

social dialogue, but to promote it actively, the most important element is still missing. We refer to *awareness*, a deep conviction in the imperative need for sustainable policy and decision making to be a participatory process at all levels of society, from the national level to the local, enterprise, community, sector and branch levels.

Many governments are still reluctant to engage in a meaningful dialogue with social partners on key social and economic issues, and, in some countries, employers prefer to avoid collective bargaining with trade unions. In this context, social dialogue is an objective in its own right; tripartism and social dialogue are the keys to sustainable, equitable development, but there is a need for aware, committed people to promote and manage it.

Training, with appropriate methods and strategies, can influence not only the intellectual and practical capacities of participants, not only the acquisition of new skills and knowledge: it can also stimulate a deeper process of change. If the trainer/facilitator, in addition to be in command of the topics, is also *personally* convinced about the importance and value of social dialogue, he/she can have an impact on participants' behaviours and stimulate this change. Participants can open their mind to the value added represented by the adoption of a participatory approach to decision making and appreciate the significance of consultation and concertation. This all leads to changes in attitudes and, as a following step, to personal commitment in undertaking concrete actions to promote social dialogue.

OBSTACLES TO EFFECTIVE NEGOTIATION

Individually, and then in groups, record your responses to the following questions:

1. What do I do which stands in the way of effective negotiation?
2. What do others do which stands in the way of effective negotiation?

GROUP PROCESS GUIDELINES

- * appoint a facilitator;
- * appoint a scribe and a spokesperson to report back;
- * let each person in the group contribute an idea without interruption or discussion.
- * only allow questions for clarity.
- * capture the essence of each idea on flipchart;

TYPICAL OBSTACLES TO EFFECTIVE NEGOTIATION

- * not listening - not hearing
- * subjectivity
- * changing the subject
- * pre-judging
- * unrealistic expectations
- * not living by agreements
- * hidden agendas
- * high demands/low offers
- * few concessions
- * position taking
- * impractical agreements
- * lack of trust
- * inflexibility
- * dishonesty
- * confrontational dialogue
- * manipulation
- * emotions
- * complicated solutions
- * threats
- * ignorance
- * poor selection of negotiation team
- * interruptions
- * resistance to change
- * failure to explore needs and interests
- * lack of creativity
- * win-lose mentality
- * decision makers not at the table
- * history of adversarialism
- * language
- * talking at the same time
- * competition
- * unilateral process and groundrules
- * moving goal posts
- * poor timekeeping
- * inflexible mandates
- * divergent values
- * ulterior motives
- * pessimism
- * vagueness
- * power imbalances
- * lack of information
- * lack of senior leadership buy-in
- * inability to be objective
- * adversarial seating arrangements
- * stereotypes
- * failure to recognise common ground
- * rule bound
- * political agendas
- * lack of feedback
- * conflicting approaches to negotiation
- * lack of training
- * broken promises
- * impatience
- * poor problem solving skills
- * aggression
- * traditional negotiation skills
- * poor preparation
- * constituencies will not ratify agreement
- * lack of knowledge
- * lack of experience
- * history of unresolved conflict
- * premature mandating
- * premature resort to power
- * pressure of time
- * changing team composition
- * fears of co-option

HOW CONFLICT DEVELOPS INTO A DISPUTE

Read through the case study which follows and then individually, and then in pairs, record your responses to the following questions:

1. What is the basic underlying cause of the disputes between the parties?

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2. How did the disputes show themselves?

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3. What made the disputes worse?

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4. What tended moderate the disputes?

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CASE STUDY JOE AND FRANK

In June, the Company computerized its stores department. Joe, the chief shop steward and Frank, an active Union member, who were employed as stores' clerks, slowly taught themselves how to operate the computer terminals in the stores. They were keen to improve their skills and educational level. A year later, they had mastered the computer terminal in the stores and were performing the jobs of computer operators. They felt they should receive some recognition and maybe some additional remuneration.

Joe then approached the stores supervisor and asked that the Company re-grade him and Frank upward. The stores' supervisor, having been able to rely on Joe and Frank's skills, had not himself mastered the terminal. He feared that Joe and Frank were trying to supersede him, so he said he would look into the matter but notwithstanding numerous reminders to him, he did nothing.

Joe and Frank then approached the factory manager and demanded that he immediately re-grade them upwards. He said that he would consider their demand and come back to them. He spoke to the Company's general manager. His attitude was that recognition might have been due to Frank and Joe but that job grading was a management prerogative. He feared that if they talked to Joe as senior shop steward about job grading, this would set a dangerous precedent and would constitute a victory for the Union in its pursuit of employee control. Although the factory manager wanted to discuss the matter with the employees in order to find a satisfactory outcome the general manager decided that it would be best not to respond to Joe and Frank because any response would constitute a concession to negotiate about a management prerogative.

Joe and Frank eventually decided that if the Company were not prepared to re-grade them, then they would stop using the computer.

Joe and Frank were determined to pressurize the Company into giving them the recognition they demanded. They knew that the Company needed their computer skills and they believed that if they withheld them, the Company would be forced to submit.

On the first day of their refusal they received a warning for failing to use the computer.

When they continued with their refusal they were given a final written warning for insubordination. They continued their refusal and finally they were summoned to a disciplinary enquiry and after a full hearing they were dismissed for insubordination.

The employees at the Company were incensed. They believed that the real reason for the dismissal was that the Company wanted to get rid of the Union. They therefore stopped work and demanded Joe and Frank's reinstatement. The Company informed them that their work stoppage was illegal and that they would not talk to them until they returned to work. The employees did not heed management's request and began singing and marching in the car park.

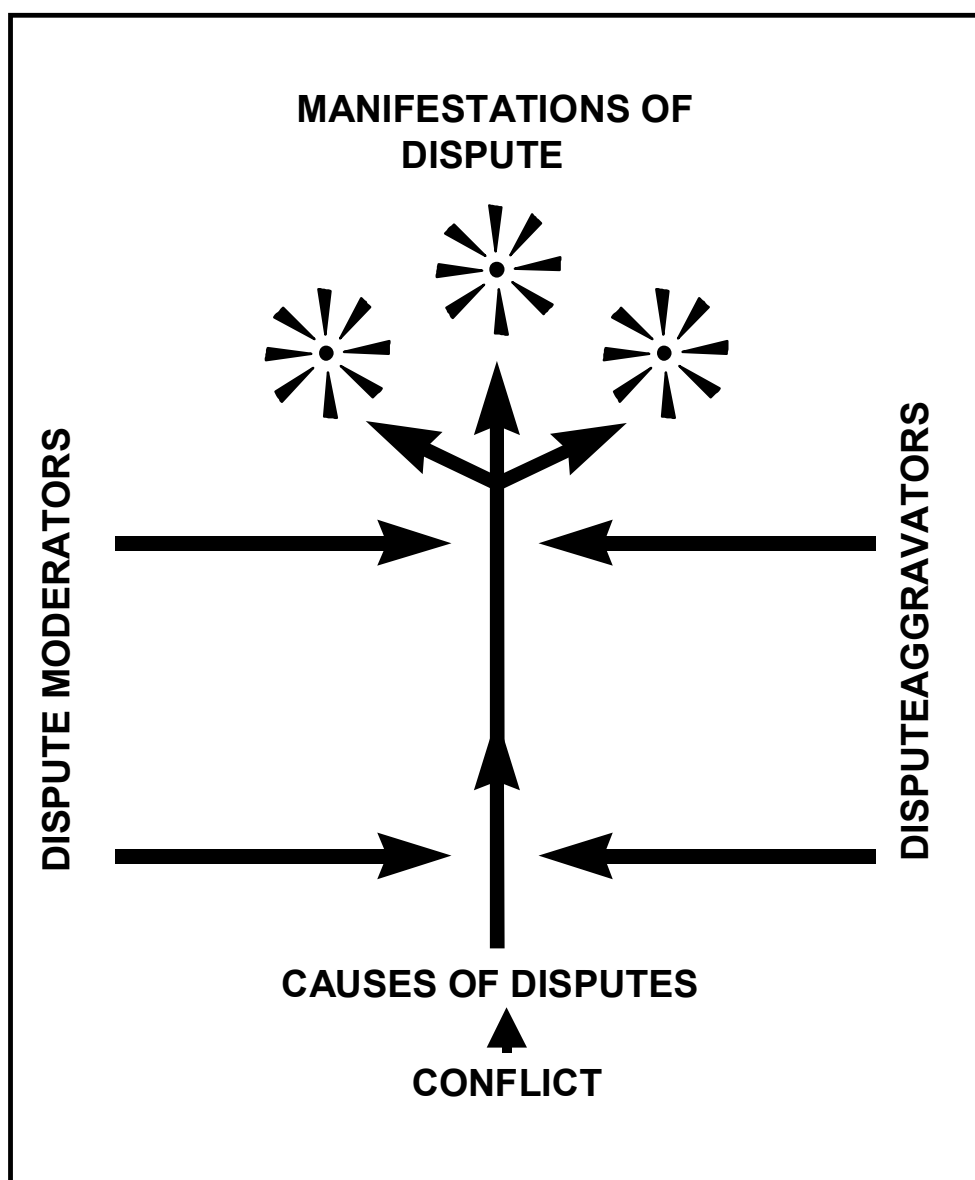
The employees continued with their strike the following day. The Company's lawyers suggested that they resolve the dispute by going to court for an interdict ordering the striking employees to return to work. The Company gave the employees an ultimatum to return to work. When they did not heed the ultimatum they were dismissed.

The Union was anxious not to lose its membership at the Company and it approached the Company. It suggested that the strikers be reinstated. The Company refused, and the Union then suggested that the case of Joe and Frank be taken to an independent arbitrator for determination. When the Company refused, it launched a consumer boycott against the Company with the support of various sympathetic political and church

organizations. The Company felt morally obliged to stand its ground against the Union and its supporters because it believed that their real intention was either to destroy it or to take it over.

The employees on the other hand believed that the Company was determined to rid itself of the Union. They felt Joe and Frank's original demand was reasonable and they felt that they had to fight to the bitter end for their jobs.

THE CONFLICT PATH



Handout continued**ELEMENTS OF THE CONFLICT PATH****Some causes of disputes***Interest disputes*

- are caused by actual or perceived competition over substantive, procedural or psychological interests.

Rights disputes

- are caused by disagreement about the interpretation or application of existing rights in laws and conventions.

Structural disputes

- is caused by unequal control, ownership or distribution of resources or by environmental or time constraints.

Value disputes

- may be caused by differing ideologies, religious beliefs, cultural norms and ethnicity.

Data disputes

- are rooted in lack of information, misunderstanding, or differences over the interpretation or relevance of data.

Relationship disputes

- are caused by breakdown in interpersonal acceptance, liking, communications and understanding.

Handout continued**TYPICAL DISPUTE MODERATORS AND AGGRAVATORS**

Several causes of disputes may be apparent in a relationship but the expression of this depends on the presence and influence of various intervening variables that serve to aggravate or moderate the conduct of the parties involved.

Aggravators

i.e. What makes disputes worse

- unrealistic expectations
- inaccurate perceptions
- past unresolved conflict
- distinctive strategies and tactics
- divided constituencies
- uninformed constituencies
- lack of tolerance
- lack of mutual trust and respect
- absence of agreed and effective conflict resolution skills, mechanisms and norms
- illiteracy, language barriers
- fear
- time limitations
- avoidance
- use of coercion
- stereotyping
- not listening, not hearing
- threatening
- poor communication skills
- lack of concern for another's needs
- paternalism
- discrimination
- absence of adequate procedures
- poor choice of process

Handout continued**Moderators*****i.e. What tends to moderate disputes***

- concern about needs and interests
- commitment to principles of good faith conflict resolution
- cohesive constituencies
- well informed constituencies
- acceptance of mutual legitimacy
- agreed and appropriate conflict resolution structures in place
- agreed conflict limiting norms
- effective communication skills
- exchange of information
- listening
- notification
- consultation
- negotiation
- tolerance
- early diagnosis of conflict
- post dispute analysis
- training
- acceptance of diversity
- socio-political stability
- sound collective bargaining and structure

Handout continued**Some manifestations of disputes***i.e. How does dispute show itself*

- dispute
- coercion
- sabotage
- boycotts
- strikes
- lockouts
- overtime bans
- work-to-rule
- go-slow
- boycotts
- demonstrations
- non-compliance with agreements
- dismissals
- excessive absence
- low productivity
- low morale
- insubordination
- assaults
- verbal abuse
- work stoppages
- murder
- intimidation
- increased waste
- withdrawal of benefits
- withdrawal of recognition
- blockades (e.g. truckers)

THE IMPORTANCE OF UNDERSTANDING HOW DISPUTES DEVELOP

Individually, and then in pairs, record your responses to the following question:

"In what way does an understanding of how disputes develop help a negotiator?"

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Handout**TYPICAL RESPONSES TO THE IMPORTANCE OF
UNDERSTANDING HOW DISPUTES DEVELOP**

It helps:

- To identify warning signals of a potential dispute
- To nip disputes in the bud
- To identify and focus on causes
- Not to deal only with manifestations of disputes
- To introduce and enhance moderators
- To address and eliminate aggravators
- To undertake post-dispute analysis
- To train all employees in dispute analysis and dispute resolution
- To recognise the importance of first line management and shop stewards in the management of conflict, and dispute prevention and resolution
- To realise that as disputes escalate the capacity to remain tolerant and impartial decreases

APPROACHES TO CONFLICT MANAGEMENT

Faced with a dispute parties have a number of strategic choices to make. In particular, they need to decide on the approach that they are going to take to resolve the conflict. There are a variety of broad approaches from which they can choose. For example, if they chose to negotiate, the broad approach that they would be adopting could be called consensus seeking.

Individually, and then in pairs, refer to the following case study and use it to record your response to the following questions.

1. What would you call the approach adopted by the union?

2. What would you call the approach adopted by the financial manager?

3. What would you call the approach adopted by the industrial relations manager?

4. What would you call the approach adopted by the general manager?

OVERTIME BAN CASE STUDY

In mid-wage negotiations the union representative threatens that the employees will embark on an overtime ban unless the employer takes the negotiations more seriously.

In a caucus the financial manager expresses the view that the employer should immediately seek a court interdict against the overtime ban.

The industrial relations manager says she thinks the employer should simply ignore the threat, as to respond may aggravate the situation.

The general manager disagrees. He suggests that the employer should go back into the negotiations with the union and raise the threat and try to get the union agree not to go ahead with it.

APPROACHES TO MANAGING CONFLICT
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1. Power

2. Rights

3. Avoidance

4. Consensus

**THE ORDER IN WHICH APPROACHES
TO CONFLICT MANAGEMENT ARE TYPICALLY USED**

Individually, and then in pairs, record your responses to the following questions:

1. In which order do you think the four approaches to dealing with conflict should be considered by parties, and why?
2. In which order do people typically consider using the four approaches to conflict management?

**SUGGESTED RESPONSES TO THE ORDER IN WHICH
APPROACHES TO CONFLICT MANAGEMENT ARE TYPICALLY USED**

1. Ideally, the approaches to managing conflict should be considered in the following order:

Consensus
Rights
Power
(Avoidance)

Some reasons for this are:

- * the extent to which the parties control the outcome of the conflict decreases in this order
- * the extent to which the parties are likely to be satisfied with the outcome decreases in this order
- * the extent to which the approach deals with the real causes of the conflict decreases in this order
- * the extent to which the parties are likely to comply with the outcome, decreases in this order
- * the extent to which the relationship between the parties may be damaged, increases in this order
- * the extent to which the real needs of the parties are dealt with decreases in this order
- * the extent of alienation of the parties increases in this order
- * the time and cost tends to increase in this order

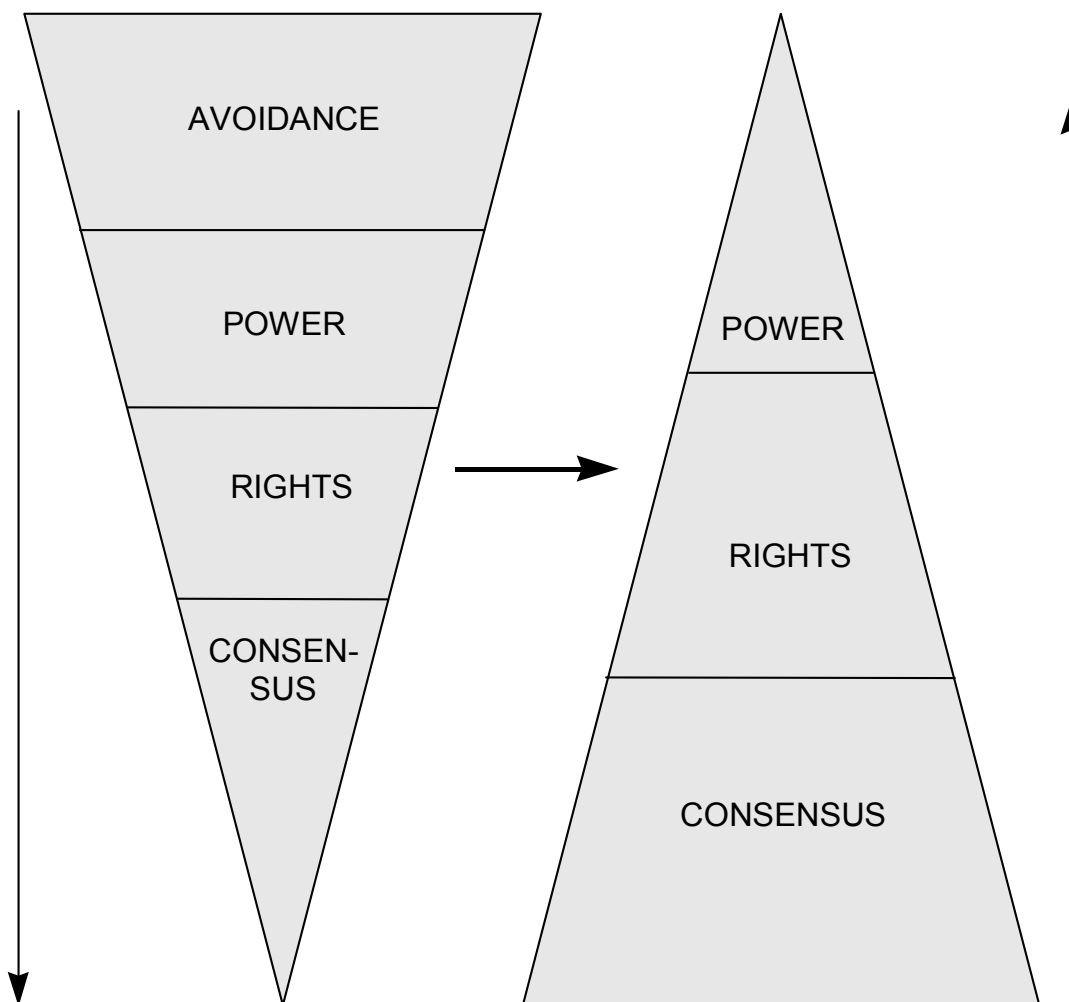
2. The four approaches to conflict management are often considered in the following order:

Avoidance
Power
Rights
Consensus

EFFECTIVE SYSTEMATIC CONFLICT MANAGEMENT

INEFFECTIVE SYSTEM

EFFECTIVE SYSTEM



INSTRUCTIONS FOR ROLE-PLAY

1. Read your brief carefully and understand it. If it is unclear to you, seek clarity from the trainer.
2. Do not create facts at variance with your brief. Stay true to your brief.
3. Get into your role. Do not stand outside of your brief.
4. Refer back to your brief regularly.
5. Do not let anyone else read your brief unless instructed to by the trainer.
6. Do not overact your brief. Be as realistic as possible.

**EXPERIENCING THE NEGOTIATION PROCESS
JOB GRADING ROLE-PLAY****BRIEF FOR THE UNION**

You represent the Union. You are to negotiate on three issues: the number of job grades in the Company; the time period for implementing a new job grading structure and the amount to be spent on training re graded persons.

The Union places greatest weight on a speedy implementation date because it is involved in great rivalry with another Union and must be seen to deliver swiftly on the re-grading issue. Ideally it would like to have regrading take place within six months but certainly not longer than 12 months. The Union would like to see the job grades reduced from 24 to 8, although it doesn't place much weight on whether it is less than 16 grades. It would like 200 000,00 Crowns to be paid by the Company for training but it places much less weight on these issues than on speedy implementation. It is therefore very flexible on the issues of the number of grades and on the cost of training.

You fear that the Company will respond opportunistically if you tell them how important early implementation is to you. You know that if you tell them they will say that rapid implementation would be very difficult for them but perhaps it could be arranged in return for a very small change in the number of grades and if very little is spent on training.

You therefore decide to be very careful in the negotiation and to downplay your interest in completion time and the amount to be spent on training. You also plan to exaggerate the low number of job grades you demand in the hope of slowly making concessions on that issue in return for a big gain on the implementation time issue.

The Company has told the Union and its members that a moderate implementation date of 18 months and a moderate amount of 25 000,00 Crowns spent on training in return for a small reduction in the number of job grades are barely possible and are very costly to it.

Negotiate the best deal you can with the Company.

EXPERIENCING THE NEGOTIATION PROCESS JOB GRADING ROLE PLAY

BRIEF FOR THE EMPLOYER

You represent the Company. You are to negotiate on three issues: the number of job grades in the Company; the time period for implementing a new job grading structure and the amount to be spent on training re graded persons.

The Company gives greatest weight to the number of job grades that it wants to maximise. It knows that the Union wants only 8 grades. The Company would ideally like the highest number of grades but it realises change is inevitable. It would therefore like to see as small a reduction from 24 grades as possible but to not less than 16 grades.

The Company is flexible in relation to implementation and it doesn't place much weight on whether it is 6 or 18 months although the later the better for it.

As to training it estimates that although providing 200 000,00 Crowns for training involves additional cost, it would ultimately pay off because employees would be multi-skilled. It therefore doesn't place much weight on what deal it gets on training or implementation. What it is concerned to do is limit the change in the number of job grades.

You know that if you let the Union know that you have much more concern with the number of job grades than with the date of implementation and the cost of training, you will have given up all your bargaining chips. The Union will, knowing its past record, initially demand a low number of grades, an early implementation date and full payment of the training costs of 200 000,00 Crowns.

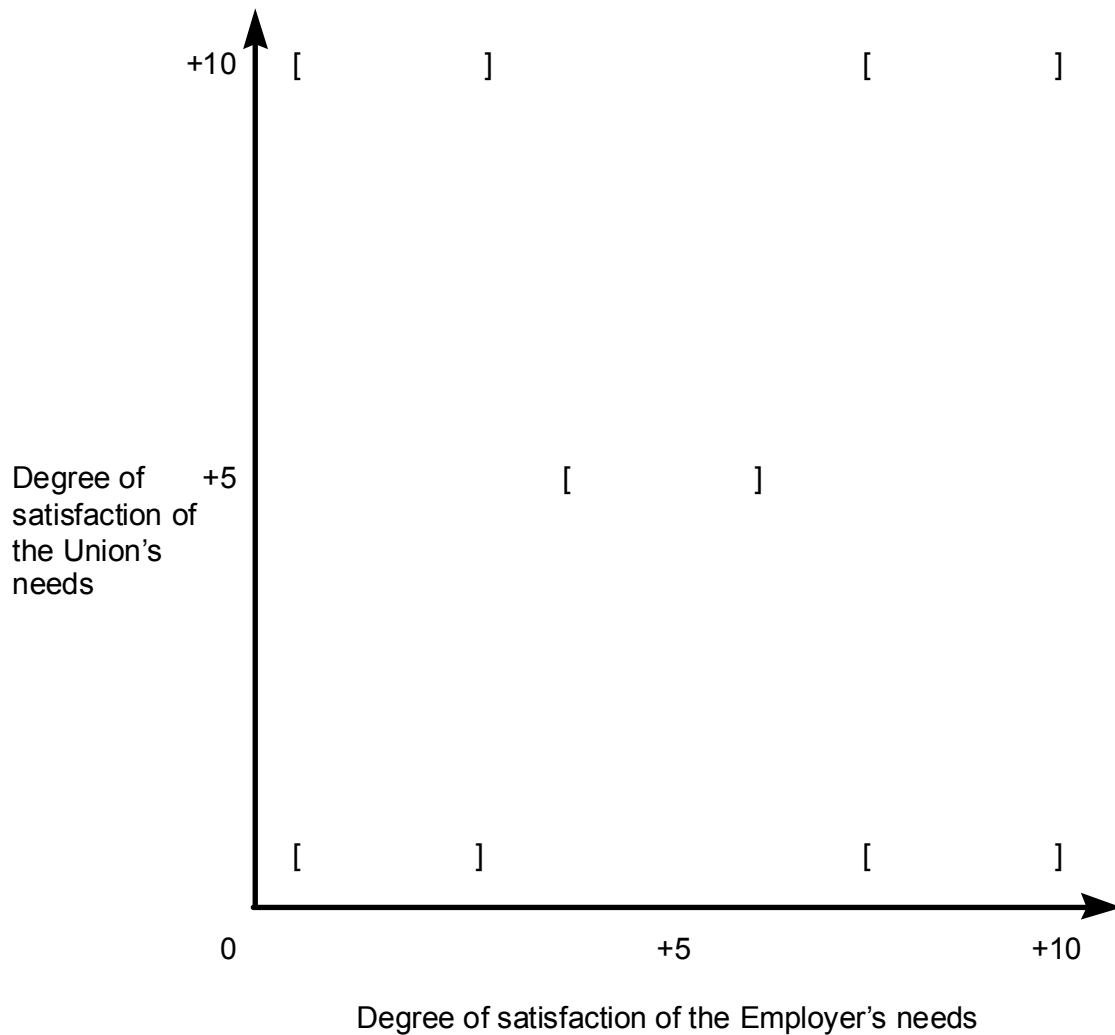
The Company has therefore decided to be very careful. In order to lower expectations, it has let the Union and its members know that a moderate implementation date of 18 months and a moderate amount spent on training of 25 000,00 Crowns in return for a small reduction in the number of job grades, are barely possible and are very costly to it. Your strategy is to concede slowly on implementation time for as little a change in the number of job grades as possible and in return for some small concessions from 25 000,00 Crowns on the amount to be spent on training.

Negotiate the best deal you can with the Union.

OUTCOMES IN NEGOTIATION

Individually, and then in pairs, read scenarios A, B and C and match the outcome of the scenarios with the marked positions on the graph below as well as in a word or two describe what you would call those outcomes.

Note: "10" is very satisfactory and "0" is totally unsatisfactory



SCENARIO A

In scenario A the trade unions hold a national strike in an attempt to prevent employers from using temporary labour. The strike lasts 10 days but collapses and the unions are forced to accept defeat.

The unions are very unhappy with the outcome and the employers are delighted.

Where should the outcome be located on the outcomes graph?

SCENARIO B

In scenario B the trade unions refer a dispute about temporary labour to the Labour Court alleging that the use of it amounts to an unfair labour practice under the Constitution. The Labour Court rules in the unions' favour and orders employers to cease the practice immediately.

The employers are very unhappy with this outcome and the unions are delighted.

Where should the outcome be located on the outcomes graph?

SCENARIO C

In scenario C the employers lodge an appeal against the Labour Court's decision to the Constitutional Court but the case takes 3 years to get to that Court. In the meanwhile many large multinational corporations sustain losses as a consequence of the Labour Court's order and decide to disinvest from the country causing significant job loss and financial loss to the employers.

Both the unions and the employers are bitterly unhappy with this outcome.

Where should the outcome be located on the outcomes graph?

APPROACHES TO NEGOTIATION

Individually and then in groups, read scenario D and:

1. Match the outcome with the marked position on the outcome graph as well as in a word or two describe what you would call the outcome.
2. Record what features characterized the negotiations.

SCENARIO D

In scenario D the unions and the employers enter into negotiations over temporary labour just before the Constitutional Court case is due to be heard.

The employers enter the negotiations with a demand that they be entitled to unrestricted use of temporary labour failing which more of them will disinvest from the country. The employers are in fact willing to make some concessions to the unions later in the negotiations. They have a mandate to agree that not more than 25% of an employer's workforce should be made up of temporary labour but they fear that if they tell the unions this, they will just get negotiated down from that.

The unions' negotiators counter with a demand that the employers accept the Labour Court decision and only employ permanent employees although they know they will have to make some concessions later in the negotiations. They have a mandate to allow an employer to employ at most 10% temporary labour. They fear that if they disclose this to the employers they will just get negotiated up from that.

The employers respond with anger at the unions' perceived intransigence and they threaten to get the government to intervene if the unions do not negotiate in good faith.

The talks are postponed and when they resume the employers offer to agree that not more than 40% of an employer's employees should be temporary labour. They argue that they have made a huge concession in order to demonstrate their good faith and they expect the unions to make an equally large move.

The unions respond that they know the employers' game and, solely to placate World Bank pressure for a settlement, they are prepared to allow employers to employ up to 5% temporary labour. They say that this is their bottom line and that it is "take it or leave it". The unions organise lunch time pickets and week-end street marches and covertly encourage a national go slow in order to put pressure on the employers.

The employers respond by threatening to walk out of the talks and they call on their members to dismiss workers who participate in go slows. They say that as a last gesture of good faith and notwithstanding the unions' bad faith, they would agree to 30% temporary labour. The unions respond that they will try to get a mandate to make a final offer of 10% temporary labour. They threaten the employers that they will call on their members to embark on all out strike action if agreement is not reached.

The talks are stalled for several months during which intermittent strike action takes place and many employers dismiss workers who participate in go slow action.

Eventually at renewed talks the parties settle on employers being permitted to

employ 15% temporary labour. Neither the employers nor the unions are happy with the outcome or the process and they secretly resolve to get even in time.

CHARACTERISTICS OF NEGOTIATION IN SCENARIO D
--

- Extreme opening positions
- Pre-determined mandates
- Negative perceptions
- Mistrust
- Adverserialism
- Untruthfulness
- Misleading statements
- Demands
- Concessions
- Exaggeration
- Demeaning people
- Insulting people
- Threats
- Use of power
- Walk outs
- Delay
- Negative fallout
- Unsatisfactory compromise
- Dissatisfaction with the process
- Foundations for revenge

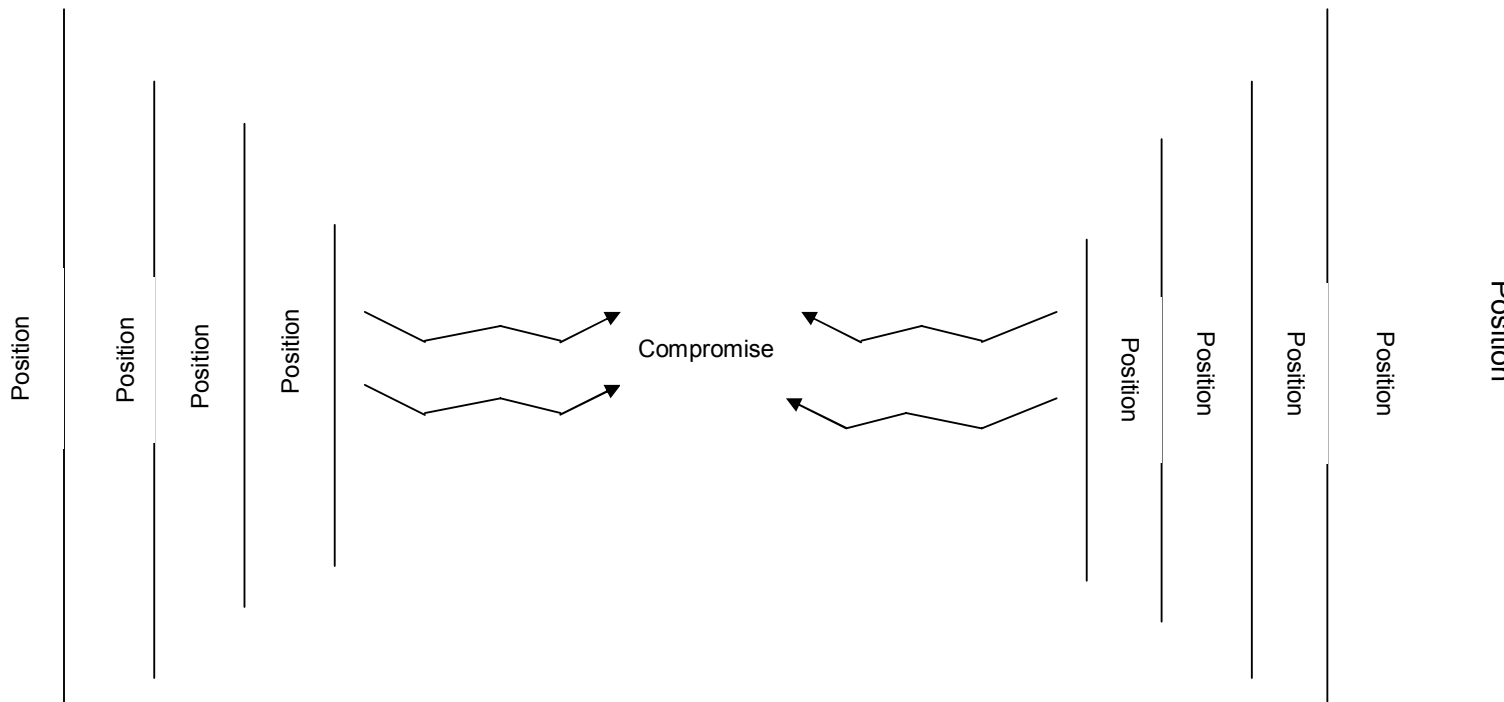
OUTCOME ASSUMPTIONS IN SCENARIO A
--

- Best Case: Win
- Worst Case: Lose
- Likely Case: Compromise

WHAT POSITIONAL NEGOTIATION LOOKS LIKE

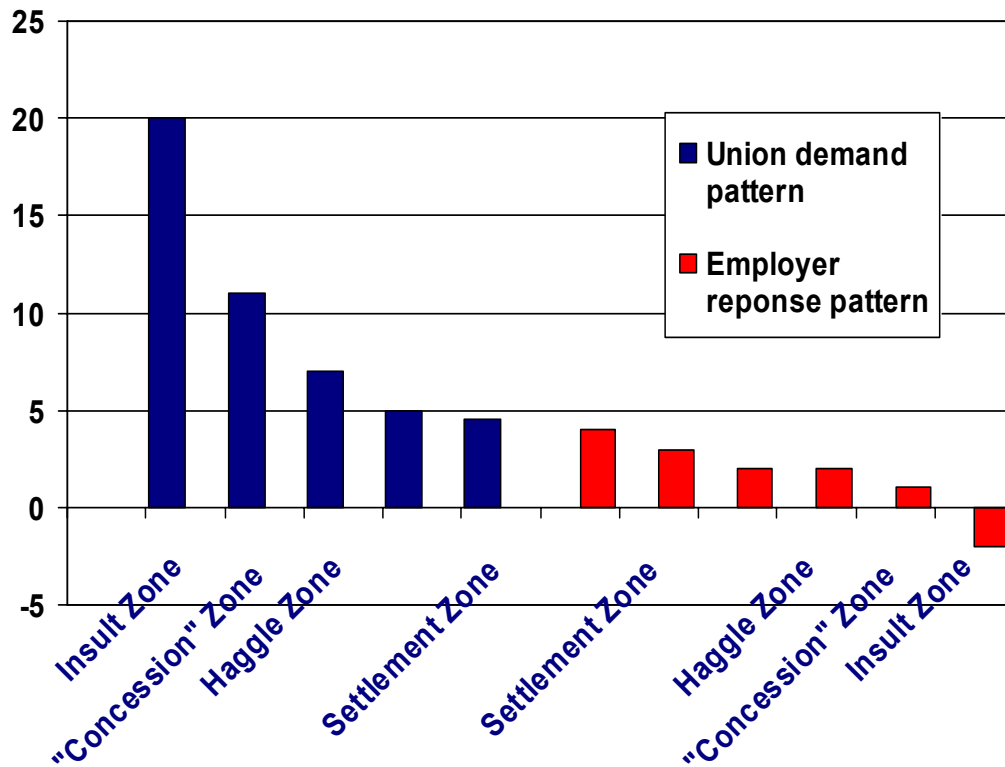
UNION

COMPANY



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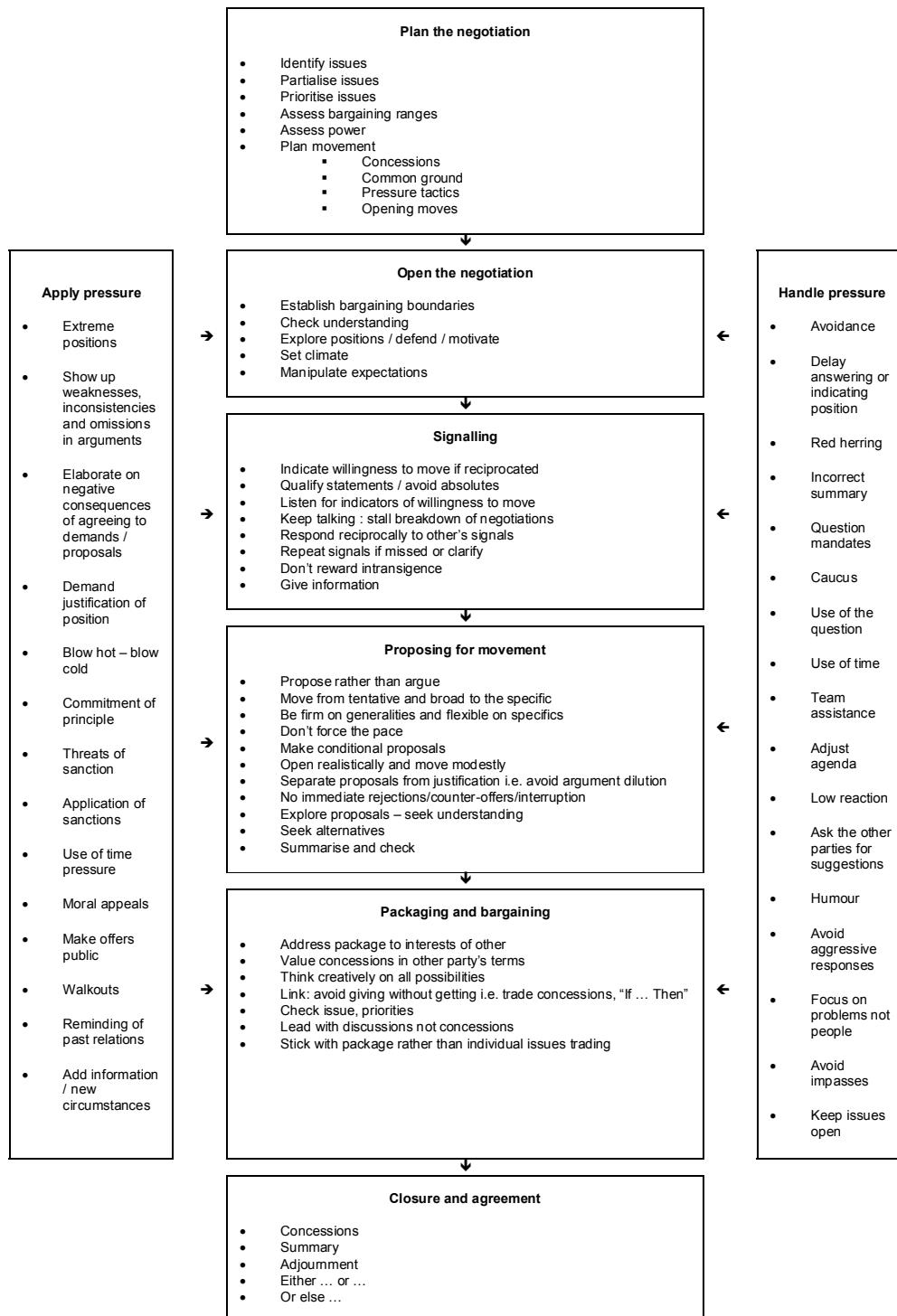
The stuff of traditional bargaining



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THE STAGES AND TACTICS OF POSITIONAL BARGAINING



APPROACHES TO NEGOTIATION (CONTINUED)

Individually and then in pairs, read scenario E and:

1. Match the outcome with the marked position on the outcomes graph as well as in a word or two describe what you would call the outcome.
2. Record what features characterized the negotiations.

SCENARIO E

In a frank and open discussion between the parties it emerges that the employers have a very strong economic need to employ temporary employees when they have pressure for production peaks and to lay those employees off during troughs in production. They also have a very strong need to employ temporary employees during emergencies and during shut-downs to handle maintenance.

It also emerges that the unions do not have a serious problem with employers employing temporary workers during peaks or during emergencies and shut-downs. They however have serious concerns about employers employing temporary workers on a permanent basis and on a large scale. They also are concerned that employers do not afford temporary workers the same terms and conditions of employment as permanent workers and are therefore able to erode worker rights by the use of temporary employees. The more they are able to do this the more attractive the use of temporary employees is to employers. Another major concern of the unions is that employers use the temporary nature of the employees' contracts to avoid the country's unfair dismissal legislation by simply refusing to renew temporary contracts. What angers the unions most is that many employers are using atypical labour to undermine the strength of the unions. The unions also raise their concern about unscrupulous labour brokers who employ temporary workers without complying with unemployment insurance, health and safety and revenue legislation.

The parties then brainstorm every conceivable solution they can think of for the problem. Both parties generate a list of possibilities which in combination address the employers' needs for flexibility for peaks, emergencies and shut-downs but which also address the unions' concerns raised during the negotiation.

After numerous exchanges between the parties they agree on the following agreement:

Handout continued

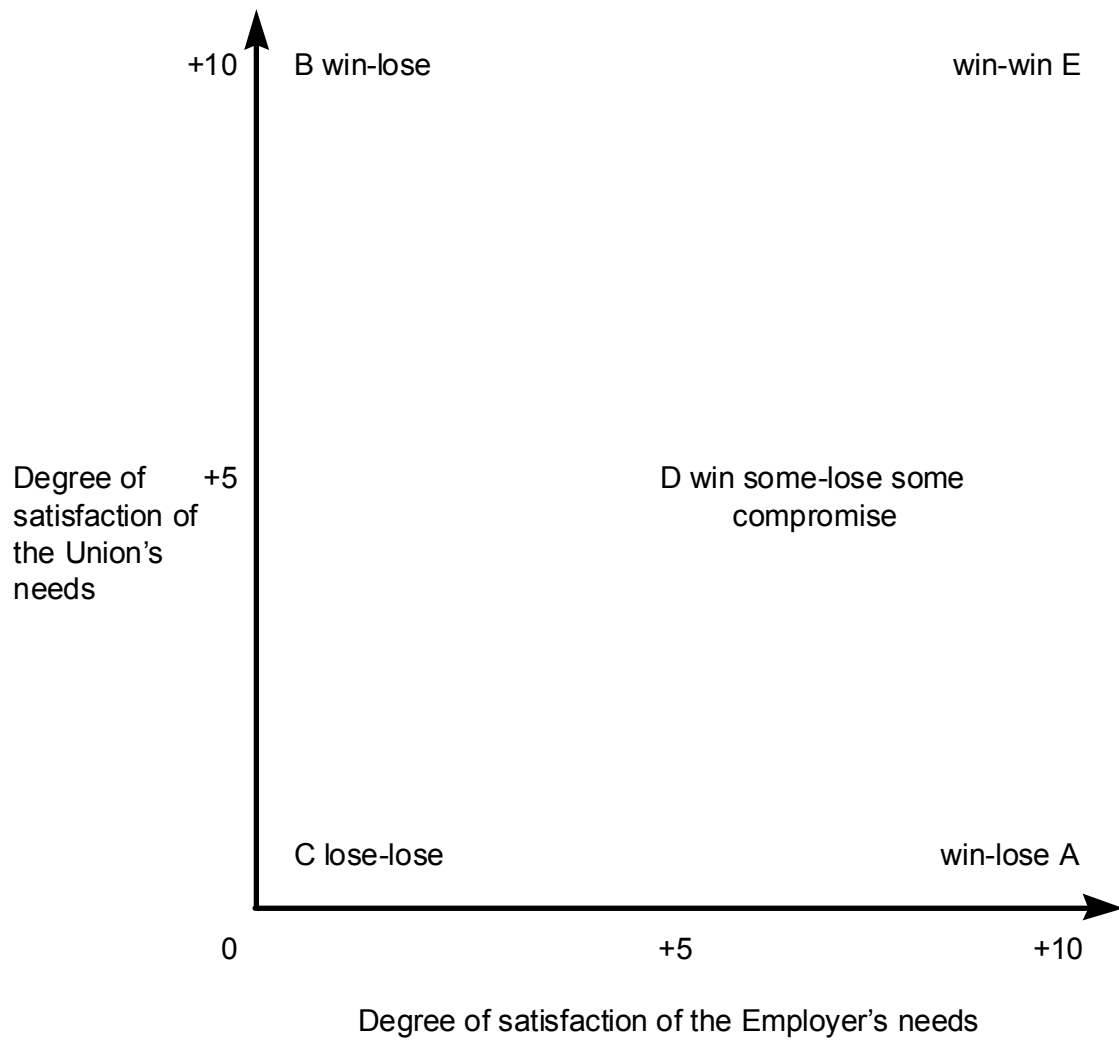
TEMPORARY WORKERS

1. In this clause:
 - 1.1 “temporary employee of a temporary employment service” means a temporary employee of a temporary employment service who renders services to a client that operates in the country.
 - 1.2 “temporary employment service” means any person or labour broker who, for reward, procures for or provides to a client other persons who -
 - 1.2.1 render services to or perform work for the client; and
 - 1.2.2 are remunerated by the temporary employment service.
 - 1.3 An employee of a temporary employment service, who is provided to one or more clients on a casual, non-continuous and occasional basis for periods of less than two months, shall be deemed to be a temporary employee of such temporary employment service.
 - 1.4 An employer who continues to utilise the services of an employee referred to in sub clause 1.2 for any period after the expiration of the current two months period must comply with the provisions of sub clause 1.5 below.
 - 1.5 An employee of a temporary employment service who is provided to one or more clients on a continuous basis for a period in excess of two months shall be deemed to be an ordinary employee and all the provisions of Collective Agreements shall be applicable to such employee.
 - 1.6 No employer may use the services of a temporary employment service unless the temporary employment service provides satisfactory proof to the employer that it is registered with the Department of Labour and is subject to compliance with:
 - 1.6.1 the Unemployment Insurance Act;
 - 1.6.2 the Compensation for Occupational Injuries and diseases Act; and
 - 1.6.3 the Revenue Services and in possession of an IT 30 Tax Certificate.
 - 1.7 The number of employees supplied by a temporary employment service or services to an employer shall on average not exceed 30% of the employers average workforce over any retrospective period of 12 (twelve) months from the date of an inspection.

Handout continued

- 1.8 Any employer who exceeds the 30% average as of the date of implementation of this agreement shall notify the Department in writing within 60 (sixty) days and shall have a period of 12 (twelve) months from the date of implementation to comply with the agreement.
- 1.9 A temporary employment service and its client shall, in terms of section 198 of the Act, be jointly and severally liable if the temporary employment service contravenes the provisions of this Agreement in respect of any of its employees provided to such client.
- 1.10 Employers may only utilise the services of temporary employment service companies which are registered with the Department.
- 1.11 Provisions regarding the termination of a contract of employment of a temporary employee of a temporary employment service that is provided to a client shall be contained in the document handed to the employee when he is assigned to the client.

OUTCOMES



Handout continued

DEFINING OUTCOMES IN NEGOTIATION

- * win-lose/lose-win is a sub-optimal outcome in which all of one party's needs are met and none of the other party's needs are met.

- * lose-lose is a sub-optimal outcome in which neither party's needs are met.

- * win some-lose some or compromise is a sub-optimal outcome in which neither party's needs are met to the degree that is possible.

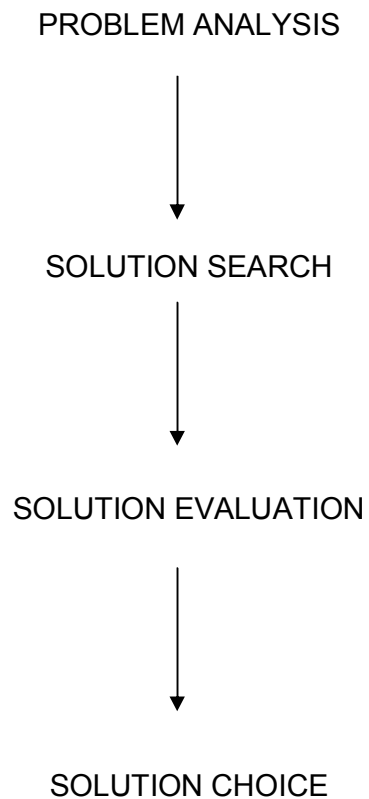
- * win-win is an outcome in which both party's needs are met to the maximum degree possible in the circumstances; win-win outcomes can increase in value to both parties as needs and the value in those needs is discovered and traded.

CHARACTERISTICS OF NEGOTIATION IN SCENARIO E
--

- Trust
- Honesty
- Discovery of underlying needs, fears, concerns and interests
- Focus on the problems
- No exchange of positions
- Brainstorm for options
- Multiple options
- Win/Win outcome
- Satisfaction with outcome
- Satisfaction with the process
- Durable agreement

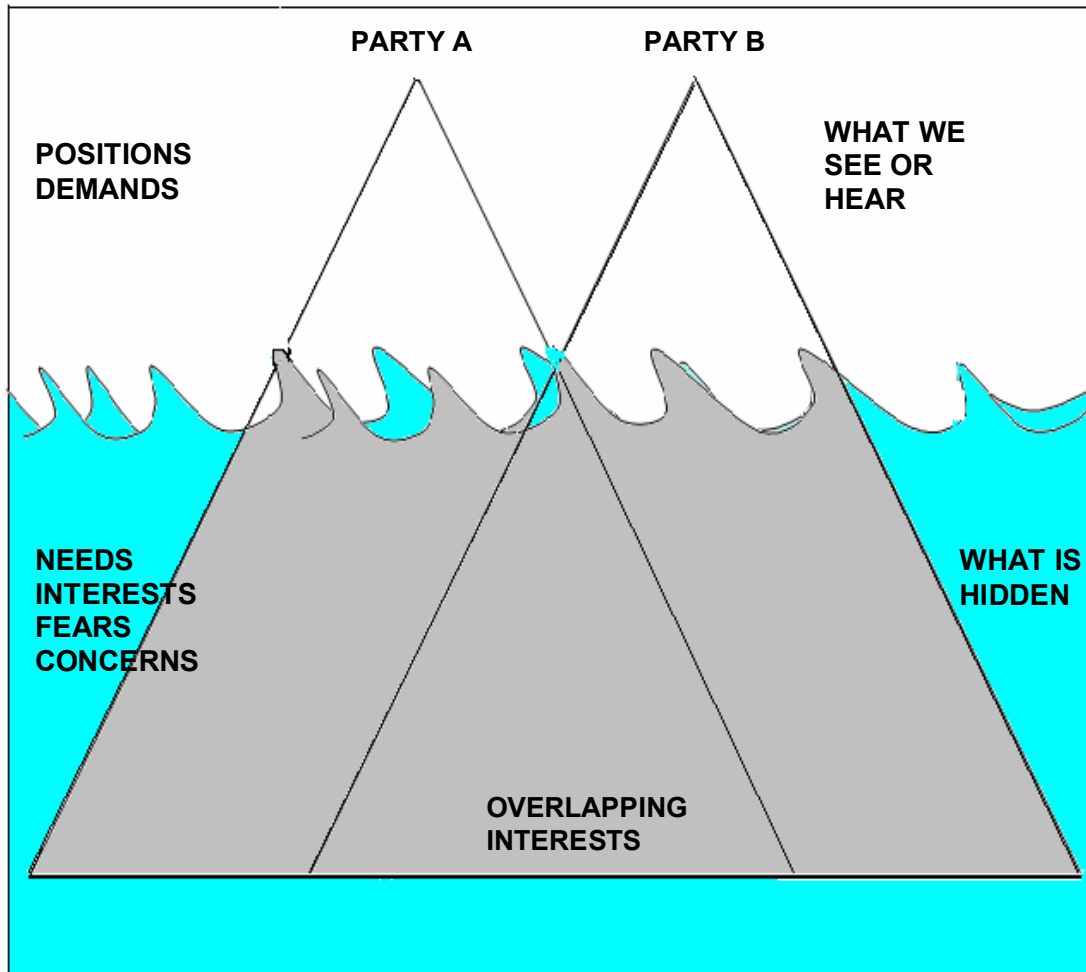
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THE PROBLEM SOLVING PROCESS



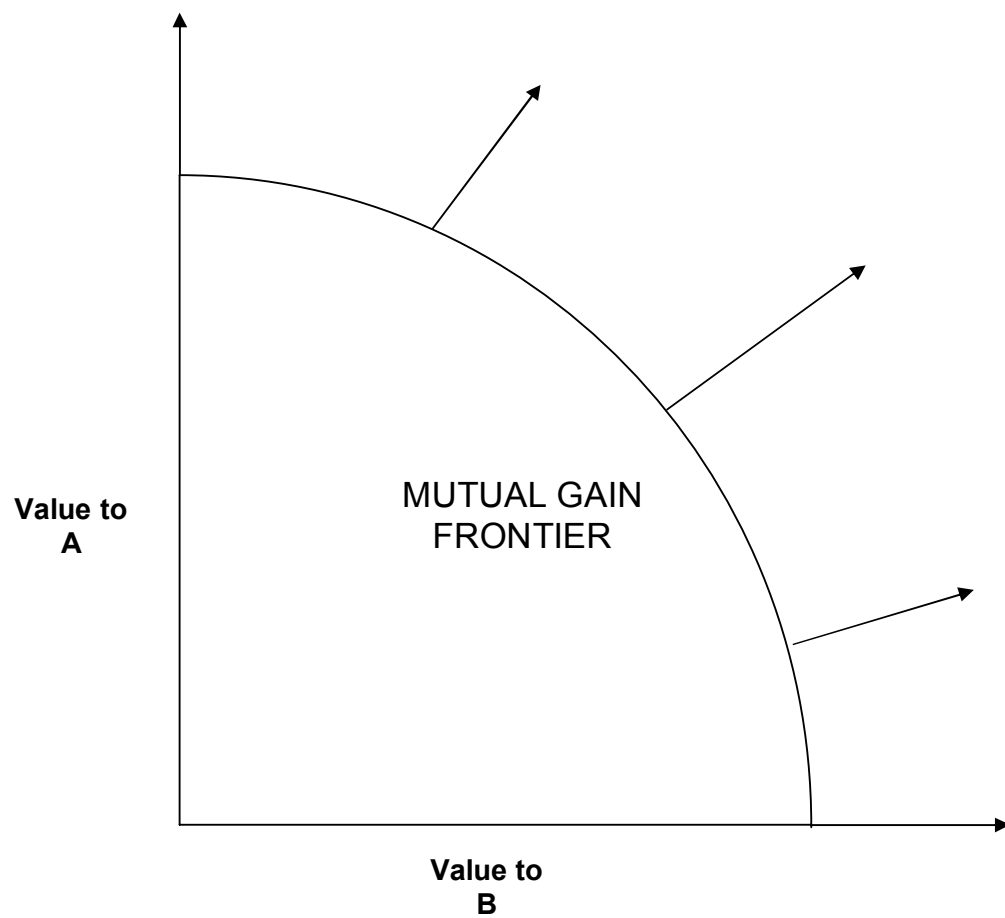
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POSITIONAL VS INTEREST BASED NEGOTIATION



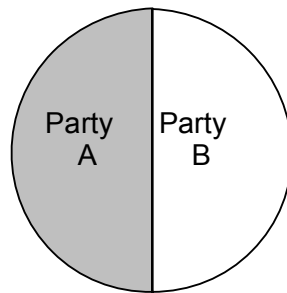
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PUSHING OUT THE MUTUAL GAIN FRONTIER

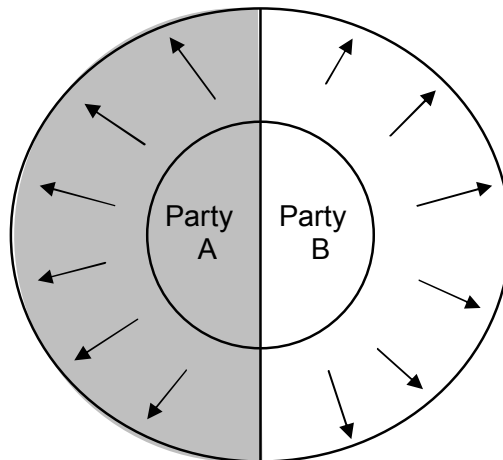


EXPANDING THE PIE – DIVIDING THE PIE

Positional



Mutual Gain





Who wins in negotiations?

"Even some experienced negotiators assume that the way to get what they want is to 'look tough' and to 'give the other side a hard time'. Consensus building, they assume, is for 'weaklings'. ***As it turns out, the negotiators with the best reputations are the ones who almost always get a good deal for the person across the table as well.*** The pressure they feel is to generate an agreement that meets everyone's interests. They are not concerned with looking tough. They stay focused on the outcomes they want to achieve. If consensus building produces good outcomes (and leaves relationships intact so that future negotiations are easier), then they know they will get credit for their success."



The Consensus Building Handbook
Susskind, McKernan & Thomas-Larmer, 1999

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**EXPLORING HOW TO MAXIMIZE JOINT VALUE AND
ACHIEVE OPTIMUM SETTLEMENTS**

Read both your briefs from the job grading negotiation and individually, and then in pairs, record your response to the following question:

If you had made full disclosure of information and had both negotiated exclusively in a needs-based way, what outcome would have simultaneously achieved maximum gain for both parties?

THE NEGOTIATOR'S DILEMMA

Individually and then in pairs, record your responses to the following questions:

1. If party A and party B trust one another and both negotiate in an interest-based way-

1.1 what kind of outcome is A likely to get?

great ☐

good ☐

mediocre ☐

terrible ☐

1.2 what kind of outcome is B likely to get?

great ☐

good ☐

mediocre ☐

terrible ☐

2. If party A and party B do not trust one another and both negotiate in a positional way -

2.1 what kind of outcome is A likely to get?

great ☐

good ☐

mediocre ☐

terrible ☐

2.2 what kind of outcome is B likely to get?

great ☐

good ☐

mediocre ☐

terrible ☐

3. If party A cynically negotiates in a positional way and party B naively trusts A and negotiates in an interest based way -

3.1 what kind of outcome is A likely to get?

great ☐

good ☐

mediocre ☐

terrible ☐

3.2 what kind of outcome is B likely to get?

great ☐

good ☐

mediocre ☐

terrible ☐

THE NEGOTIATOR'S DILEMMA

		A		A	
		NEEDS BASED		POSITIONAL	
B	N	GOOD FOR A GOOD FOR B	B	N	GREAT FOR A TERRIBLE FOR B
	E				
	E				
	D				
	S				
	B				
	A				
	S				
	E				
	D				
		A		A	
		NEEDS BASED		POSITIONAL	
B	P	TERRIBLE FOR A GREAT FOR B	B	P	MEDIocre FOR A MEDIocre FOR B
	O				
	S				
	I				
	T				
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	N				
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COSTS AND BENEFITS OF POSITIONAL AND NEEDS-BASED NEGOTIATION STYLES

COSTS AND BENEFITS OF A POSITIONAL NEGOTIATION STYLE

Costs

- compromise outcome could damage relationships
- reduced trust between the parties
- it creates the perception of a disregard for needs
- limited potential for creative solutions by assuming that there is only your solution, my solution or a compromise in between obscures real needs and interests of parties
- positions often based on false assumptions
- entrenches power imbalances and maintains false perceptions about power
- encourages a resort to power
- deadlock is more readily achieved
- gives rise to face-saving difficulties
- it is superficial
- it is an alienating experience.

Benefits

- it maintains power positions
- there is a limited disclosure of information
- it may help parties retain a competitive advantage
- it may be appropriate when there are limited resources to be divided it may be an initial option for dealing with many and high demands
- it can maintain the *status quo*
- there might be security in predictable and traditional approaches
- it may result in a cheaper outcome.

COSTS AND BENEFITS OF A NEEDS-BASED NEGOTIATION STYLE

Costs

- a move away from adversarialism could be perceived as weak
- requires disclosure of information and possible vulnerability
- may expose divergent interests resulting in more conflict
- a strategic approach not easy to change
- time consuming (in the short-term)
- possible loss of power
- higher level of skill required.

Benefits

- win-win outcomes
- builds relationship
- tends to deal with causes
- particular needs satisfied
- creative solutions possible
- fosters participation
- models joint problem solving
- fosters greater commitment to agreements
- promotes understanding by information exchange
- non-confrontational
- non-adversarial
- better solutions
- develops trust
- genuine compromises made
- shared investments in the conflict resolution process

NEGOTIATING WITH DIFFICULT PEOPLE

Read through the following quote, and then in your group prepare a five-minute presentation to the plenary on the dos and don'ts of the breakthrough step allocated to your group.

"How do you deal with someone who won't listen to you? Someone who throws a temper tantrum in order to get his way? Someone who tells you: "Take it or leave it!"

How do you handle someone who constantly interrupts you? Or who accuses you of being unreliable and incompetent? Or who tries to make you feel guilty? Or who threatens you with dire consequences unless you give in?

How do you negotiate with someone who uses false, phony, or confusing information? Someone who leads you to believe you have an agreement, only to make yet another last-minute demand? Or who drags his feet endlessly? Or who just plain refuses to negotiate?

Ideally, you would engage the other person in a game of problem-solving negotiation. You would begin by identifying his interests – his concerns, needs, and desires. You would proceed to explore different options for meeting both sides' interests. Your goal would be to reach a mutually satisfactory agreement in an efficient and amicable fashion.

But what if your opponent is not interested in this kind of negotiation? You may want to get to yes, but what if his answer is no? How do you get past no?

Five Challenges

To get past no, you need to understand what lies behind the "no." What makes your opponent refuse to cooperate? It is easy to believe that stonewalling, attacks, and

tricks are just part of his basic nature, and that there is little you can do to change his difficult behavior. But you can affect his behavior if you can deal successfully with his underlying motivations.

Behind your opponent's attacks may lie anger and hostility. Behind his rigid positions may lie fear and distrust. Convinced he is right and you are wrong, he may refuse to listen. Seeing the world as eat-or-be-eaten, he may feel justified in using nasty tactics to defend or avenge himself.

Further, your opponent may dig in and attack, not because he is unreasonable but because he knows no other way to negotiate. He is merely using the conventional negotiating tactics he first learned in the sandbox. In his eyes, the only alternative is to give in – and he doesn't want to do that.

Even if he is aware of the possibilities of cooperative negotiation, he may spurn it because he does not see how it will benefit him. Even if you can satisfy his interests, he may be afraid of losing face as he backs down from his position. And if it is your idea, he may reject it for that reason alone.

Moreover, if he regards negotiation as a win-lose proposition, he will be determined to come out the winner. Feeling more powerful, he may not see why he should engage in problem-solving negotiation. He may be guided by the precept "What's mine is mine. What's yours is negotiable."

Frustrated and angered by your opponent's intransigence, you may feel like striking back. Unfortunately, this will probably provoke him even further. Or you may feel like giving in just to get him off your back. However, not only will you lose, but he may be encouraged to demand more. The problem you are up against is not only your opponent's behavior but your reaction, which can easily perpetuate the very behavior you would like to stop.

To get past no, you must overcome each of these barriers to cooperation: his negative emotions, his negotiating habits, his skepticism about the benefits of agreement, his perceived power, and your reaction. You thus face five challenges.

The first step is to control your own behavior. Instead of reacting, you need to regain your mental balance and stay focused on achieving what you want. The first challenge is: Don't react.

Next you need to help your opponent regain his mental balance. You need to defuse his negative emotions – his defensiveness, fear, suspicion, and hostility. You need to break through his resistance and get him to listen. The second challenge is : Disarm your opponent.

Once you have created a favorable negotiating climate, you need to get your opponent to stop bargaining over positions and start exploring ways to meet both sides' interests. You need to break through his stone walls, deflect his attacks, and neutralize his tricks. The third challenge is : Change the game.

Once you have engaged your opponent in problem-solving negotiation, you need to overcome his skepticism and guide him to a mutually satisfactory agreement. You need to bridge the gap between his interests and yours. You need to help him save face and make the outcome appear as a victory for him. The fourth challenge is : Make it easy to say yes.

Your opponent may still believe, however, that he can prevail through superior power. You need to enhance your negotiating power and use it to bring him to the table. You need to deploy your power without making him an enemy who resists you even more. The fifth challenge is : Make it hard to say no.

The Breakthrough Strategy

This book lays out a five-step strategy for meeting these challenges – the strategy of breakthrough negotiation. Taken in sequence, the five steps enable you to change the game from face-to-face confrontation to side-by-side problem-solving.

The breakthrough strategy is counterintuitive: It requires you to do the opposite of what you might naturally do in difficult situations. When your opponent stonewalls or attacks you, you feel like responding in kind. When he insists on his position, you

want to reject it and assert your own. When he exerts pressure, you are inclined to retaliate with direct counter pressure. But in trying to break down your opponent's resistance, you usually only increase it.

The essence of the breakthrough strategy is indirect action. You try to go around his resistance. Rather than pounding in a new idea from the outside, you encourage him to reach for it from within. Rather than telling him what to do you let him figure it out. Rather than trying to break down his resistance, you make it easier for him to break through it himself. In short, breakthrough negotiation is the art of letting the other person have your way.

Breakthrough negotiation can be used with any opponent – with an irascible boss, a temperamental teenager, a hostile co-worker, or an impossible customer. It can be used by diplomats trying to stave off a war, lawyers trying to avoid a costly court battle, or spouses trying to keep a marriage together. It is an all-purpose strategy that anyone can use.

The breakthrough strategy requires you to resist normal human temptations and do the opposite of what you usually feel like doing. It requires you to suspend your reaction when you feel like striking back, to listen when you feel like talking back, to ask questions when you feel like telling your opponent the answers, to bridge your differences when you feel like pushing for your way, and to educate when you feel like escalating.

At every turn the strategy calls on you to choose the path of indirection. You break through by going around your opponent's resistance, approaching him from the side, acting contrary to his expectations. The theme throughout the strategy is to treat your opponent with respect – not as an object to be pushed, but as a person to be persuaded. Rather than trying to change his mind by direct pressure, you change the environment in which he makes decisions. You let him draw his own conclusions and make his own choice. Your goal is not to win over him but to win him over.

From Adversaries to Partners

It takes two to tangle, but it takes only one to begin the process of untangling a knotty situation. It is within your power to transform your most difficult negotiations. During the American Civil War, Abraham Lincoln made a speech in which he referred sympathetically to the Southern rebels. An elderly lady, a staunch Unionist, upbraided him for speaking kindly of his enemies when he ought to be thinking of destroying them. His reply was classic: "Why madam," Lincoln answered, "do I not destroy my enemies when I make them my friends?"

The breakthrough strategy is designed to do precisely that – to destroy your adversary by making him your partner in problem-solving negotiation."

The breakthrough steps are:

- | | |
|--------|--------------------------------|
| Step 1 | <i>Don't react</i> |
| Step 2 | <i>Disarm your opponent</i> |
| Step 3 | <i>Change the game</i> |
| Step 4 | <i>Make it easy to say yes</i> |
| Step 5 | <i>Make it hard to say no</i> |

- 1. Go to the Balcony. The first step is to control your own behaviour. When your opponent says no or launches an attack, you may be stunned into giving in or counterattacking. So, suspend your reaction by naming the game. Then buy yourself time to think. Use the time to figure out your interests and your BATNA. Throughout the negotiation, keep your eyes on the prize. Instead of getting mad or getting even, focus on getting what you want. In short, go to the balcony.*
- 2. Step to Their Side. Before you can negotiate, you must create a favourable climate. You need to defuse your opponent's anger, fear, and suspicions. He expects you to attack or to resist. So do the opposite: Listen to him, acknowledge his point, and agree with him wherever you can. Acknowledge his authority and competence, too. Disarm him by stepping to his side.*

3. *Don't Reject... Reframe.* The next step is to change the game. Instead of rejecting your opponent's position – which usually only reinforces it – direct his attention to the problem of meeting each side's interests. Take whatever he says and reframe it as an attempt to deal with the problem. Ask problem-solving questions, such as "Why is it that you want that?" or "What would you do if you were in my shoes?" or "What if we were to...?" Rather than trying to teach him yourself, let the problem be his teacher. Reframe his tactics, too: Go around stone walls, deflect attacks, and expose tricks. To change the game, change the frame.
4. *Build Them a Golden Bridge.* At last you're ready to negotiate. Your opponent, however, may stall, not yet convinced of the benefits of agreement. You may be tempted to push and insist, but this will probably lead him to harden and resist. Instead, do the opposite – draw him in the direction you would like him to go. Think of yourself as a mediator. Involve him in the process, incorporating his ideas. Try to identify and satisfy his unmet interests, particularly his basic human needs. Help him save face and make the outcome appear as a victory for him to say yes by building him a golden bridge.
5. *Bring Them to Their Senses, Not Their Knees.* If your opponent still resists and thinks he can win without negotiating, you must educate him to the contrary. You must make it hard for him to say no. You could use threats and force, but these often backfire; if you push him into a corner, he will likely lash out, throwing even more resources into the fight against you. Instead, educate him about the costs of not agreeing. Ask reality-testing questions, warn rather than threaten, and demonstrate your BATNA. Use it only if necessary and minimize his resistance by exercising restraint and reassuring him that your goal is mutual satisfaction, not victory. Make sure he knows the golden bridge is always open. In short, use power to bring him to his senses, not his knees."

"Getting Past No" William Ury

DISTINGUISHING POSITIONS FROM NEEDS

Being able to distinguish positions from needs is the cornerstone of successful consensus building, be it through problem solving, negotiation or mediation.

A **POSITION** is how the party states the conflict should be resolved i.e. a demand or an ultimatum for a particular solution.

A **NEED** is the concern or essential underlying need that motivated the party to choose the particular solution or position.

Indicate which of the following paired statements are positions, and which are needs.

PAIR ONE: -

- A. We will not negotiate wages until a recognition agreement is in place.
- B. We are concerned that the negotiation procedures, which guide our bargaining, should be agreed before we start bargaining.

PAIR TWO: -

- A. I refuse to work flexible shifts.
- B. I need to spend more time with my family.

PAIR THREE: -

- A. We are facing serious financial difficulties.
- B. We will not give in to your demand.

CHARACTERISTICS AND TYPICAL LANGUAGE OF POSITIONAL AND NEEDS-BASED STATEMENTS

CHARACTERISTICS	
POSITION STATEMENTS	NEEDS STATEMENTS
* are solutions to the problem * limit discussion * seek a quick answer * end discussion * are a basis for argument * are specific, definite, absolute * require justification * are hard to hear * discourage information sharing * encourage threats and the use of power	* are not solutions * encourage discussion * encourage creative solutions * start discussion * are a basis for dialogue * are open and flexible * require explanation * are easier to hear * encourage information sharing * are not accompanied by threats or the use of power

TYPICAL LANGUAGE	
POSITION STATEMENTS	NEEDS STATEMENTS
* We demand ... * We insist ... * We can't live with/without ... * You must give ... * We are entitled to ...	* We need ... * We favour ... * We prefer ... * Please understand... * Let me tell you why ...

REFRAMING

Individually, and then in pairs, read the following positional statements and suggest how you would reframe the statements to surface a real underlying need:

A. We demand a living out allowance.

B.

A. We refuse to allow a union representative to chair this meeting.

B.

A. We want a union organiser to represent us in the disciplinary inquiry.

B.

A. I refuse to negotiate with a Union official over the telephone.

B.

A. We refuse to allow sub-contracting.

B.

SUGGESTED RESPONSES TO REFRAMING EXERCISE
--

- A. We demand a living out allowance.
- B. We need subsistence when away from the workplace.

- A. We refuse to allow a union representative to chair this meeting.
- B. We need a neutral third party to chair meetings.

- A. We want a union organiser to represent us in the disciplinary inquiry.
- B. We need an expert experienced in discipline to assist with the case.

- A. I refuse to negotiate with a Union official over the telephone.
- B. I need to have direct contact with the person across the negotiation table.

- A. We refuse to allow sub-contracting.
- B. We need job security.

EXTRACTING NEEDS ROLE-PLAY

In your pairs, read your brief and when instructed to do so, extract from your partner what his or her real needs are. Do not seek solutions at this stage.

EXTRACTING NEEDS ROLE-PLAY

BRIEF FOR THE UNION REPRESENTATIVE

You are the Union representative in a dispute between your Union and your employer over a travel allowance.

The afternoon shift employees have demanded that they be compensated for having to use private transport to get home to Alexander in the evenings. This is costing the afternoon shift employees approximately 50.00 Crowns per month and it demands that the Company pay this.

The Company refuses to pay and says that the afternoon shift employees should catch a bus like all the other employees. The problem is that the last bus leaves at 18h15 and the afternoon shift ends at 18h30.

If there were buses after 18h30 the employees would not demand the 50.00 Crowns.

EXTRACTING NEEDS ROLE-PLAY

BRIEF FOR THE COMPANY REPRESENTATIVE

You are the Company representative in a dispute between your Company and the Union about a travel allowance.

The Union has demanded a 50.00 Crown per month travelling allowance for the afternoon shift workers.

The afternoon shift ends at 18h30 and you cannot understand why the employees cannot catch the bus like all the other employees do when their shifts end.

The Company is in a severe cash crisis and simply cannot afford any additional expense without having to retrench employees.

REFLECTION ON EXTRACTING NEEDS

Individually, and then in pairs, record your answers to the following questions:

1. What assisted you to discover real needs?
2. What hindered you in discovering real needs?

DO'S AND DON'TS OF EXTRACTING NEEDS
--

DO:

- * listen carefully
- * paraphrase
- * ask open questions, in particular "why do you say ...?; tell me more about ..."
- * show empathy
- * continue to probe answers deeply
- * probe beyond mere motivation
- * get behind aspirations
- * reframe positions for needs
- * reality test
- * communicate openly
- * check out your understanding
- * test understanding of needs
- * put needs on the table
- * be neutral in the way you state things
- * summarise

DON'T:

- * ask closed questions in particular "tell me yes or no ..."
- * assume to know the needs of the other person
- * state solutions
- * give advice
- * judge
- * tell
- * be paternalistic
- * get into argument mode
- * be positional
- * immediately criticise ideas
- * assume that the motivation of the position is the underlying need

FINDING MUTUAL GAIN OUTCOMES

In your pairs, endeavour to find an outcome to the extracting needs role-play which simultaneously meets the needs of the employees and the company.

**THE SIGNIFICANCE OF ALTERNATIVES
TO A NEGOTIATED AGREEMENT**

In your pairs, record your response to the following questions:

1. If you were selling your car, would you trade with Sam who was offering you much less than you wanted if you knew you could get much more for it from another person?

2. If you were selling your car, would you trade with Sam who was offering you much less than you wanted if you had one day left before going abroad and no better offers from anyone else?

3. What significance do alternatives or no alternatives have on negotiations?

**WEIGHING ALTERNATIVES
THE KEY QUESTIONS**

Individually, read the following quote on alternatives and then in the job grading negotiation, consider your responses to the following questions:

1. What are your key needs?
2. What are all the things you could do to achieve your needs if you did not reach agreement?

Possible Alternatives	Pros	Cons

- © Copyright International Training Centre of the ILO, Turin

6. What could the other parties do to satisfy their needs if no agreement was reached?

Possible Alternatives	Pros	Cons

7. What would you do if you were in their shoes?

8. How might you make their BATNA less attractive?

Making It Harder To Do	Influencing Their Perceptions

ONCE YOU HAVE ANSWERED QUESTIONS 1 TO 8, FIND THE PARTNER YOU NEGOTIATED WITH AND DISCUSS AND DECIDE WHO YOU THINK WAS IN THE STRONGER BARGAINING POSITION.

ALTERNATIVES

What will I do if we do not agree?

Not every negotiation concludes with an agreement. Nor should it. There are times when you can do better by walking away, because the costs of the proposed agreement exceed its benefits or because someone else is in a position to offer you a better deal.

Alternatives, as the name suggests, are other ways of accomplishing something. In negotiation, that something is satisfying your interests. Your interests can be satisfied in two different ways: through a negotiated solution – that is, an option, using the vocabulary of this workbook – or through some kind of self-help alternative – that is, some action you take independently or an arrangement you make with someone other than the person with whom you are negotiating. In every negotiation, if you stop to think about it, you will be able to come up with several possible alternatives (not all of them may be attractive, but it is important to know that they exist). The best of these is what we call your BATNA – your **Best Alternative To a Negotiated Agreement**. For the outcome of a negotiation to be truly considered a success, you should come up with an option that is better for you than your BATNA, or you should walk away.

Preparing your BATNA before the negotiation is absolutely essential to helping you decide when to walk or when to stay and talk. Many negotiations come up with a “bottom line” before they start a negotiation – but if that bottom line is a number you have pulled out of the air, it does not really help you make decisions. If you get pushed to your bottom line, should you walk away? You should do so only if your bottom line is based on what you could get elsewhere, your alternatives; and only if the best of those, your BATNA, is better than what is on the table. Otherwise, how do you know your “bottom line” was realistic? Moreover, how do you know that you can do better outside the negotiation than in it? If you know your BATNA, and it is better than what your counterpart is offering, you can head for the door with confidence. If it is not, you know it is time to get very creative at the negotiation table, and that you are not being weak by failing to walk out in a huff.

Common Mistakes

Not thinking of a BATNA

Negotiators make two common preparation mistakes regarding their BATNA. Some negotiators walk into a negotiation without knowing what they will do if they cannot reach agreement. That tends to make them insecure and unsure of when they should keep negotiating and when they should start heading for the door. Just think of a time when you were in a similar situation: someone said, “This is it,” and you

either had to give in or call their bluff (and risk it may not be one!). Without knowing what your BATNA is, a whole negotiation may come down to bluster and a roll of the dice.

Assuming BATNA is the “same old thing”

The other common mistake is to assume you know your BATNA, without first thinking more creatively about other ways to satisfy your interests. In labour negotiations, for example, unions have traditionally viewed the strike as their BATNA. Even though striking is sometimes the only way to convince management to accept their demands, that may not be the union's only way to accomplish what they want. Under some circumstances, other alternatives may be more effective, less costly, or both. For example, certain lobbying or public relations efforts may pay off, work-to-rule or job-slowdowns may send the necessary message without incurring risks of a full-blown strike, negotiating with a potential acquitter may satisfy some economic and human relations interests, etc.

The well-prepared negotiator

Know your BATNA

Never underestimate the power of knowing what you will do if you do not reach agreement. It will give you much greater confidence during the negotiation, whether you reach agreement or not. It will keep you from making mistakes by accepting something that is not good enough – compared not to some arbitrary notion of what you or others want, or think you can get, but to something concrete and feasible. It will help you decide when to walk away and when to stay, without all the anxiety that such a decision tends to provoke. Investing time to think about not just one alternative, but several ways to satisfy your interests, and determining which alternative is best will pay off, even when you never have to use your BATNA. Remember that your BATNA is not just another way to pressure them to give in. It is a powerful concept to help you focus on what you really want to accomplish, and the different ways in which you can do so, without having to accept a deal with terms that do not well satisfy your interests.

Strengthen your BATNA

Alternatives are rarely fixed in stone. Taking a moment to step back and think about how to make your BATNA easier, more profitable, or better at satisfying your interests can improve the outcome of many of your negotiations. Think about it. If you will only accept a deal that is better than your BATNA, by improving your BATNA you guarantee yourself a better result: if you reach an agreement, it will be better and if you do not, your BATNA will be better too. . Having a strong BATNA, and knowing so, will also boost your confidence during the negotiation.

Consider their BATNA

All negotiators have a BATNA, whether they have thought about it or not. As you prepare to negotiate with someone, it would be useful to know at what point they should walk out of the negotiation. While you may never be able to figure out such a

subjective thing with any degree of confidence, you may be able to make a pretty good guess at what they might do if you do not reach agreement. And if you can do that, you can think about how to make the choice less attractive to them – whether by making their BATNA harder to implement or less valuable, or just by affecting their perception of how unwise or costly such an alternative might be.¹

¹ *'Getting Ready To Negotiate'* by Roger Fisher and Danny Ertel

ROAD FREIGHT CASE STUDY

Individually and then in groups read the following case study and record your response to the following question:

What lessons are there for me from the case study?

THE NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT INDUSTRY – A SOUTH AFRICAN CASE STUDY ²

BACKGROUND

Prior to the political change in 1994, South African collective bargaining was characterised by high levels of adversarialism and conflict with a strong focus on positions, demands, power and war talk. It was also frequently accompanied by strikes, boycotts and violence. There were 3.9 million workdays lost to industrial action in 1994 compared to 0.7 million in 2003. The negotiations took place in a highly charged political environment in which workers regularly perceived employers to be part of the apartheid enemy. Strikes often mirrored protest action on the streets of South African townships. The “toyi toyi” dance was as much a part of industrial action as it was of “mass action” which was aimed at the overthrow of the political order. Armoured cars, police dogs and tear gas accompanied industrial action as often as they accompanied protest action.

The negotiation agenda was also a highly politicised one with demands like those for paid holidays on May Day and June 16 (the day of the Soweto student uprising). Frequently political campaigns such as those for the release of Nelson Mandela overflowed into the workplace and onto the bargaining table. Many workplaces were plastered with political slogans, and t-shirts bearing political statements were common apparel. Some workers even came to work brandishing wooden replica AK-47 assault rifles while right wing activists carried real guns and wore khaki uniforms as a counter. Strike action was a crime and a dismissible offence with mass dismissals a frequent occurrence. The police were often called in to “deal with” striking workers and it was not unusual for employers to use informers and to secretly monitor worker telephones and meetings.

ASSUMPTIONS AND TACTICS BEFORE 1994

The fundamental underlying assumption of the negotiating parties in the pre-1994 era was that they were at war and that the outcome of the negotiations was either win or lose, or at best a temporary truce or compromise. The idea of partnership and mutual gain was virtually non-existent. Employers feared worker control and Unions feared co-option.

Typically the parties consulted their constituencies and received extreme and relatively fixed and inflexible mandates. In preparing for negotiations they would determine in advance what their opening, ideal and fallback positions on each issue would be. They would then decide the order in which they would make concessions and how they would apply pressure on the other party. Most of their preparations

² The parties to this negotiation have consented to this disclosure of confidential information given during the facilitation process

Handout continued

centered on planning for potential strike action. Unions would strategise how to win mass support both amongst the workforce and from the community and how they could nullify the impact of "scab" labour. Employers on the other hand would spend much time preparing strike contingency plans and ensuring that they had good relations with the police and other authorities.

Before the negotiations commenced the Unions would conventionally deliver a letter of demand containing these extreme demands on a wide range of issues. At the negotiating table the union would commence the negotiations by repeating these demands and delivering a political speech to the employer about the sins of apartheid and the employer's complicity with it.

Typically, the employers would respond with extremely low counter offers and then set about demeaning the Unions with volumes of statistics and data. Central to both parties' thinking was the belief that the higher the demand and the lower the counter offer the more likely it was that the midway compromise would favour them.

Negotiations would then progress very slowly from one concession to the other. In making these moves the parties would tend to exaggerate the value of their own moves while minimising the value of the others'. They would tend to manipulate information to hide that which was harmful to their position and to emphasise that which undermined their opponent's. Adversarial, political rhetoric and increasing levels of anger and frustration invariably accompanied the negotiations.

As the process progressed, the parties would often remove issues from the negotiation table in return for the other party doing likewise until only the most pressing issue, usually wages, were left. The result was that year after year important structural matters like efficiency and worker participation would remain unaddressed. As it became increasingly difficult to bridge the gap between them the parties inevitably resorted to the use of power to pressurise each other. This would range from fairly benign go slows to all out strike action, boycotts and violence.

Sadly, because workers were in an extremely weak position in the apartheid State, Unions were frequently forced to capitulate or compromise to outcomes which were of limited value to them. Both parties would leave the negotiations angered and dissatisfied with the process and the outcome. This in turn sowed the seeds for revenge in future engagements.

Handout continued

ASSUMPTIONS AND TACTICS AFTER 1994

Without doubt the atmosphere in which collective bargaining has taken place since 1994 has improved dramatically. Today one very seldom hears of violent strike action or of police involvement in industrial relations although it still does happen from time to time. The negotiation agenda is also, perhaps with the exception of employment equity, almost entirely focused on conventional wage and working condition issues. There has also been a dramatic decline in the incidence of strike action. Industrial action that does occur is most often orderly and protected strike action regulated by agreed picketing rules. Mass dismissals are very exceptional and strikes no longer attract criminal sanction. That is the good news.

The bad news is that, with a few exceptions, the negotiation style of the parties has remained relatively adversarial and positional. Parties still tend to prepare for negotiations by determining in advance what their opening, ideal and fallback positions on each issue will be and then enter the negotiations with relatively fixed and inflexible mandates.

They continue to open the negotiations with extreme demands and low counter positions and then progress slowly from one concession to the other. Problem analysis and information flow remains stunted, and adversarial rhetoric and high levels of anger and frustration often accompany the process. The parties also often trade the removal of structural and non-distributive issues from the agenda in order to focus on wage related issues only.

Although the use of power is less prevalent than it was in the past, it is still often used as the perceived means to bridge the gap between the parties' positions. The usual outcome of negotiations remains a compromise, often with significant loss of face to one or both parties. The result is that the parties still leave feeling dissatisfied with the process and its outcome.

Although a suite of labour-friendly laws has dramatically improved basic worker rights, the economic power of workers remains very weak. They are perhaps even less powerful now than before. Retrenchment and unemployment have grown and solidarity within the broader community has declined with the advent of the new political order. The typical imbalance of power between capital and labour which is present in many capitalist economies and which was aggravated by hundreds of years of colonialism and apartheid subjugation remains. The consequence is that, in many cases, after a brief show of force and an exchange of militant rhetoric most negotiations end in a meek capitulation by Unions to outcomes, which are more valuable to employers than to workers.

Handout continued

THE ALTERNATIVE

Fortunately numerous parties have found that there is an alternative to this traditional process³. These parties have learnt from the negotiating techniques used to facilitate our political transition that there is another way. Those that have made the change have often done so after a series of very damaging negotiation experiences that have forced them to want to do things differently.

Some shrewd union strategists have realised that the exclusive use of strike action to win worker benefits is futile in a society in which the imbalance of power between capital and labour is so pronounced. They have recognised that alternative ways have to be found to get what workers need. Instead of dismissing the interests of employers they seek to identify those interests and to exploit maximum advantage from meeting them whilst at the same time protecting worker needs.

For example, they appreciate that in order for employers to compete globally, they need the latitude to work flexibly to maximise the output from expensive capital equipment. Instead of refusing to engage with employers on this issue they do so after first ensuring an inflation related wage increase. They then extract additional percentage increases in return for co-operating (without undue sacrifice) in endeavours to address the employers' interest. This process is often repeated in relation to other interests so that the Union manages to secure benefits for workers far exceeding those that could be won by the use of brute force. Of course the quid pro quo is a price that employers are happy to pay. They are under pressure to compete in a global market and to comply with

legislation which demands major changes and restructuring of the workplace. They have found that the old methods are less effective to achieve the kind of structural changes they require in order to remain competitive in a global market and changed South Africa.

THE ROAD FREIGHT EXAMPLE

The example which this paper will focus on is what has transpired in the South African Road Freight Industry. The National Bargaining Council for the Road Freight Industry is the negotiation forum in which the Road Freight Employers Association and five Unions negotiate nationally on wages and working conditions for drivers and other workers employed in the South African Road Freight Industry. The Employers Association represents 654 employers and the Unions represent 32 000 employees. Their collective agreement is extended to a total of 3200 employers and 60 000 employees in terms of the Labour Relations Act.

For five years, that Industry had a series of very unsatisfactory negotiations. On at least two occasions the negotiations culminated in compromise wage deals after very disruptive and costly strike action. In the process, important structural changes,

³ Leading examples of organizations which have made the change are Rand Water, which entered into a complex partnership agreement in 1995, the Furniture Bargaining Council, the Motor Ferrier Industry, De Beers, Nestle, Impala Platinum and Bankserv.

Handout continued

which were essential for the success of the Industry, were not made. There was an urgent need to address, among other issues, productivity, flexibility, outsourcing, casualisation, HIV/Aids, job grading, hours of work and job security. However, year after year, these matters fell by the wayside as the parties narrowed their fight to wages only. That fight was characterised by all the well-known features of positional bargaining and they generally culminated in outcomes which were of very low value to all the parties.

Eventually, after a particularly damaging strike which included truck blockades of major roads and street demonstrations, the parties agreed to try to do things differently. In 2001 they agreed to undergo joint training in mutual gain negotiation⁴ and, thereafter, to address the many outstanding issues which had fallen by the wayside in the past years in the positional fight over wages. They attended a facilitated pre-negotiation meeting and, in the space of a few months, a series of facilitated task teams tackled these difficult structural issues and a detailed agreement was reached between them.⁵ The parties were delighted with both the process and the outcome.

Nico Badenhorst, spokesperson for the Employer's Organisation, summed up the thoughts of the parties when he said:

"In using the previous 5 years as a yard stick, the industry negotiations that took place after the introduction of the "mutual gain" approach, was beyond comparison. The culmination of the training, the workshop and the facilitated negotiations was a settlement that:

- addressed some of the most complex issues ever confronted;*
- relegated the traditional, adversarial approach to one with very limited application;*
- reflected solutions that addressed the matters in issue;*
- resulted in an agreement concluded in the shortest period ever with neither party opting for the "power play" alternative.*

The utilisation of facilitators during the negotiations proved to be extremely successful in assisting the parties to utilise and jointly apply the mutual gain approach. Without the application of the mutual gain approach and the assistance of the facilitators, the parties would not have been able to obtain the results they have during negotiations".

In the following three years the process of training and facilitation was successfully repeated but in the fourth year the parties decided to go it alone. They did not undergo refresher training nor were their negotiations facilitated. The negotiations culminated in a strike which the parties believed was occasioned by new people on

⁴ The training was done by John Brand and Felicity Steadman.

⁵ The task teams were facilitated by John Brand and Felicity Steadman.

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the negotiating teams being unfamiliar with mutual gain negotiation and existing members falling back into bad ways. Accordingly they decided to reinvigorate their negotiations for the 2005/2006 round. What follows is a detailed account of those negotiations.

JOINT TRAINING

Parties who have made the change from highly adversarial bargaining to mutual gain negotiation recognise that there is a need to do things differently and central to that change is a joint understanding of the essence of mutual gain negotiation. Both parties need to play the new game so it is essential that they make a joint commitment to do things differently and jointly attend training in the new methodology.

In July 2005 the 30 member Road Freight negotiating team participated in a two day facilitated interactive training session⁶.

The training helped them to identify what the obstacles were to effective negotiation and how they may be overcome. They jointly learnt that at the core of the mutual gain approach is an assumption that it is possible to find an outcome which is simultaneously of mutual value to both of them. In order to do this they discovered that they needed to understand the underlying problems first before choosing solutions. They came to appreciate that one of the fundamental flaws of traditional bargaining is that the parties start with solutions to problems before they have jointly understood them and they obtain mandates for the solution without any proper grasp of the other parties' needs and interests. They realised that by meeting another's needs and interests, they may be able to have their needs met as well.

In the joint training the negotiators learned how a failure to recognise each other's underlying needs and interests is perceived to be an attack on the humanity and dignity of the other. This in turn sets up a mutually destructive adversarial dynamic which stands in the way of sensible outcomes. They saw that an open and honest exchange of information was vital to a proper understanding of any problem and to the development of mutual trust. They jointly realised that there is seldom one solution to a problem and that if they calmly and creatively explore a range of solutions they will often find one solution or a combination of solutions which simultaneously addresses both of their needs and concerns. They were also taught how to accurately assess their own and their negotiating partners' best alternatives to a negotiated agreement and to realise the limitations of the resort to power alternatives.

⁶ The training was done by John Brand.

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PRE-NEGOTIATION MEETING

With this understanding the parties attended a pre-negotiation workshop⁷ at which they agreed that the goal of their negotiation was to achieve a mutual gain outcome which was simultaneously of maximum value to all negotiating parties. They also agreed to follow a set of negotiation guidelines.

The parties then exchanged written proposals for the negotiation. It was recognised that it would be preferable not to exchange proposals before exploring needs and concerns because of the potential to become unnecessarily positional. One of their challenges however was to manage their principals' expectations that demands and counter demands had to be made. It was accordingly agreed that proposals and counter proposals would be exchanged on the understanding that they would form the basis for a discussion about underlying needs and interests.

These proposals were formally tabled at the negotiations and a very detailed discussion then took place between the parties on the needs and concerns which underpinned the proposals. There was also a detailed exchange of supporting data and an exploration of areas of possible trade.

Thereafter it was agreed that there were 19 issues which needed to be addressed in the negotiations. Those were:

1. Division of the Industry into sectors;
2. The harmonisation of wages and working conditions across the Industry;
3. Labour brokers;
4. The Bargaining Unit;
5. Section 21(11)(b) of the existing Collective Agreement
6. A Charter on theft and corruption;
7. Standard trip times;
8. Night shift;
9. Wages;
10. Provident fund;
11. Medical aid;
12. Long service;
13. Housing;
14. Night out allowance;
15. Day off in the cash in transit sector;

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16. Cross boarder allowance;
17. Long distance guarantee in the fuel sector;
18. Sunday work;
19. Change of agreement cycle.

The parties then agreed on a series of two-day facilitated negotiation sessions commencing at the end of October 2005. It was also agreed that the parties would revert to their principals in order to convey to them what had taken place at the meeting and in order to get flexible mandates from them for the negotiations.

COMMENCEMENT OF NEGOTIATIONS

The negotiations then commenced at the end of October 2005 and continued for 12 days until agreement was reached at the beginning of February 2006.

In the negotiation process the facilitator developed a continuous working document which captured areas of actual agreement, proposals and counter proposals and, in limited cases, suggestions by the facilitator to bridge areas of disagreement. This document went through a great many drafts until it evolved into the ultimate Agreement between the parties.

TRADE IN NEEDS AND CONCERNS

In the course of the negotiations the parties focused on each other's needs and concerns and the agreement as a whole represents a balance between these underlying needs and concerns. For example the parties settled for a wage increase of 7.5% after the strike in 2005, yet agreed to a lesser increase of 6.5% in the 2006 Agreement. This was because many of the Unions' needs were met elsewhere in the Agreement. The most pressing one concerned the harmonisation of wages and working conditions across the Industry. Agreement on this issue had eluded the parties for many years because of the potential cost to the employers of harmonising upwards and the potential cost to employees of harmonising downwards. The solution is a classic example of a mutual gain solution.

To appreciate the value of the outcome to both parties it is necessary to put it in context. The Bargaining Council is a merger between two regional Councils. The one Council had a Sick Fund into which employers paid 12 days pay for each worker. One day's pay would be deducted from the workers' Sick Fund for each day of sick leave and the balance would be paid out to the worker at the end of the year. The original purpose of the Sick Fund payout was to act as an incentive to not take unnecessary sick leave. The other Council did not have such a fund and at the merger the employers from that Council resisted introducing one because of the cost and because the purpose of the Sick Fund in the other Council had not been

⁷ Facilitated by John Brand

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realised. What happened was that workers took unauthorised leave instead of sick leave and then claimed their full Sick Fund payout at the end of each year.

The outcome contained in the harmonisation clause of the agreement:

- gave employers what they needed on short time across the Industry;
- gave the Unions what they needed in relation to leave pay and holiday bonus across the Industry whilst meeting employer concerns by way of an exemption process;
- gave employers what they needed on Saturday work whilst addressing Union concerns about Saturdays off;
- most importantly met the employers concerns about sick and unauthorised leave by converting the Sick Fund into a Sick and Absence Fund and providing that both a workers' sick and unauthorised leave would be deducted from the Fund payout and paid back to the employer; and
- furthermore the Fund would be extended to the whole Industry and be phased in over four years to cushion the cash flow impact on employers.

The cost of harmonisation for the majority of employers was an increase of approximately 2.5% of their wage bill but they were prepared to incur this expense because their needs in relation to short time, Saturday pay, leave pay, holiday bonus and unauthorised absence were addressed. Furthermore their needs for action on theft and corruption, the agreement cycle and sectoral flexibility were met elsewhere in the Agreement.

In addition, the agreement

- on Labour Brokers represents a very complex and delicate balance of employer and worker interests in regard to atypical labour.
- introduces separate chambers into the Council to permit greater flexibility and variance of terms and conditions from sector to sector which was a major employer need.
- addresses theft and corruption in the Industry which was a concern raised by the employers.
- deals with night work which was a concern raised by the Unions.
- deals with the Unions' concerns about a practice in the fuel sector which had the effect of significantly reducing the remuneration of fuel sector workers.
- puts in place processes to deal with medical aid which was a major need identified by the Unions.
- puts in place a process to address one of the employers' needs on which they placed great value namely flexibility in relation to Sunday work in the retail delivery sector.
- meets a major Union need to be recognised in a broader bargaining unit subject to employer concerns about managers and conflicts of interest being addressed in the agreement.

Handout continued

- deals with standard trip time which is intended to address a long standing concern in the Industry about drivers working excessive overtime in order to increase their take home pay. The Standard Trip Time Project is one aimed at agreeing on standard trip time for routes and paying per trip rather than per hour.

LESSONS AND CHALLENGES

There are numerous lessons and challenges which emerge from the Road Freight Industry's experience of mutual gain negotiation.

ENVIRONMENT

Perhaps the most fundamental lesson is that mutual gain negotiation cannot take place without freedom of association, including the right to strike. There needs to be a reasonable balance of power between the parties which is absent without both the right and ability to strike. The greater the imbalance of power between the parties the more difficult it is to achieve mutual gain ends.

Both parties also have to recognise each other as legitimate stakeholders rather than enemies that have to be defeated. They need to recognise their dependence and independence and accept that they may have overlapping and different interests.

They all have to be committed to change from the adversarial win/lose assumption of the past otherwise the process has limited prospects of success. Regrettably it seems that parties have to experience high levels of adversarialism and conflict before they are ready to change and explore alternatives. A challenge for a facilitator is to know when the time is right to intervene with a prospect of making a difference.

FACILITATION

Independent facilitation of the negotiations from the outset is also very important. Between 2001 and 2005, facilitated negotiation assisted the parties to reach mutual gain outcomes. In 2005 when the parties tried to go it alone, their negotiations culminated in deadlock and industrial action. They report that without the assistance of a facilitator they tended to drift back into positional ways. Furthermore they recognised that historical lack of trust between them had not been overcome and they found that, without the bridging assistance of the facilitator, lack of trust and poor communication remained a hurdle in their negotiations. Because there are many elements of the mutual gain approach to negotiation which are radically different from the traditional positional approach it is essential for a facilitator to be present throughout to assist the parties to do many things which are counter intuitive for them.

Handout continued

JOINT TRAINING

The value of joint training in mutual gain negotiation cannot be overstated. In certain instances employers have undergone needs based and mutual gain training without their Union counterparts doing likewise. In these instances employers have at worst had their newfound openness and needs focus exploited by adversarial and positional Trade Unions. At best they have had to endeavour to subtly get the Union party to focus on underlying needs and interests but this has not borne nearly as much fruit as when both parties understand and are skilled in mutual gain negotiation. If the parties are not exposed to the fact that in reality it is possible to achieve outcomes which are of greater value to both parties than mere compromise they will continue to have the assumption that there are only three possible outcomes to their negotiation namely win, lose or compromise. It is only once parties realise that there is something better, that they are able to enter the negotiations with the assumption that if they work hard they can find a mutual gain outcome. Without this mindset it is impossible to make the necessary change.

It is essential for the facilitator to ensure that all the major players on both negotiation teams are present throughout the training. This requires the facilitator to be trusted by both teams and to have the capacity to encourage the parties to train jointly. If any major player is absent at the initial stages of the engagement, it is very likely that that player will prove to be very disruptive due to a lack of understanding and buy into the new process.

It is also essential to conduct regular refresher training so that new members of the negotiating team are familiarised with mutual gain negotiation and existing members are reminded of its fundamentals.

In South Africa and other developing countries the negotiation teams often have a huge range of levels of literacy, education and experience. There are also major language, cultural and class differences. Training in this environment throws up a whole range of challenges which are a study in themselves.

ACCOMMODATING DEMANDS

One of the greatest challenges in making the move away from positional bargaining is, ideally, to ensure that the parties start by putting a problem on the table and by analysing it before moving on to seek and then evaluate and choose solutions. The tradition of starting with demands is so entrenched that, even with training, it is difficult to get the parties to do things differently. This is not only a matter of changing bad habits but also because, even when the representatives of the parties have been trained, they remain answerable to constituencies who expect things to be done in the traditional militant way. It therefore requires some subtlety on the part of the facilitator and the parties to recognise this and allow demands to be put on the table but to convert them into proposals which are held over until a proper problem analysis has been completed when they can be treated as just one possible solution during the solution search stage of the process.

Handout continued

THE NEGOTIATION PARADOX

The facilitator and the parties need to be sensitive to a negotiation paradox. On the one hand a needs based and mutual gain approach to negotiations is likely to deliver a strong outcome, but the process of achieving this may be perceived to be weak by the party's principals. On the other hand a tough and militant positional stance may appear to be strong to the principals but it usually delivers a weak outcome. The facilitator and the parties need to manage this in a way which does result in a strong outcome but without the representatives appearing to be weak. As appreciation of the benefits of mutual gain negotiation is cascaded down into organisations the problem is easier to manage⁸ but in the Road Freight Industry it remains a difficult one to manage. This is perhaps because there are so many different employers involved. Where there is a single employer it is much easier to achieve this cultural change.

THE MANDATING PROCESS

It is also necessary for the facilitator to endeavour to change the traditional mandating process in order to put problem analysis before solution search. Instead of both parties starting the negotiations by seeking positional mandates from their principals it would be ideal to delay the mandating process until after the problem analysis stage. In reality it has been necessary for the facilitator to accommodate pressure from the representatives' principals and to allow them to receive mandates at an early stage. However the representatives need to be encouraged to obtain mandates which are as flexible as possible and which accommodate the possibility of considering other solutions if they meet the underlying interests which motivate the chosen position. It is also important to encourage the representatives to start lowering expectations at a very early stage.

THE USE OF PRE-NEGOTIATION MEETINGS

What has proved very useful in changing the traditional mandating process is for the facilitator to commence the negotiations with problem analysis, issue identification, interest exploration and solution search at a pre-negotiation meeting before the parties go back to their principals for mandates on possible solutions. These meetings can also be used to negotiate on how to negotiate and to reach agreement on the aim of the negotiations, negotiation guidelines and timetables.

PROBLEM ANALYSIS

It is a significant challenge for the facilitator to ensure that the parties are thorough at the problem analysis stage. They are often very impatient to get to the solution stage. However, unless time is taken to look at underlying causes of problems and to seriously explore the parties' underlying interests, fears, needs and concerns one is unlikely to find a mutual gain solution. This is particularly so in relation to complex integrative issues. It is also very important for the facilitator to ensure a proper and

⁸ For example at Rand Water, where over the past ten years training has been extended to the Board of Directors and all the various joint plant committees the problems are not as marked.

Handout continued

credible exchange of information at this problem analysis stage. Both the exchange of credible information and the generation of creative solution options can be facilitated by the joint appointment, by the parties, of credible consultants and experts.

SOLUTION SEARCH

Once the process does move into the solution search phase it is very important for the facilitator to find ways to encourage creative lateral thinking in the generation of possible options. Even with training, parties remain relatively uncreative in generating solutions which, in combination with one another, will achieve a mutual gain outcome. Processes like creative brainstorming are very difficult to manage in large groups such as the 30-member Freight negotiating team. As a facilitator one is forced to work in smaller task teams in order to make brainstorming effective. It is also sometimes necessary to do the brainstorming in separate party groups because creativity is often stifled by mistrust and fear of exploitation in mixed groups.

TRADING

A major challenge for both the facilitator and the parties is to regularly stand back from the total negotiation and think about possible trades across issues. Whilst it is useful to work on issues in separate task teams, it is important to avoid being trapped in issue silos. Often if one party is prepared to address the other party's concerns on one issue, the other party may be prepared to do likewise on another issue. Particularly when distributive issues are being dealt with, one needs to seek to "expand the pie" by addressing employer interests on the one hand and to facilitate meeting employee distributive needs on the other. It is therefore necessary, at appropriate times, to break out of issue silos and to look for trades between issues.

SOLUTION COMBINATION

It is also important for the facilitator to get the parties to look for combinations of solutions to an issue which address different needs and concerns and in doing so realise mutual gain.

RECORDING PROGRESS

In order to record and reflect progress in the negotiations it is very important for the facilitator to have a working document which grows from the commencement of the negotiation into the final agreement at its conclusion. Early in the negotiation the document will be more like a minute and record issues, needs, interests, fears, concerns and proposals and counter-proposals. As the negotiation proceeds it will progress into more of a single text document reflecting areas of actual agreement, disagreement and possible agreement. In the final stages of the negotiation it will contain a series of draft agreements which are refined to ensure that there is eventually an accurate record of what has been agreed to between the parties and one which is unlikely to give rise to future interpretation disputes.

Handout continued

CONCLUSION

The Road Freight case study demonstrates that notwithstanding a history of conflict and adversarialism it is possible to move toward a more co-operative approach to negotiation which delivers outcomes of relatively high quality. It does not eradicate the different interests of business and labour but recognises both the inter-dependence and independence of the parties and manages these more effectively.

The move from positional to mutual gain negotiation is not an easy road to travel and calls for strong leadership and commitment from representatives of capital and labour. It cannot take place effectively without joint training and skilled facilitation. It is also very easy to regress into adversarial positional ways. The Road Freight Industry in South Africa has shown that it is the most effective way to negotiate over complex structural change issues which have to be addressed in a developing country like South Africa.

If South Africa is to succeed in its quest for growth, investment and job security, many more Unions and employers will have to move away from traditional, adversarial collective bargaining to co-operative, mutual gain strategies in the way in which the Road Freight Industry has done.

**SOME WAYS OF MAXIMIZING JOINT VALUE
AND ACHIEVING OPTIMUM SETTLEMENTS**

1. Recognise a need to change
 - all parties need to acknowledge the need to move away from traditional, positional styles of negotiating
2. Agree to joint training
 - agree to train jointly in the benefits of realizing joint value and needs-based negotiation.
3. Negotiate about how you are going to negotiate and for example agree to:-
 - postpone obtaining mandates until needs have been explored
 - explore needs before stating positions
 - agree on the groundrules and process for the negotiation
 - negotiate off the record and without prejudice
 - consider a post-agreement process review
4. Facilitate the shift from positional to needs-based negotiation by:-
 - assuring that it is possible to find an outcome that meets both parties needs.
 - working hard to develop and maintain trust
 - seeking first to understand before being understood
 - starting with an understanding of the problem rather than choosing one solution
 - describing events, behaviour or issues instead of evaluating
 - focusing on needs rather than positions
 - helping the other person save face
 - exchanging information openly

Handout continued

- suggesting, rather than controlling process
 - being genuine and maintaining respect
 - being flexible and open to new and creative options
 - being calm, restrained and non-adversarial
 - being conditionally open – tit for tat
 - recognise independence and interdependence
 - describing the benefits of not being positional
 - pointing out the consequences of the negotiation breaking down
 - using every opportunity to demonstrate a seriousness about a new approach to negotiation
5. Consider the following when responding to competitive strategies:-
- try to discover why the other party is using competitive strategies
 - check facts and figures, and all other information
 - stop for a process check during the course of the negotiation
 - stop to reconsider the negotiation groundrules
 - be well prepared
 - ask open questions
 - try strategic avoidance
 - focus on issues rather than on personalities
 - seek a shared information base, encourage verification of information
 - provide a rationale for your perspective
 - share your needs and interests
 - explain why their idea doesn't meet your interests
 - describe what might meet your interests

Handout continued

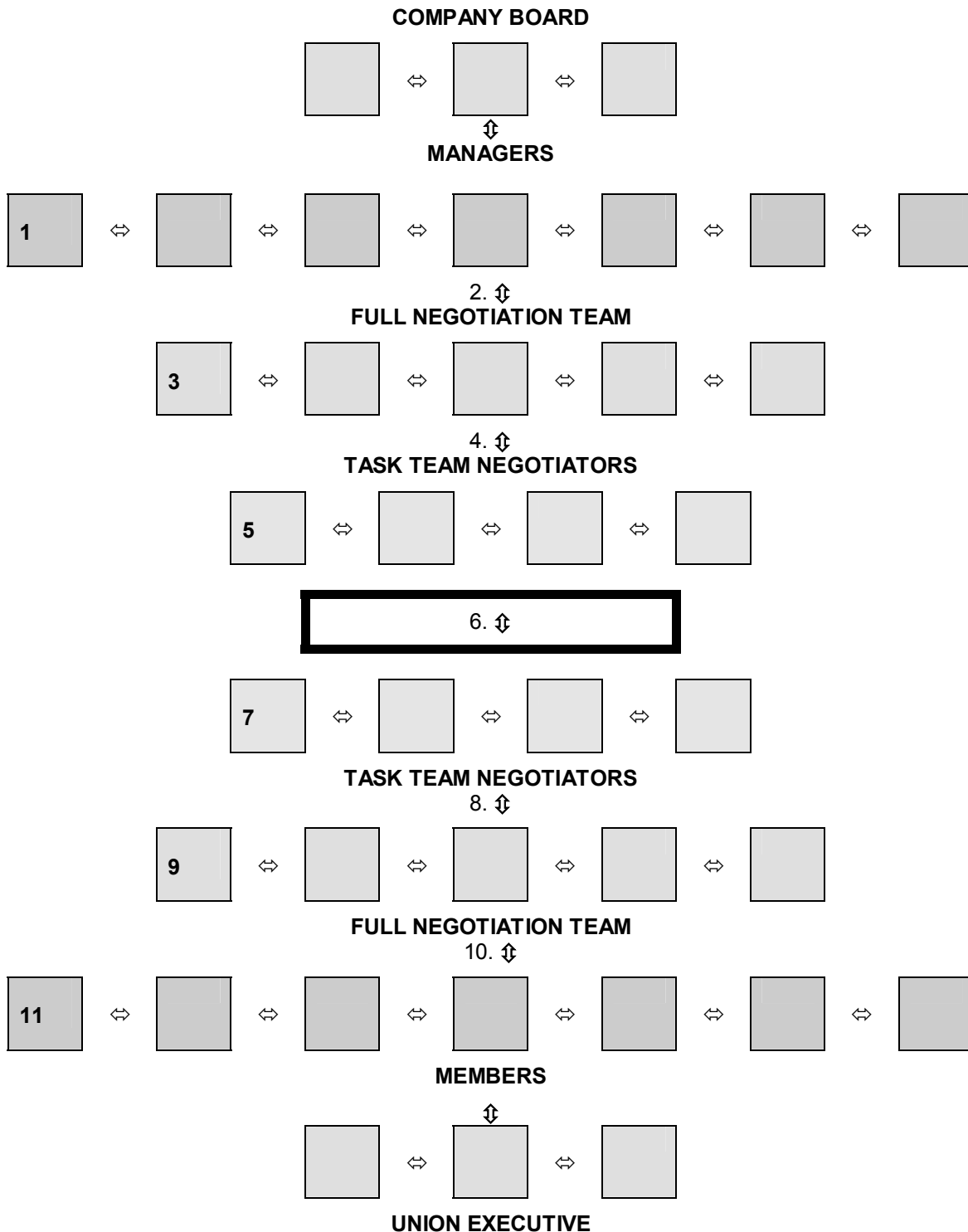
- inquire about their interests
 - express your willingness to meet their interests
 - state their interests as you understand them and ask whether you are correct
 - neither accept nor reject their position; treat it as one possible option
 - remain open to hearing disagreements with your point of view; ask questions rather than go on the defensive
 - don't take things personally
 - find confidence builders
 - ask how their position meets your interests
 - ignore the position and refocus on the issues, needs and interests
 - don't respond at all
 - suggest process options to move forward e.g. task teams
 - use needs-based techniques to discover value and positional techniques to claim value.
6. Use mediation or facilitation to:
- bridge the absence of trust
 - facilitate information flow
 - enhance creativity
 - protect people from their position
 - blunt conflict and positional escalation
 - explore real needs
 - create a single text

THE MANDATING DYNAMIC – IDENTIFYING NEGOTIATING INTERFACES

Individually, and then in pairs, record your responses to the following questions:

1. Apart from the interface between the company negotiation team and the union negotiation team, what other negotiating interfaces are there either between or within parties in the negotiations?
2. What significance do these negotiation interfaces have for you as a negotiator?

THE MANDATING INTERFACES DYNAMIC



Handout continued

Negotiations have numerous interfaces. Some of the more common are:

1. the horizontal interface between the two teams of negotiators, across the table from one another. ⑥
2. The primary mandating interface between the negotiators and the first level of their constituencies. ④ ⑧
3. The secondary mandating interface between the first and second level of constituencies. ② ⑩
4. The vertical interface between the negotiators and within constituencies.
① ③ ⑤ ⑦ ⑨ ⑪

Some learning points from this are:

1. NEGOTIATORS:
 - * may have to advance/defend a position that they do not believe in.
 - * may take time to get mandates from primary and secondary constituencies.
 - * may receive incomplete information from secondary constituencies.
 - * will be influenced in the strategy of their horizontal interface, by the dynamics in the vertical primary and secondary mandating interface.
2. PRIMARY MANDATE GIVERS:
 - * may feel frustration in the negotiation process.
 - * may play the role of mediators between the negotiators and the secondary mandate givers.
3. SECONDARY MANDATE GIVERS:
 - may feel frustration in the negotiation process.
 - * may cause a delay in the obtaining of mandates by negotiators.
 - * may withhold information from the primary mandate-givers and the negotiators.

PREPARATION FOR MUTUAL GAIN NEGOTIATIONS

Individually and then in pairs, record what you as a negotiator must consider in preparation for needs based mutual gain negotiation.

PREPARATION CONSIDERATIONS

1. What is the overall purpose of the negotiation?
2. Who are all the people or bodies who have an interest in the negotiation?
3. Who should be in our negotiating team?
4. What value does each member bring to the team?
5. How can we build a good working relationship in our negotiation team?
6. Which interested parties must we negotiate with?
7. In which order should we negotiate with interested parties or should we negotiate with them collectively?
8. How can we build a good working relationship with our counterparts?
9. Should we use a facilitator?
10. What are all our needs, interests, concerns and fears relevant to the negotiation?
11. What is the relative weighing out of ten that we would apportion to each?
12. What might all other interested parties needs, interests, concerns and fear be?
13. What is the relative weighing out of ten that they might apportion to each?
14. What possible options are there to meet our needs, interests, concerns and fears?
15. What possible options are there to meet other interested parties needs, interests, concerns and fears?
16. What skills and resources do we have as a party?
17. What skills and resources do other interested parties have?
18. How could we combine resources and skills to add value?
19. What alternatives do we have to an agreement?
20. What are the pros and cons of each alternative?
21. What can we do to improve any of our alternatives?
22. What are our counterpart's alternatives to an agreement?
23. What are the pros and cons of these alternatives?
24. What can we do to make our counterparts alternatives less attractive?
25. What standards might we apply to judge options against?

Handout continued

26. Might external experts or arbitrators be useful to apply those standards?
27. What assumptions do we make about our counterparts in the negotiations?
28. What should make us re-visit those assumptions during the negotiations?
29. How might our counterpart misunderstand anything we say and how might we reframe it?

GUIDELINES FOR MUTUAL GAIN NEGOTIATION

1. PRE-NEGOTIATION MEETING

- 1.1. agree on how to negotiate e.g. “The parties shall negotiate in good faith with a serious intention to reach mutually beneficial agreements”;
- 1.2. share with each other the needs, interests, fears, concerns and expectations which lie behind their proposals and counter proposals;
- 1.3. seek to understand the needs, interests, fears, concerns and expectations of the other party;
- 1.4. seek to clarify the issues to be negotiated;
- 1.5. seek to settle any issues capable of quick and easy settlement;
- 1.6. share information and request any relevant information needed for the negotiations;
- 1.7. settle the groundrules and process for the negotiation;
- 1.8. seek to agree on dates, times and places for the negotiation;
- 1.9. seek to agree on inclusive negotiation teams.

2. PREPARATION FOR NEGOTIATIONS

- 2.1. determine the composition of the negotiating team with due regard to inclusivity;
- 2.2. agree on groundrules for the conduct of the negotiating team;
- 2.3. explore the needs, interests, fears and concerns of all interest groups with due regard to diversity;
- 2.4. share with their mandate givers any relevant information received from the other party;
- 2.5. share with their mandate givers the needs, interests, fears, concerns and expectations of the other party;
- 2.6. endeavour to moderate the mandate givers’ expectations;

Handout continued

- 2.7. seek to generate creative options for meeting the needs, interests, fears, concerns and expectations of the other party and for finding mutual gain outcomes;
- 2.8. seek to obtain flexible mandates from the mandate givers;
- 2.9. obtain as much relevant information as possible to substantiate the needs and proposals;
- 2.10. explore and seek to understand what the possible alternatives are to a negotiated agreement.

3. AT THE COMMENCEMENT OF THE NEGOTIATION PROCESS

- 3.1. introduce the teams to each other;
- 3.2. settle housekeeping matters which may include:
 - 3.2.1. start and finish times
 - 3.2.2. tea and lunch arrangements
 - 3.2.3. smoking regulations
 - 3.2.4. limits to interruptions
- 3.3. seek to agree on ground rules for the negotiation which may include;
 - 3.3.1. agreeing to listen carefully
 - 3.3.2. agreeing to speak in turn and not to interrupt one another
- 3.4. seek to agree on caucus groundrules which may include that;
 - 3.4.1. parties may request caucuses at any time
 - 3.4.2. caucusing will take place only once parties have fully explored the issues raised by the other party
 - 3.4.3. the party requesting the caucus will leave the room
 - 3.4.4. the party requesting the caucus will indicate how long they require to caucus
 - 3.4.5. if it appears that a caucus will take longer than anticipated then the caucusing party will inform the other party and indicate a new time.
- 3.5. reaffirm the commitment to the agreed goal of the negotiation
- 3.6. agree that all that is said in the negotiation will be off the record unless it is expressly placed on the record.

Handout continued

- 3.7. confirm that summary minutes will be kept which will only reflect the attendance, matters which a party has requested to be placed on record and any agreements reached.

4. CLARIFYING AND DEVELOPING AN UNDERSTANDING OF THE ISSUES

- 4.1. present the proposals and explain the needs, interests, fears, concerns and expectations.
- 4.2. frame issues in a collaborative and solvable way
- 4.3. explore and seek to understand the proposals, needs, interests, fears, concerns and expectations of the other parties.
- 4.4. exchange relevant information
- 4.5. list and agree the issues for negotiation
- 4.6. agree on order of issues to be dealt with (consider starting with easier issues, urgent issues or issues that will help clarify others)
- 4.7. continue to clarify issues with particular regard to needs, interests, fears, concerns and expectations
- 4.8. track and focus the discussions
- 4.9. identify areas of common concern and competing interest

5. DEVELOPING AND SELECTING OPTIONS FOR AGREEMENT

- 5.1. take each issue at a time, generate as many possible ways of meeting the needs of each party and “making the pie bigger”
- 5.2. invent options without committing
- 5.3. use objective criteria and standards as a basis to evaluating and choosing options
- 5.4. analyse options to see which ones both parties can accept
- 5.5. seek to influence and be open to be influenced
- 5.6. separate and integrate issues as necessary
- 5.7. consider linking and trading issues
- 5.8. try hypotheticals i.e. ‘what if..?’
- 5.9. consider creating sub-groups/task teams/commissions to develop proposals
- 5.10. consider using a single text document to reach consensus

Handout continued

- 5.11. keep options tentative and conditional until all issues have been agreed
- 5.12. identify areas of agreement
- 5.13. package acceptable options into an overall agreement
- 5.14. minimise formality and record keeping until final agreement is reached

6. REACHING AGREEMENT

- 6.1. draft an agreement
- 6.2. ensure mutual understanding of the terms of the agreement
- 6.3. specify who, what, where, when and how agreement will be implemented
- 6.4. set out evaluation, implementation and follow-up details
- 6.5. consider report back procedures including the idea of a joint statement to constituencies
- 6.6. include procedures in the event of deadlock
- 6.7. if a final agreement is difficult to arrive at consider agreements in principle, tentative agreements, interim agreements, partial agreements, agreement on goals, agreement on process
- 6.8. if a final agreement is not possible then reality test, compromise, take a break, discuss alternative ways of reaching agreement such as the involvement of a third party, capture what has been agreed and narrow what is in dispute

EFFECTIVE LISTENING

Individually, and then in pairs, record your response to the following questions:

1. How did it feel to be listened to without interruption?

2. How did it feel to remain silent while your partner spoke?

3. Identify what indications there were that your partner was listening to you?

4. Identify what indicators there were that your partner was not listening to you?

5. Identify what stood in the way of you listening effectively?

DOS AND DON'TS OF EFFECTIVE LISTENING
--

DO:

- * create a listening environment; remove barriers e.g. furniture
- * mirror the speaker's mood
- * be conscious of personal space
- * tactfully express concerns about non-listening
- * be open-minded
- * keep listening even if you think you have heard it before
- * be patient and courteous
- * keep listening even if you disagree with what you are hearing
- * cultivate a caring attitude towards the speaker
- * demonstrate attentive body language
- * be sensitive to gestures and body movement
- * maintain eye contact when appropriate
- * make notes when appropriate
- * acknowledge that you are listening by nodding, "uh, uh", "yes, "mmm", smiling and giving other positive cues
- * make time available
- * structure the listening time
- * clarify
- * question
- * summarise
- * paraphrase
- * demonstrate a feeling of respect and equality
- * help the speaker to relax
- * focus on the speakers tone, stresses, speed, pitch and volume of the voice
- * be sensitive to non-verbal cues
- * allow silences
- * make mental summaries
- * listen as if you have to report back on what you have heard

Handout continued

- * mentally relate the speakers ideas to your own experience
- * be conscious of emotional obstacles to hearing
- * mentally launder out offensive language

DON'T:

- * interrupt
- * day dream
- * remain absolutely still and unmoved
- * change the topic
- * stereotype
- * judge
- * shut out what offensive people say
- * let yourself be distracted
- * give your point of view
- * be paternalistic
- * divert to your own problem
- * argue
- * put down
- * belittle
- * allow interruptions
- * prejudge
- * fiddle
- * doodle

DOS AND DON'TS OF PARAPHRASING

DO:

- * listen empathetically
- * focus on the speaker
- * concentrate
- * in your own words restate your understanding of what the other person has said
- * include both facts and feelings
- * determine whether you have paraphrased correctly before responding with your view
- * paraphrase manageable amounts of information

DON'T:

- * evaluate
- * judge
- * simply repeat what you have heard - get to the meaning
- * make stereotypical responses
- * over-use or use inappropriately
- * reframe to suit your position
- * interrupt inappropriately
- * overstate the issue or feeling
- * be paternalistic
- * over-use the same opening words, e.g.: "what I hear you saying is..." "what I hear you saying is..."
- * provide solutions
- * interpret

HELPING PEOPLE SAVE FACE

Individually, and then in groups, read the case study and consider your responses to the following questions.

1. Consider what you would say to Mr Footinit to help him save face?
2. Based on this, generate a list of things you would generally do and not do when trying to help people save face.

HELPING PEOPLE SAVE FACE CASE STUDY

The managing director of an explosives manufacturing business, Mr Footinit, pays an unscheduled visit to the plant one Sunday afternoon. Production is not in progress and the only employees on duty are two security guards.

One of these guards, Mr Zondo, is new and has as yet not met the managing director. He does not recognise him when he presents himself at the gate. The second guard, Mr Makilipe, is fast asleep on a makeshift bed under the table in the gatehouse.

Mr Footinit arrives at the gate and demands to be let in. Mr Zondo, acting according to his instructions, requests that Mr Footinit produce some form of identification before he is allowed on site. Mr Footinit does not have his company identification card with him and explains that he is the managing director. Mr Zondo nevertheless refuses him access.

Mr Footinit angrily barges past Mr Zondo in search of the other guard who he knows will recognise him. He discovers him asleep. He shakes Mr Makilipe awake and orders him to open the security access to the site for him. He also orders both security guards to present themselves in his office at 08h00 the following morning.

When the two guards arrive at Mr Footinit's office the following morning, he tells them that he has thought about their conduct the day before and has decided to dismiss them both for gross misconduct, specifically insubordination and sleeping on duty.

The two guards are shocked at the manner in which they have been treated and approach their Union for assistance. The Union approaches you, their manager, to lodge an appeal against this obviously unfair dismissal. You do not feel that the managing director handled the situation well and it is your task to approach him.

How can you do it without him losing face?

DOS AND DON'TS OF HELPING PEOPLE SAVE FACE

DO:

- * reality test
- * focus on needs instead of positions
- * bring people to their senses by questions
- * ask for third party recommendations
- * point to a standard of fairness
- * bring out new information or identify a change in circumstances which merits a change in position
- * make the solution your partner's idea
- * focus on issues over which the parties have already reached agreement
- * look for low-cost – high-benefit trades
- * write the person's victory speech
- * help the person back away without backing down
- * ask for a temporary suspension of the demand to allow for more analysis of the situation
- * offer your partner a choice
- * refocus the parties on the problem, separating this from the person
- * involve your partner - ask for ideas
- * establish a special forum or separate process to resolve outstanding issues
- * ask for constructive criticism
- * build a golden bridge for "retreat" - find alternative ways to satisfy your partner's weaknesses

Handout continued

DON'T:

- * judge
- * embarrass
- * criticise
- * humiliate
- * dismiss him as irrational
- * threaten
- * overlook basic human needs
- * belittle
- * blame
- * avoid
- * give advice

HANDLING EMOTIONS ROLEPLAY

BRIEF FOR THE APPLICANT

You are very, very angry with the Commission. You have been misled by Case Management Officers (CMO) at the Commission throughout your case. You have taken three days off work to attend to your case. Two of these days were a complete waste of time. Now four months later you have discovered that your case has been closed.

You are now going to attend a face-to-face meeting with the Commissioner who closed your case and you are going to demand that it be reopened.

In the meeting you must reveal the background information that follows slowly and get more and more difficult, angry and threatening as the exercise unfolds. The purpose of the exercise is to test the Commissioner's ability to deal with anger and threats.

The facts are that you referred your matter to the Commission on the 2nd January after being dismissed by your employer the day before Christmas. You were accused by your employer of incompetence and dismissed without a hearing.

You were initially impressed by the service rendered to you by the Commission because they responded to your referral very promptly and your conciliation was arranged for the 13th January. You were however disappointed to find when you arrived for the conciliation that the Commission had failed to notify the employer of the date of the hearing and as a result the conciliation had to be postponed. The conciliation finally took place on the 31st January but was not successful.

You believe that the Commissioner at that stage did not afford you a fair opportunity to put your case as you were separated from your employer soon after the conciliation commenced and you were as a result unable to confront the employer.

You referred your matter to arbitration on the day that conciliation took place. Two months later, having received no notification of the arbitration from the Commission, you called their offices. You spoke to a CMO called Sue. Sue asked for your case number and after drawing the file she reported to you that your case was scheduled for 14h00 that day. You were unable to attend the hearing at such short notice, as you have since found alternative employment, and so you asked her to arrange for a postponement of the arbitration. Sue promised to do this and to call you back within a week with a new date.

Handout continued

Sue did not call you and when you tried to contact her she was always unavailable. Eventually, you were assisted by another CMO, Edwin. He investigated your case and told you that your case had been closed. You were completely shocked. He suggested that you come into the Commission to request that your case be reopened. You went to the Commission but were told at the front desk that arbitration cases cannot be reopened once they are closed. You demanded to see Sue. She arrived with your file and she told you that your case had been closed because you had failed to attend the arbitration hearing. She could not remember your phone call to her requesting a postponement.

Co-incidentally as you were discussing the matter with Sue, the Commissioner who closed the case arrived on the scene and Sue simply referred you to the Commissioner and disappeared.

You have recently read several letters in the newspapers from disgruntled users of the Commission service and you intend to write a letter of the same nature.

You confront the Commissioner and demand that your case be reopened immediately. You are very impatient and are unwilling to have to repeat your story time and again to the Commission. You feel the Commissioner has shown a complete disregard for your Constitutional right to be heard before dismissing your case. You also believe the Commissioner is biased against you as an employee and you make sure to tell the Commissioner of these views and of your opinion that the Commissioner is incompetent and unfit to play a role in the Commission.

During the encounter you sigh loudly, cross your arms, roll your eyes, tap your foot, shake your head, interrupt and you are sarcastic.

HANDLING EMOTIONS ROLEPLAY**BRIEF FOR THE COMMISSIONER**

You are confronted by an irate applicant whose case has been dismissed. The applicant is demanding that the case be reopened. Upon examination of the file you recall that you dismissed the case because the applicant did not arrive for the hearing. Before you did this, you telephoned the applicant and were told by the person who answered the phone that she was at work and that he did not have the applicant's telephone number.

The employer did arrive for the case and they informed you that they had been informed of the arbitration some two weeks before the event. They also said that they had seen the applicant working for one of their competitors.

You are a part-time Commissioner with a busy private practice and this is not the first time that an applicant has failed to attend a hearing. In fact it happens all the time. Sometimes it is the fault of the Commission but in others it is the fault of the applicant who has failed to notify the Commission that the matter has been settled or that they have found another job and they do not wish to pursue their case.

You remember that you had been very irritated at the applicant not arriving for the case and that although the file had not clearly indicated that both parties had been notified of the hearing you had assumed that if one party had received notification the other must also have.

Before you can rescind the award, which you issued when dismissing the case, you have to ensure that the Labour Act has been complied with. You feel trapped in a situation not of your making. Sue, the Case Management Officer who referred the matter to you, has disappeared.

The purpose of this exercise is for you to deal with this angry person in an appropriate manner.

HANDLING EMOTIONS ROLEPLAY

Individually, and then in your pairs, record your response to the following questions:

1. What positive things did the Commissioner do to manage the emotion, anger and threats by the applicant?
2. What could the Commissioner have done which would have more effectively managed the applicant's emotion, anger and threats?
3. Generate a general list of effective ways for a mediator to handle other people's emotion, anger and threats.

SUGGESTED WAYS OF DEALING WITH ANGER AND THREATS OF OTHERS

1. HANDLING THE ANGER OF OTHERS:

- * be strategic and choose the appropriate tactic
- * acknowledge the emotion of the other party
- * encourage the other party to acknowledge their emotion and to talk about it
- * treat them with respect
- * show empathy not sympathy
- * stick with facts
- * do not accept blame for the emotion until a rational discussion is possible
- * be positive, not negative
- * use effective listening skills
- * stay cool - don't react defensively
- * remain calm responding strategically not emotionally
- * don't interrupt
- * determine the cause of the emotion
- * take a break
- * don't be reactive
- * don't deny it or stop it
- * don't argue
- * avoid creating more anger
- * don't tell them they have no reason to be angry
- * don't blame
- * be careful of offering your opinion
- * avoid red-flag words: "You always..."; "You are wrong..."; "You never...".
- * resist giving advice
- * listen - even allow a silence
- * acknowledge facts and focus on needs
- * lower tone

Handout continued

2. EFFECTIVE WAYS OF DEALING WITH THREATS FROM OTHERS:

- * be strategic and choose the appropriate tactic
- * recognise the tactic
- * consider the threat
- * let the words sink in
- * repeat, rephrase, recap, rewind the tape
- * choose your response
- * ignore
- * use silence
- * ask for clarification
- * laugh
- * express disbelief
- * express disappointment
- * redirect the threat
- * express understanding and empathy
- * reason with the other party
- * defer discussion of the issue
- * call their bluff
- * counter with a threat
- * break off session and leave
- * acquiesce
- * stay flexible
- * reality test
- * examine power balances or imbalances
- * don't get even - get what you want
- * reinterpret the threat as an aspiration
- * ignore it
- * don't threaten back
- * don't react or seem threatened
- * reframe the attack on you as an attack on the problem
- * reframe a personal attack as friendly
- * turn the trick to your advantage
- * negotiate about the rules of the game

ANGER SELF-EVALUATION

Individually, record your responses to the following questions. You will be asked to share your answers to question 9 only.

1. Record a situation that has made you angry with persons at work, with friends or with family
2. How did you feel emotionally in the situation? For example: suspicious, frustrated, discouraged, frightened, disappointed, guilty, hostile, jealous, lonely, inferior, rejected, inadequate, envious, impatient, bored, etc.
3. How did you feel physically in the situation?

4. What was your response to the other party in the situation?

5. In particular, to what extent did you do the following:

		YES	NO
5.1	Did you try to see the situation through the eyes of the other person involved? For example did you try to understand the need, interest, fear, concern or perceived threat or loss which may have motivated the other person		
5.2	Would it have helped had you tried to see the situation through the eyes of the other person?		
5.3	Did you <u>avoid</u> dealing with the situation by for example walking away, remaining silent, capitulating to the other person's position?		
5.4	If you avoided dealing with the situation, was this appropriate?		
5.5	Did you deal with the situation but without expressing the anger and emotion that you were feeling?		
5.6	If you did not express anger and emotion, was this appropriate?		
5.7	Did you react vigorously and demonstratively by shouting, raising your voice, arguing, blaming, insulting or assaulting?		
5.8	If you reacted vigorously and demonstratively, was this appropriate?		
5.9	Did you feel out of control and unable to influence the situation?		

		YES	NO
5.10	If you feel out of control, is this appropriate?		
5.11	Did you overtly or covertly judge the other person as stupid, incompetent, racist, sexist, uncouth, uncultured, etc.?		
5.12	If you judged, was it appropriate?		
5.13	Did you have negative thoughts? For example exaggerate the problem, jump to conclusions or focus on the bad to the exclusion of the good.		
5.14	If you thought negatively, was it appropriate?		
5.15	Was your anger justified?		
	5.15.1 Was it the result of a real or intended threat?		
	5.15.2 Was it caused by a deliberately hurtful act?		
	5.15.3 Was it caused by something beyond your control?		

6. What could you have done to manage your anger more effectively?

- before

- during

- after

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SUGGESTED WAYS OF DEALING WITH YOUR ANGER
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- * be strategic and choose the appropriate tactic
- * count to 10
- * take a break
- * acknowledge and accept the emotion
- * breath deeply
- * identify the emotion you are feeling i.e. anger, frustration, humiliation
- * don't assume responsibility
- * identify the cause of the emotion
- * express the emotion when it is safe and appropriate
- * separate the emotion from the issue or problem and deal separately with each
- * don't react spontaneously - act strategically
- * write things down
- * shift responsibility to another
- * talk it out with a friend or colleague
- * think before you act
- * identify it early
- * use anger strategically
- * be aware of your communication style
- * watch your facial expressions
- * check your tone of voice
- * select your words carefully
- * change your anger into energy
- * be assertive not aggressive
- * be realistic and check your expectations
- * don't create needless pressure on yourself
- * know your "hot buttons"
- * use "I" statements
- * moderate your language
- * deal with your anger before it escalates
- * try new approaches until one works for you
- * visualise the behaviour you want to achieve
- * learn to relax

UNILATERAL CHANGE ROLEPLAY**BRIEF FOR THE MANAGER**

A dispute has arisen between you and your site foreman. The site foreman claims his overtime is taking afternoons and days off instead of claiming overtime pay and working normal hours like other employees. The site foreman often works long hours of overtime to complete specialist work after the other workers have gone home. The practice of exchanging overtime for afternoons and days off developed under the previous manager.

Most other employees consider this to be an unfair privilege, as they do not have the same option. Some workers have used it as a reason to refuse to work overtime at all. You need to have a uniform practice that is satisfactory to all. Whilst you need the specialist work to be done it is not essential that the site foreman do it. Temporary employees could be hired or other workers could be trained to do it.

You notified the site foreman that in future he would have to claim overtime pay and work normal hours and he has lodged a grievance alleging that this was an illegal unilateral change to his conditions of service. No matter how strong or weak your legal case may be, you do not want to get involved in court action. You have accordingly agreed to meet with the foreman to deal with the grievance.

You are very firm however that the practice must end.

UNILATERAL CHANGE ROLEPLAY**BRIEF FOR THE SITE FOREMAN**

A dispute has arisen between you and your manager. You have always worked erratic hours, often putting in long hours of overtime to complete specialist work after other employees have gone home. Over the last few years a practice has developed whereby you claim this overtime by taking afternoons and days off. This practice developed under your previous manager and was acceptable to everyone.

Other employees claim overtime pay and work normal hours, but your arrangement suits you better as it gives you greater time at home. The financial compensation for the overtime is not important to you. You do not particularly want to do the specialist work or to work overtime at all. Your greatest need is to spend as much time as possible with your family.

You were greatly angered when your new manager suddenly notified you that in future you have to claim overtime pay and work normal hours. This is totally unacceptable to you and you believe it is an illegal unilateral change to your conditions of service. You have lodged a grievance and will fight the case no matter how long or how much it costs unless your real needs are met.

You have agreed to go to meet with the manager in order to restore the practice. You are angry but want to find a solution which meets your needs.

REFLECTION ON ROLE-PLAY

Individually record your responses to the following questions. Be constructive, not destructive in your comment; be specific, give examples and offer alternatives. When each participant in the role-play group is ready, give feedback.

1. *What did the negotiators do well in the negotiation?*

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2. *What could the negotiators have done better in the negotiation?*

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3. *What questions or learnings, if any, do you have for report back to the main group?*

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DOMESTIC WORKER ROLE-PLAY**BRIEF FOR THE DOMESTIC WORKER**

You were employed by the employer as a domestic worker for four and a half years. In that capacity you looked after the employer's children, now aged 10 and 12 years, and you did washing and ironing and cleaned the house. You were paid 1000 Crowns per month for 45 hours work and were provided with a furnished room on the property as well as food.

At the end of last month the employer told you that you would have to leave at the end of the following month because he/she could no longer afford to pay you. She had recently been divorced.

You were shocked by this news. Your first reaction was to demand your notice pay immediately and to leave the job. You did not believe the employer's explanations for your dismissal because the employer had recently got a new car and seemed to have as much money as ever.

Upon reflection you realise that your first reaction was short-sighted because you now have no accommodation and no income. A friend of yours advised you to lodge an unfair dismissal claim.

It is going to be difficult for you to find employment in your current circumstances so you would like your job back. You will settle for shorter hours and less pay or for other different, but reasonable, conditions of employment. If the worst comes to the worst then you will settle for retrenchment pay. You have heard that in terms of the law, you should have been paid one weeks pay for each completed year of service.

You always had a good relationship with the employer and have agreed to try to settle the dispute with your employer. You hope that an agreement is possible. You do not belong to a union and cannot afford legal advice and representation if the matter is not settled. You are overwhelmed by the negotiation and are initially quite emotional in the negotiation.

DOMESTIC WORKER ROLE-PLAY**BRIEF FOR THE EMPLOYER**

You employed a domestic worker who has worked for you for four and a half years. In that capacity the domestic worker looked after your children, now aged 10 and 12 years, and did your washing and ironing and cleaned your house. You paid the worker 1000 Crowns per month for working 45 hours a week and provided a furnished room on your property as well as food.

You recently got divorced and received a car and a small maintenance payment from your ex-spouse as part of the divorce settlement. You found it increasingly difficult to cover all your monthly expenses with the small salary and maintenance that you receive. You realised that you could only afford to pay a domestic worker at most 750 Crowns per month.

You reluctantly decided that you had no choice but to give your domestic worker one month's notice of termination as stipulated in the contract of employment. You called the worker in at the end of the month and explained your difficulty and said that the worker would have to leave at the end of the following month. You knew it would be difficult coping with work, the children and the housekeeping but you believed that you had no option but to dismiss the worker.

You were shocked by the worker's reaction because you had always had a good relationship. The worker shouted at you and accused you of being selfish and spending the money you could have paid in wages on yourself. You tried to discuss the matter but the worker demanded to leave immediately and that you pay a month's notice pay. You decide to go along with this because you realized how difficult it would be for the two of you to live together during the notice period.

The worker then lodged an unfair dismissal claim against you. You are angry and upset that the worker has challenged you in this way.

Try settle the dispute with the employee.

REFLECTION ON ROLE-PLAY

Individually record your responses to the following questions. Be constructive, not destructive in your comment; be specific, give examples and offer alternatives. When each participant in the role-play group is ready, give feedback.

1. *What did the negotiators do well in the negotiation?*

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2. *What could the negotiators have done better in the negotiation?*

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3. *What questions or learnings, if any, do you have for report back to the main group?*

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BANK ROLE-PLAY**BRIEF FOR THE DISMISSED EMPLOYEE**

You are the dismissed employee.

You were a cashier at a bank and were charged with gross negligence and dismissed following a disciplinary hearing.

On the 5th of September you received an urgent telephone call from your neighbour that burglars had broken into your home and were in the process of packing up your goods inside your house. You were very shocked and decided to rush home immediately in order to save your property. Your home is ten minutes' walk from the bank. As you left you told the security guard that you had an emergency at home but that you would be back soon. You asked the security guard to lock your till and watch over it whilst you were away.

When you got to your home you found that the burglars had escaped with all your valuable possessions. After securing your home you returned to work and completed your day's work. When you came to sign off and hand in your cash you were shocked to find 50 Crowns missing from your till.

You reported to your supervisor and explained that someone must have stolen the money during your absence to attend to the burglary. Your supervisor was very unsympathetic and alleged that you knew that in terms of the cashiers' rules and procedures:

1. You were not to leave your till without signing off sub-totals and handing in cash for banking.
2. You were supposed to report sudden emergencies to your supervisor who would appoint two relief cashiers to cash up and sign off the accounts and balance.
3. You were not permitted to receive outside calls during your shift.
4. You were supposed to lock your till whenever you left it.

You do not dispute that you knew that you had to lock your till. That is why you asked the security guard to lock it. You did not want to take the key with you as you did not know how long you would be away and your supervisor may have wanted to access your till.

Handout continued

You also knew that generally you were not to leave your till without signing off sub-totals and handing in cash for banking. However, you did not have time to do this and you cannot believe that this procedure applies in the case of an emergency.

You have no knowledge of any rule or procedure that required you to report sudden emergencies to your supervisor who would appoint relief cashiers.

You know that you were generally not permitted to receive outside calls during your shift but you did not know that this applied to emergencies.

You did not undergo any formal induction.

You are very angry at what you consider to be a gross injustice and you are initially quite impatient to tell the employer your story. You are prepared to acknowledge off the record that you did wrong, but you are adamant that dismissal is an excessive punishment and you will do anything reasonable to get your job back.

You are to negotiate with the employer before the dispute goes to arbitration.

BANK ROLE-PLAY**BRIEF FOR THE INDUSTRIAL RELATIONS OFFICER**

You are the Industrial Relations Officer employed by a bank.

You are responsible for all personnel related matters at a branch of the Bank. You are very familiar with the disciplinary code and procedure and like to consider yourself a resource to everyone in the branch.

The dismissed employee's supervisor has informed you that on the 5th September she received a report from the employee that 50 Crowns was missing from the employee's till. The employee explained that a telephone call had been received from a neighbour that burglars had broken into the employee's home and were in the process of packing up the employee's household goods. The employee was shocked and decided to rush home immediately. The employee's home is ten minutes' walk from the store.

The security guard employed by a sub-contractor was allegedly told by the employee of the emergency and asked by the employee to lock and watch over the employee's till.

Your investigations show that the security guard does not remember asked to lock the employee's till.

The supervisor maintained that all cashiers know that:

1. They were not to leave their tills without signing off sub-totals and handing in cash for banking.
2. They were to report sudden emergencies to you who would appoint two relief cashiers to cash up and sign off the accounts and balance.
3. They were not permitted to receive outside calls during their shifts.
4. They were to lock their tills whenever they left them.

The supervisor said she had explained, time and again, that there were no exceptions to these rules. The supervisor has now left the Company cannot be traced.

Your workplace is a small branch of the bank and you consider your subordinates to be like your family. You don't like treating them very formally so you do not have formal instructions or written briefs. You just explain the rules to the staff from time to time.

Handout continued

You are responsible for welcoming new employees to the bank. When you do that you always tell them they can get a copy of all the company's codes, rules and procedures from you on request. You also explain that if they want to know about any specific rules that apply to them they should ask their immediate supervisor.

You have no first hand knowledge of the events that have caused the employee to be dismissed. You feel very sorry for the dismissed employee, as you believe that there might have been some misunderstanding of what the employee should have done in an emergency. However you do not want cashiers to get the impression that they can get away with negligence. You would be delighted if a settlement could be arrived at which met the dismissed employee's and the company's needs, and your need not to set an adverse precedent.

You are to negotiate with the dismissed employee before the matter goes to arbitration.

REFLECTION ON ROLE-PLAY

Individually record your responses to the following questions. Be constructive, not destructive in your comment; be specific, give examples and offer alternatives. When each participant in the role-play group is ready, give feedback.

1. *What did the negotiators do well in the negotiation?*

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2. *What could the negotiators have done better in the negotiation?*

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3. *What questions or learnings, if any, do you have for report back to the main group?*

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WAGE NEGOTIATION ROLE-PLAY**BRIEF FOR THE UNION REPRESENTATIVES**

You are about to commence the annual round of wage negotiations. Prepare for the negotiations using the preparation and process guidelines in your workbook.

The issues that your membership have instructed you to put to management are the minimum wage for a single category of employees (the lowest grade), shift allowance, annual bonus and annual leave. They have also told you what your opening demands should be and the Union has submitted these to management in a letter of demand.

Your demands are as follows:-

1. Wages - The present minimum wage in the company is 50 Crowns per hour. Your opening demand is a 10 Crowns per hour increase.
2. Shift Allowance – The present shift allowance is 5% on the basic rate. Your opening demand is 20% on the basic rate.
3. Annual Bonus – The present annual bonus of one week is discretionary and, if paid, is paid on the 1st January. Your opening demand is a non-discretionary bonus of 4 weeks basic pay payable to all employees with 12 months service on 1st December each year.
4. Annual leave – The present annual leave is 15 working days paid leave per annum. Your opening demand is 20 working days paid leave.

In a general meeting of the workers you were mandated to settle at no less than an increase from 50 to 56 Crowns per hour; a 7% shift allowance; a discretionary annual bonus of between 2 and 3 weeks basic pay payable to all employees with 12 months service on 1st December each year; and 20 working days paid annual leave

The company has informed you that they wish to raise the issue of restructuring in the wage negotiations. You do not object in principle to them doing this although you are nervous about the topic, as you fear that it will result in retrenchments. You would be prepared to engage in a process of discussion outside the negotiation forum, particularly, if the company was prepared to offer your members guarantees about job security. If you are unable to extract such a guarantee then you would at least like agreement that Management will negotiate with the Union on the issues of job loss, timelines, facilitation, training, re-training, creation of Small, Micro and Medium Enterprises, severance and dispute resolution mechanisms.

You are an inexperienced negotiator and attempt to conceal this by adopting a positional approach to the negotiation. You are prepared to be co-operative if you get a sense that the company appreciates your needs and concerns.

Handout continued

You want to avoid industrial action, as the union is not organizationally strong enough to carry out a successful strike. You also cannot consider mediation as this will delay settlement and weaken your position with your membership. To consolidate the union's position it is essential that you get a good settlement quickly.

You would be prepared to consider a two-year wage agreement as this would give you time to consolidate union strength, but in order to sell such an idea to your membership the company would have to agree to grant wage increases above inflation which is predicted to be 12% next year.

WAGE NEGOTIATION ROLE-PLAY**BRIEF FOR THE EMPLOYER REPRESENTATIVES**

You are about to commence the annual round of wage negotiations. Prepare for the negotiations using the preparation and process guidelines in your workbook.

The union has sent you their usual letter of demand. The issues that they have raised concern the minimum wage for a single category of employees (the lowest grade), shift allowance, annual bonus and annual leave.

You have met with the board of the company and have been given the following mandate:

1. Wages - The present minimum wage in the company is 50 Crowns per hour. You have been mandated to pay a decent living wage and your bottom line is an increase of 6 Crowns per hour. The board's main concern in relation to wages is that to remain viable and profitable the company needs to keep pay levels and conditions of service close to the average in the industry. The current industry average is 52 Crowns per hour. The union's opening demand is an increase of 10 Crowns per hour to the minimum wage.
2. Shift Allowance – The present shift allowance is 5% on the basic rate; the average in the industry is 6%. The union has demanded an increase of 20% on the basic rate. The company is also keen to stay as close to the average in the industry as possible but would be prepared to go to 7% to achieve a settlement.
3. Annual Bonus - The present annual bonus of one week is discretionary and, if paid, is paid on the 1st January. The union has demanded a non-discretionary bonus of 4 weeks basic pay, payable on the 1st December to all employees with 12 months service. You are prepared to agree to a discretionary bonus of 2 weeks basic pay, payable on the 15th December to all employees with 12 months service if you get agreement on wages and the shift allowance.
4. Annual leave – The present annual leave is 15 working days paid leave per annum. The union has demanded 20 working days paid leave. You are flexible on this item if you get agreement on wages and shift allowance.

The board has instructed you to open a discussion with the union about restructuring. This issue has arisen because of concerns from management about quality, waste and productivity. The company has not put issues on the negotiating agenda in the past and you are unsure about how the union will react to this. You have informed the union in very general terms that you will be doing this at the opening of the negotiation process. You do not have a mandate to guarantee job security in the event that the union raises this, although you have little doubt that if the productivity improved there would be potential for new jobs as opposed to job cuts. If the Union

Handout continued

shows at least an understanding of the Company's needs for restructuring, it will influence your flexibility on this and other issues.

The board of the directors consider themselves progressive in their employment practices and generally pay wages and provide conditions of employment that are higher than the average in the industry. Nevertheless you have been instructed not to settle below your bottom line if at all possible, particularly because the quality, waste and productivity difficulties faced by the company have eroded recent profits.

You have also been told to avoid strike action at all costs and to settle as soon as possible. You would like to enter into a two-year wage agreement with the union to secure industrial peace during the restructuring period, but only if the increase granted in the second year is closely linked to inflation.

You are an experienced and well trained negotiator; the union is less experienced. You are familiar with the union's positional approach and you try as much as possible to avoid being drawn into a positional negotiation with them. You make strategic use of both positional and needs-based tactics to obtain the most mutually beneficial agreement possible.

REFLECTION ON ROLE-PLAY

Individually record your responses to the following questions. Be constructive, not destructive in your comment; be specific, give examples and offer alternatives. When each participant in the role-play group is ready, give feedback.

1. *What did the negotiators do well in the negotiation?*

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2. *What could the negotiators have done better in the negotiation?*

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3. *What questions or learnings, if any, do you have for report back to the main group?*

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BEHAVIOURS OF EFFECTIVE NEGOTIATORS

Individually, and then in groups, consider your responses to the following question:

What are the behaviours of a good negotiator?

Handout

BEHAVIOURS OF EFFECTIVE NEGOTIATORS

- Researches before the negotiation
- Listens carefully
- Handles his or her own anger and emotion well
- Handles the anger of others well
- Is sensitive to face saving
- Has stamina and never gives up the search for common ground
- Paraphrases and asks questions to check understanding and gather information
- Clarifies and summarises
- 'Reads' the other parties needs
- Understands and communicates own needs
- Prepares well
- Visualises mutual gain not losses
- Practices negotiating at every opportunity
- Prioritises
- Is flexible
- Is sensitive to any cultural differences of the other party
- Is observant of the body language of others at the table
- Is aware of own body language, including eye contact
- Keeps an open mind
- Is patient and tolerant
- Demonstrates respect for the dignity of the other party
- Is assertive not aggressive
- Is polite, using emotion strategically
- Avoids exposing the other party's weaknesses
- Communicates logically, clearly and in plain language
- Is strategic not spontaneous
- Dresses appropriately
- Is able to tolerate silence
- Is organised and structured in approach
- Communicates with own constituency and with the other party
- Is a team player
- Uses humour when appropriate
- Seeks out common ground
- Only engages in constructive arguments
- Respects confidentiality when speaking off the record
- Is a creative thinker

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JOINT UNION / MANAGEMENT NEGOTIATION SKILLS TRAINING COURSE

**ILO CONVENTIONS AND RECOMMENDATIONS
AND
RECOMMENDED READING LIST**

ILO CONVENTIONS AND RECOMMENDATIONS

CONVENTION No. 87

Convention concerning Freedom of Association and Protection of the Right to Organise

The General Conference of the International Labour Organisation,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948;

Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the session;

Considering that the Preamble to the Constitution of the International Labour Organisation declares “recognition of the principle of freedom of association” to be a means of improving conditions of labour and of establishing peace;

Considering that the Declaration of Philadelphia reaffirms that “freedom of expression and of association are essential to sustained progress”;

Considering that the International Labour Conference, at its Thirtieth Session, unanimously adopted the principles which should form the basis for international negotiation;

Considering that the General Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour Organisation to continue every effort in order that it may be possible to adopt one or several international Conventions; adopts this ninth day of July of the year one thousand nine hundred and forty eight the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organise Convention, 1948:

PART I:

FREEDOM OF ASSOCIATION

Article 1

Each Member of the International Labour Organisation for which the Convention is in force undertakes to give effect to the following provisions.

Article 2

Employees and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorization.

Article 3

1. Employees' and employers' organisation shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Employees' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Employees' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of employees and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of employees' and employers' organisations.

Article 7

The acquisition of legal personality by employees' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention employees and employers and their respective organisations, like other persons or organised collectives, shall respect the law of the land.
2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.
2. In accordance with the principle set forth in paragraph 8 or article 19 of the Constitution of the International labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term “organisation” means any organisation of employees or of employers for furthering and defending the interests of employees or of employers.

PART II

PROTECTION OF THE RIGHT TO ORGANISE

Article 11

Each Member of the International labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that employees and employers may exercise freely the right to organise.

PART III.

MISCELLANEOUS PROVISIONS

Article 12

1. In respect of the territories referred to in Article 35 of the Constitution of the International Labour Organisation as amended by the Constitution of the International Labour Organisation Instrument of Amendment 1946, other than the territories referred to in paragraphs 4 and 5 of the said article as so

amended, each Member of the Organisation which ratifies this Convention shall communicate to the Director-General of the International Labour Office with or as soon as possible after its ratification a declaration stating:

- a) the territories in respect of which it undertakes that the provisions of the Convention shall be applied without modification;
- b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;
- c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
- d) the territories in respect of which it reserves its decision.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 13

1. Where the subject-matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the international relations of that territory may, in agreement with the government of the territory, communicate to the Director-General of the International Labour Office a declaration accepting on behalf of the territory the obligations of this Convention.

2. A declaration accepting the obligations of this Convention may be communicated to the Director-General of the International Labour Office:

- a) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or
- b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.

3. Declarations communicated to the Director-General of the International Labour Office in accordance with the preceding paragraphs of this Article shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications it shall give details of the said modifications.

4. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

5. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 16, communicate

to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

PART IV.

FINAL PROVISIONS

Article 14

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 15

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Article 16

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 17

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 18

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 19

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall

examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 20

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 21

The English and French versions of the text of this Convention are equally authoritative

CONVENTION No. 98

Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June, 1949, and

Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to organise and collective Bargaining Convention, 1949:

Article 1

1. Employees shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to —
 - (a) make the employment of an employee subject to the condition that he shall not join a union or shall relinquish trade union membership;
 - (b) cause the dismissal of or otherwise prejudice an employee by reason of union membership or because of participation in union activities outside working hours, or with the consent of the employer, within working hours.

Article 2

1. Employees' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agent or members in their establishment, functioning or administration.
2. In particular, acts which are designed to promote the establishment of employees' organisations under the domination of employers or employers' organisations, or to support employees' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and employees' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.
2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate --
 - a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;
 - b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;
 - c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
 - d) the territories in respect of which it reserves its decision pending further consideration of the position.
2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.
3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.
4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in

any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 10

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.
2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.
3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 14

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides,

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.

CONVENTION No. 135

Workers' Representatives Convention, 1971

Article 1

Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements.

Article 2

Such facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.

In this connection account shall be taken of the characteristics of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

3. The granting of such facilities shall not impair the efficient operation of the undertaking concerned.

Article 3

For the purpose of this Convention the term workers' representatives means persons who are recognised as such under national law or practice, whether they are--

trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or

(b) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned.

Article 4

National laws or regulations, collective agreements, arbitration awards or court decisions may determine the type or types of workers' representatives which shall be entitled to the protection and facilities provided for in this Convention.

Article 5

Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives.

Article 6

Effect may be given to this Convention through national laws or regulations or collective agreements, or in any other manner consistent with national practice.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
 - a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;
 - b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

CONVENTION No. 144

Tripartite Consultation (International Labour Standards) Convention, 1976

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-first Session on 2 June 1976, and

Recalling the terms of existing international labour Conventions and Recommendations--in particular the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, and the Consultation (Industrial and National Levels) Recommendation, 1960--which affirm the right of employers and workers to establish free and independent organisations and call for measures to promote effective consultation at the national level between public authorities and employers' and workers' organisations, as well as the provisions of numerous international labour Conventions and Recommendations which provide for the consultation of employers' and workers' organisations on measures to give effect thereto, and

Having considered the fourth item on the agenda of the session which is entitled "Establishment of tripartite machinery to promote the implementation of international labour standards", and having decided upon the adoption of certain proposals concerning tripartite consultation to promote the implementation of international labour standards, and

Having determined that these proposals shall take the form of an international Convention,

adopts the twenty-first day of June of the year one thousand nine hundred and seventy-six, the following Convention, which may be cited as the Tripartite Consultation (International Labour Standards) Convention, 1976:

Article 1

In this Convention the term *representative organisations* means the most representative organisations of employers and workers enjoying the right of freedom of association.

Article 2

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to operate procedures which ensure effective consultations, with respect to the matters concerning the activities of the International Labour Organisation set out in Article 5, paragraph 1, below, between representatives of the government, of employers and of workers.
2. The nature and form of the procedures provided for in paragraph 1 of this Article shall be determined in each country in accordance with national practice, after consultation with the representative organisations, where such organisations exist and such procedures have not yet been established.

Article 3

1. The representatives of employers and workers for the purposes of the procedures provided for in this Convention shall be freely chosen by their representative organisations, where such organisations exist.
2. Employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken.

Article 4

1. The competent authority shall assume responsibility for the administrative support of the procedures provided for in this Convention.
2. Appropriate arrangements shall be made between the competent authority and the representative organisations, where such organisations exist, for the financing of any necessary training of participants in these procedures.

Article 5

1. The purpose of the procedures provided for in this Convention shall be consultations on--
 - (a) government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;
 - (b) the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the International Labour Organisation;
 - (c) the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;
 - (d) questions arising out of reports to be made to the International Labour Office under article 22 of the Constitution of the International Labour Organisation;
 - (e) proposals for the denunciation of ratified Conventions.
2. In order to ensure adequate consideration of the matters referred to in paragraph 1 of this Article, consultation shall be undertaken at appropriate intervals fixed by agreement, but at least once a year.

Article 6

When this is considered appropriate after consultation with the representative organisations, where such organisations exist, the competent authority shall issue an annual report on the working of the procedures provided for in this Convention.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an Act communicated to the Director-General of the International Labour Office for registration. Such denunciation should not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of

denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

CONVENTION No. 151

Labour Relations (Public Service) Convention, 1978

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-fourth Session on 7 June 1978, and

Noting the terms of the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, and the Workers' Representatives Convention and Recommendation, 1971, and

Recalling that the Right to Organise and Collective Bargaining Convention, 1949, does not cover certain categories of public employees and that the Workers' Representatives Convention and Recommendation, 1971, apply to workers' representatives in the undertaking, and

Noting the considerable expansion of public-service activities in many countries and the need for sound labour relations between public authorities and public employees' organisations, and

Having regard to the great diversity of political, social and economic systems among member States and the differences in practice among them (e.g. as to the respective functions of central and local government, of federal, state and provincial authorities, and of state-owned undertakings and various types of autonomous or semi-autonomous public bodies, as well as to the nature of employment relationships), and

Taking into account the particular problems arising as to the scope of, and definitions for the purpose of, any international instrument, owing to the differences in many countries between private and public employment, as well as the difficulties of interpretation which have arisen in respect of the application of relevant provisions of the Right to Organise and Collective Bargaining Convention, 1949, to public servants, and the observations of the supervisory bodies of the ILO) on a number of occasions that some governments have applied these provisions in a manner which excludes large groups of public employees from coverage by that Convention, and

Having decided upon the adoption of certain proposals with regard to freedom of association and procedures for determining conditions of employment in the public service, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts the twenty-seventh day of June of the year one thousand nine hundred and seventy-eight, the following Convention, which may be cited as the Labour Relations (Public Service) Convention, 1978:

Part I. Scope and Definitions

Article 1

1. This Convention applies to all persons employed by public authorities, to the extent that more favourable provisions in other international labour Conventions are not applicable to them.
2. The extent to which the guarantees provided for in this Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature, shall be determined by national laws or regulations.
3. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

Article 2

For the purpose of this Convention, the term *public employee* means any person covered by the Convention in accordance with Article 1 thereof.

Article 3

For the purpose of this Convention, the term *public employees' organisation* means any organisation, however composed, the purpose of which is to further and defend the interests of public employees.

Part II. Protection of the Right to Organise

Article 4

1. Public employees shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to--
 - (a) make the employment of public employees subject to the condition that they shall not join or shall relinquish membership of a public employees' organisation;
 - (b) cause the dismissal of or otherwise prejudice a public employee by reason of membership of a public employees' organisation or because of participation in the normal activities of such an organisation.

Article 5

1. Public employees' organisations shall enjoy complete independence from public authorities.
2. Public employees' organisations shall enjoy adequate protection against any acts of interference by a public authority in their establishment, functioning or administration.
3. In particular, acts which are designed to promote the establishment of public employees' organisations under the domination of a public authority, or to support public employees' organisations by financial or other means, with the object of placing such organisations under the control of a public authority, shall be deemed to constitute acts of interference within the meaning of this Article.

Part III. Facilities to be Afforded to Public Employees' Organisations

Article 6

1. Such facilities shall be afforded to the representatives of recognised public employees' organisations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work.
2. The granting of such facilities shall not impair the efficient operation of the administration or service concerned.
3. The nature and scope of these facilities shall be determined in accordance with the methods referred to in Article 7 of this Convention, or by other appropriate means.

Part IV. Procedures for Determining Terms and Conditions of Employment

Article 7

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters.

Part V. Settlement of Disputes

Article 8

The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved.

Part VI. Civil and Political Rights

Article 9

Public employees shall have, as other workers, the civil and political rights which are essential for the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their functions.

PART VII. PROVISIONS

Article 10

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 11

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Article 12

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an Act communicated to the Director-General of the International Labour Office for registration. Such denunciation should not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 13

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 14

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 15

At such times as may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 16

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 12 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 17

The English and French versions of the text of this Convention are equally authoritative.

CONVENTION No. 154

Convention concerning the Promotion of Collective Bargaining

This General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-seventh Session on 3 June, 1981, and

Reaffirming the provision of the Declaration of Philadelphia recognising “the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve ... the effective recognition of the right of collective bargaining”, and noting that this principle is “fully applicable to all people everywhere”, and

Having regard to the key importance of existing international standards contained in the Freedom of association and Protection of the Right to Organise Convention, 1948, the Right to organise and Collective Bargaining Convention, 1949, the Collective Agreement Recommendation, 1951, the Voluntary Conciliation and Arbitration Recommendation, 1951, the Labour Relations (Public Service) Convention and Recommendation, 1978, and the Labour Administration Convention and Recommendations, 1978, and

Considering that it is desirable to make greater efforts to achieve the objectives of these standards and, particularly, the general principles set out in Article 4 of the Right to Organise and Collective Bargaining Convention, 1949, and in Paragraph 1 of the Collective Agreement recommendation, 1951, and

Considering accordingly that these standards should be complemented by appropriate measures based on them and aimed at promoting free and voluntary collective bargaining, and

Having decided upon the adoption of certain proposals with regard to the promotion of collective bargaining, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, adopts this nineteenth day of June of the year one thousand nine hundred and eighty-one the following Convention, which may be cited as the Collective Bargaining Convention, 1981:

PART I:

SCOPE AND DEFINITIONS

Article 1

1. This Convention applies to all branches of economic activity.
2. The extent to which the guarantees provided for in this Convention apply to the armed forces and the police may be determined by national laws or regulations or national practice.
3. As regards the public service, special modalities of application of this Convention may be fixed by national laws or regulations or national practice.

Article 2

For the purpose of this Convention the term “collective bargaining” extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more employees' organisations, on the other, for

- (a) determining working conditions and terms of employment; and/or
- (b) regulating relations between employers and employees; and/or

- (c) regulating relations between employers or their organisations and a employees' organisation or employees' organisations.

Article 3

1. Where national law or practice recognises the existence of employees' representatives as defined in Article 3, sub-paragraph (b) of the Employees' Representatives Convention, 1971, national law or practice may determine the _ Copyright International Labour Organization, Geneva 1997 11 Conciliation/Mediation Training Course READING 1 extent to which the term “collective bargaining” shall also extend, for the purpose of this Convention, to negotiations with these representatives.
2. Where, in pursuance of paragraph 1 of this Article, the term “collective bargaining” also includes negotiations with the employees' representatives referred to in that paragraph, appropriate measures shall be taken, wherever necessary, to ensure that the existence of these representatives is not used to undermine the position of the employees' organisations concerned.

PART II:

METHODS OF APPLICATION

Article 4

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, be given effect by national laws or regulations.

PART III:

PROMOTION OF COLLECTIVE BARGAINING

Article 5

1. Measures adopted to national conditions shall be taken to promote collective bargaining.
2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:
 - (a) collective bargaining should be made possible for all employers and all groups of employees in the branches of activity covered by this Convention;
 - (b) collective bargaining should be progressively extended to all matters covered by sub-paragraphs (a), (b) and (c) of Article 2 of this Convention;
 - (c) the establishment of rules of procedure agreed between employers' and employees' organisations should be encouraged;
 - (d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules
 - (e) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

Article 6

The provisions of this Convention do not preclude the operation of industrial relations systems in which collective bargaining takes place within the framework of conciliation and/or arbitration machinery or institutions, in which machinery or institutions the parties to the collective bargaining process voluntarily participate.

Article 7

Measure taken by public authorities to encourage and promote the development of collective bargaining shall be the subject of prior consultation and, whenever possible, agreement between public authorities and employers' and employees' organisations.

Article 8

The measures taken with a view to promoting collective bargaining shall not be so conceived or applied as to hamper the freedom of collective bargaining.

PART IV:

FINAL PROVISIONS

Article 9

This Convention does not revise any existing Convention or Recommendation.

Article 10

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 11

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 12

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 13

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 14

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 15

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 16

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 12 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 17

The English and French versions of the text of this Convention are equally authoritative.

RECOMMENDATION No. 92

Voluntary Conciliation and Arbitration Recommendation, 1951

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to voluntary conciliation and arbitration, which is included in the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation designed to be implemented by the parties concerned or by the public authorities as may be appropriate under national conditions,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one, the following Recommendation, which may be cited as the Voluntary Conciliation and Arbitration Recommendation, 1951.

I. Voluntary Conciliation

1. Voluntary conciliation machinery, appropriate to national conditions, should be made available to assist in the prevention and settlement of industrial disputes between employers and workers.

2. Where voluntary conciliation machinery is constituted on a joint basis, it should include equal representation of employers and workers.

3.

(1) The procedure should be free of charge and expeditious; such time limits for the proceedings as may be prescribed by national laws or regulations should be fixed in advance and kept to a minimum.

(2) Provision should be made to enable the procedure to be set in motion, either on the initiative of any of the parties to the dispute or ex officio by the voluntary conciliation authority.

4. If a dispute has been submitted to conciliation procedure with the consent of all the parties concerned, the latter should be encouraged to abstain from strikes and lockouts while conciliation is in progress.

5. All agreements which the parties may reach during conciliation procedure or as a result thereof should be drawn up in writing and be regarded as equivalent to agreements concluded in the usual manner.

II. Voluntary Arbitration

6. If a dispute has been submitted to arbitration for final settlement with the consent of all parties concerned, the latter should be encouraged to abstain from strikes and lockouts while the arbitration is in progress and to accept the arbitration award.

III. General

7. No provision of this Recommendation may be interpreted as limiting, in any way whatsoever, the right to strike.

RECOMMENDATION No. 119

Recommendation concerning Termination of Employment at the Initiative of the Employers

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-seventh Session on 5 June, 1963, and

Having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation, adopts this twenty-sixth day of June of the year one thousand nine hundred and sixty-five the following Recommendation, which may be cited as the Termination of Employment Recommendation, 1963:

I. METHODS OF IMPLEMENTATION

1. Effect may be given to this Recommendation through national laws or regulations, collective agreements, works rules, arbitration awards, or court decisions or in such other manner consistent with national practice as may be appropriate under national conditions.

II. STANDARDS OF GENERAL APPLICATION

2. (1) Termination of employment should not take place unless there is a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the undertaking, establishment or service.
(2) The definition or interpretation of such valid reason should be left to the methods of implementation set out in Paragraph 1.
3. The following, inter alia, should not constitute valid reasons for termination of employment:
 - (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
 - (b) seeking office as or acting or having acted in the capacity of, a employees' representative;
 - (c) the filing in good faith of a complaint or the participation in a proceeding against an employer involving alleged violation of laws or regulations; or
 - (d) race, colour, sex, marital status, religion, political opinion, national extraction or social origin.
4. A employee who feels that his employment has been unjustifiably terminated should be entitled, unless the matter has been satisfactorily determined through such procedures within the undertaking, establishment, or service, as may exist or be established consistent with this Recommendation, to appeal, within a reasonable time, against that termination with the assistance, where the employee so requests, of a person representing him to a body established under a collective agreement or to a neutral body such as a court, an arbitrator, an arbitration committee or a similar body.
5. (1) The bodies referred to in Paragraph 4 should be empowered to examine the reasons given for the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination.

- (2) Subparagraph (1) should not be construed as employing that the neutral body should be empowered to intervene in the determination of the size of the work force of the undertaking, establishment or service.
6. The bodies referred to in Paragraph 4 should be empowered, if they find that the termination of employment was unjustified, to order that the employee concerned, unless reinstated, where appropriate with payment of unpaid wages should be paid adequate compensation, or afforded such other relief as may be determined under the methods of implementation set out in Paragraph 1, or granted such compensation and other relief as may be so determined.
7. (1) A employee whose employment is to be terminated should be entitled to a reasonable period of notice of compensation in lieu thereof.
- (2) During the period of notice the employee should, as far as practicable, be entitled to a reasonable amount of time off without loss in pay in order to seek other employment.
8. (1) The employee whose employment has been terminated should be entitled to receive, on request, at the time of the termination, a certificate from the employer specifying the dates of his engagement and termination and the type or types of work on which he was employed.
- (2) Nothing unfavourable to the employee should be inserted in such certificate.
9. Some form of income protection should be provided for employees whose employment has been terminated; such protection may include unemployment insurance or other forms of social security, or severance allowance or other types of separation benefits paid for by the employer, or a combination of benefits, depending upon national laws or regulations, collective agreements and the personnel policy of the employer.
10. The question whether employers should consult with employees' representatives before a final decision is taken on individual cases of termination of employment should be left to the methods of implementation set out in Paragraph 1.
11. (1) In case of dismissal for serious misconduct, a period of notice or compensation in lieu thereof need not be required, and the severance allowance or other types of separation benefits paid for by the employer, where applicable, may be withheld.
- (2) Dismissal for serious misconduct should take place only in cases where the employer cannot in good faith be expected to take any other course.
- (3) An employer should be deemed to have waived his right to dismiss for serious misconduct if such action has not been taken within a reasonable time after he has become aware of the serious misconduct.
- (4) A employee should be deemed to have waived his right to appeal against dismissal for serious misconduct if he has not appealed within a reasonable time after he has been notified of the dismissal.
- (5) Before a decision to dismiss a employee for serious misconduct becomes finally effective, the employee should be given an opportunity to state his case promptly, with the assistance where appropriate of a person representing him.
- (6) In the implementation of this Paragraph the definition or interpretation of "serious misconduct" as well as the determination of "reasonable time" should be left to the methods of implementation set out in Paragraph 1.

III. SUPPLEMENTARY PROVISIONS CONCERNING REDUCTION OF THE WORK FORCE

12. Positive steps should be taken by all parties concerned to avert or minimise as far as possible reduction of the work force by the adoption of appropriate measures, without prejudice to the efficient operation of the undertaking, establishment or service.

13. (1) When a reduction of the work force is contemplated, consultation with employees' representatives should take place as early as possible on all appropriate questions.
 (2) The questions on which consultation should take place might include measures to avoid the reduction of the work force, restriction of overtime, training and retraining, transfers between departments, spreading termination of employment over a certain period, measures for minimising the effects of the reduction on the employees concerned, and the selection of employees to be affected by the reduction.
 (3) As and when consultation takes place, both parties should bear in mind that there may be public authorities which might assist the parties in such consultation.
14. If a proposed reduction of the work force is on such a scale as to have a significant bearing on the manpower situation of a given area or branch of economic activity, the employer should notify the competent public authorities in advance of any such reduction.
15. (1) The selection of employees to be affected by a reduction of the work force should be made according to precise criteria, which it is desirable should be established wherever possible in advance, and which give due weight both to the interests of the undertaking, establishment or service and to the interests of the employees
 (2) These criteria may include —
 - (a) need for the efficient operation of the undertaking, establishment or service;
 - (b) ability, experience, skill and occupational qualifications of individual employees;
 - (c) length of service;
 - (d) family situation; or
 - (e) such other criteria as may be appropriate under national conditions, the other and relative weight of the above criteria being left to national customs and practice.
16. (1) Employees whose employment has been terminated owing to a reduction of the work force should be given priority of re-engagement, to the extent possible, by the employer when he again engages employees.
 (2) Such priority of re-engagement may be limited to a specified period of time; where appropriate, the question of the retention of seniority rights should be determined in accordance with national laws or regulations, collective agreements or other appropriate national practices.
 (3) Re-engagement should be effected on the basis of the principles set out in Paragraph 15.
 (4) The rate of wages of re-engaged employees should not be adversely affected as a result of the interruption of their employment, regard being had to differences between their previous occupation and the occupation in which they are so engaged and to any intervening changes in the structure of wages in the undertaking, establishment or service.
17. There should be full utilisation of national employment agencies or other appropriate agencies to ensure, to the extent possible, that employees whose employment has been terminated as a result of a reduction of the work force are placed in alternative employment without delay.

IV. SCOPE

18. This Recommendation applies to all branches of economic activity and all categories of employees: Provided that the following may be excluded from its scope:
 - (a) employees engaged for a specified period of time or a specified task in cases in which, owing to the nature of the work to be effected, the employment relationship cannot be of indeterminate duration;

- (b) employees serving a period of probation determined in advance and of reasonable duration;
 - (c) employees engaged on a casual basis for a short period; and
 - (d) public servants engaged in the administration of the State to the extent only that constitutional provisions preclude the application to them of one or more provisions of this Recommendation.
19. In accordance with the principle set forth in article 19, paragraph 8, of the Constitution of the International Labour Organisation, this Recommendation does not affect any provisions more favourable to the employees concerned than those contained herein.
20. This Recommendation should be considered as having been implemented in respect of employees whose conditions of employment are governed by special laws or regulations where those laws or regulations provide for such employees conditions which, in their entirety, are at least as favourable as the totality of those provided in this Recommendation.

RECOMMENDATION No. 143

R143 Workers' Representatives Recommendation, 1971

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-sixth Session on 2 June 1971, and,

Having adopted the Workers' Representatives Convention, 1971, and

Having decided upon the adoption of certain proposals with regard to protection and facilities afforded to workers' representatives in the undertaking, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this twenty-third day of June of the year one thousand nine hundred and seventy-one, the following Recommendation, which may be cited as the Workers' Representatives Recommendation, 1971:

I. Methods of Implementation

1. Effect may be given to this Recommendation through national laws or regulations or collective agreements, or in any other manner consistent with national practice.

II. General Provisions

2. For the purpose of this Recommendation the term *workers' representatives* means persons who are recognised as such under national law or practice, whether they are--

(a) trade union representatives, namely representatives designated or elected by trade unions or by the members of such unions; or

(b) elected representatives, namely representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned.

3. National laws or regulations, collective agreements, arbitration awards or court decisions may determine the type or types of workers' representatives which should be entitled to the protection and facilities provided for in this Recommendation.

4. Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures should be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives.

III. Protection of Workers' Representatives

5. Workers' representatives in the undertaking should enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements.

6.

(1) Where there are not sufficient relevant protective measures applicable to workers in general, specific measures should be taken to ensure effective protection of workers' representatives.

(2) These might include such measures as the following:

(a) detailed and precise definition of the reasons justifying termination of employment of workers' representatives;

(b) a requirement of consultation with, an advisory opinion from, or agreement of an independent body, public or private, or a joint body, before the dismissal of a workers' representative becomes final;

(c) a special recourse procedure open to workers' representatives who consider that their employment has been unjustifiably terminated, or that they have been subjected to an unfavourable change in their conditions of employment or to unfair treatment;

(d) in respect of the unjustified termination of employment of workers' representatives, provision for an effective remedy which, unless this is contrary to basic principles of the law of the country concerned, should include the reinstatement of such representatives in their job, with payment of unpaid wages and with maintenance of their acquired rights;

(e) provision for laying upon the employer, in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers' representative, the burden of proving that such action was justified;

(f) recognition of a priority to be given to workers' representatives with regard to their retention in employment in case of reduction of the workforce.

7.

(1) Protection afforded under Paragraph 5 of this Recommendation should also apply to workers who are candidates, or have been nominated as candidates through such appropriate procedures as may exist, for election or appointment as workers' representatives.

(2) The same protection might also be afforded to workers who have ceased to be workers' representatives.

(3) The period during which such protection is enjoyed by the persons referred to in this Paragraph may be determined by the methods of implementation referred to in Paragraph 1 of this Recommendation.

8.

(1) Persons who, upon termination of their mandate as workers' representatives in the undertaking in which they have been employed, resume work in that undertaking should retain, or have restored, all their rights, including those related to the nature of their job, to wages and to seniority. (2) The questions whether, and to what extent, the provisions of subparagraph (1) of this Paragraph should apply to workers' representatives who have exercised their functions mainly outside the undertaking concerned should be left to national laws or regulations, collective agreements, arbitration awards or court decisions.

IV. Facilities to be Afforded to Workers' Representatives

9.

(1) Such facilities in the undertaking should be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.

(2) In this connection account should be taken of the characteristics of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

(3) The granting of such facilities should not impair the efficient operation of the undertaking concerned.

10.

(1) Workers' representatives in the undertaking should be afforded the necessary time off from work, without loss of pay or social and fringe benefits, for carrying out their representation functions in the undertaking.

(2) In the absence of appropriate provisions, a workers' representative may be required to obtain permission from his immediate supervisor or another appropriate representative of management designated for this purpose before he takes time off from work, such permission not to be unreasonably withheld.

(3) Reasonable limits may be set on the amount of time off which is granted to workers' representatives under subparagraph (1) of this Paragraph.

11.

(1) In order to enable them to carry out their functions effectively, workers' representatives should be afforded the necessary time off for attending trade union meetings, training courses, seminars, congresses and conferences.

(2) Time off afforded under subparagraph (1) of this Paragraph should be afforded without loss of pay or social and fringe benefits, it being understood that the question of who should bear the resulting costs may be determined by the methods of implementation referred to in Paragraph 1 of this Recommendation.

12. Workers' representatives in the undertaking should be granted access to all workplaces in the undertaking, where such access is necessary to enable them to carry out their representation functions.

13. Workers' representatives should be granted without undue delay access to the management of the undertaking and to management representatives empowered to take decisions, as may be necessary for the proper exercise of their functions.

14. In the absence of other arrangements for the collection of trade union dues, workers' representatives authorised to do so by the trade union should be permitted to collect such dues regularly on the premises of the undertaking.

15.

(1) Workers' representatives acting on behalf of a trade union should be authorised to post trade union notices on the premises of the undertaking in a place or places agreed on with the management and to which the workers have easy access.

(2) The management should permit workers' representatives acting on behalf of a trade union to distribute newssheets, pamphlets, publications and other documents of the union among the workers of the undertaking.

(3) The union notices and documents referred to in this Paragraph should relate to normal trade union activities and their posting and distribution should not prejudice the orderly operation and tidiness of the undertaking.

(4) Workers' representatives who are elected representatives in the meaning of clause (b) of Paragraph 2 of this Recommendation should be given similar facilities consistent with their functions.

16. The management should make available to workers' representatives, under the conditions and to the extent which may be determined by the methods of implementation referred to in Paragraph 1 of this Recommendation, such material facilities and information as may be necessary for the exercise of their functions.

17.

(1) Trade union representatives who are not employed in the undertaking but whose trade union has members employed therein should be granted access to the undertaking.

(2) The determination of the conditions for such access should be left to the methods of implementation referred to in Paragraphs 1 and 3 of this Recommendation.

RECOMMENDATION No. 152

R152 Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-first Session on 2 June 1976, and

Recalling the terms of existing international labour Conventions and Recommendations - in particular the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, and the Consultation (Industrial and National Levels) Recommendation, 1960 - which affirm the right of employers and workers to establish free and independent organisations and call for measures to promote effective consultation at the national level between public authorities and employers' and workers' organisations, as well as the provisions of numerous international labour Conventions and Recommendations which provide for the consultation of employers' and workers' organisations on measures to give effect thereto, and

Having considered the fourth item on the agenda of the session which is entitled "Establishment of tripartite machinery to promote the implementation of international labour standards, and having decided upon the adoption of certain proposals concerning tripartite consultations to promote the implementation of international labour standards and national action relating to the activities of the International Labour Organisation, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this twenty-first day of June of the year one thousand nine hundred seventy-six, the following Recommendation, which may be cited as the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976:

1. In this Recommendation the term *representative organisations* means the most representative organisations of employers and workers enjoying the right of freedom of association.

2.

(1) Each Member of the International Labour Organisation should operate procedures which ensure effective consultations with respect to matters concerning the activities of the International Labour Organisation, in accordance with Paragraphs 5 to 7 of this Recommendation, between representatives of the government, of employers and of workers.

(2) The nature and form of the procedures provided for in subparagraph (1) of this Paragraph should be determined in each country in accordance with national practice, after consultation with the representative organisations where such procedures have not yet been established.

(3) For instance, consultations may be undertaken--

(a) through a committee specifically constituted for questions concerning the activities of the International Labour Organisation;

(b) through a body with general competence in the economic, social or labour field;

(c) through a number of bodies with special responsibility for particular subject areas; or

(d) through written communications, where those involved in the consultative procedures are agreed that such communications are appropriate and sufficient.

3.

- (1) The representatives of employers and workers for the purposes of the procedures provided for in this Recommendation should be freely chosen by their representative organisations.
- (2) Employers and workers should be represented on an equal footing on any bodies through which consultations are undertaken.
- (3) Measures should be taken, in co-operation with the employers' and workers' organisations concerned, to make available appropriate training to enable participants in the procedures to perform their functions effectively.
4. The competent authority should assume responsibility for the administrative support and financing of the procedures provided for in this Recommendation, including the financing of training programmes where necessary.
5. The purpose of the procedures provided for in this Recommendation should be consultations--
 - (a) on government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;
 - (b) on the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the International Labour Organisation;
 - (c) subject to national practice, on the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations, in particular to ratified Conventions (including measures for the implementation of provisions concerning the consultation or collaboration of employers' and workers' representatives);
 - (d) on the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;
 - (e) on questions arising out of reports to be made to the International Labour Office under articles 19 and 22 of the Constitution of the International Labour Organisation;
 - (f) on proposals for the denunciation of ratified Conventions.
6. The competent authority, after consultation with the representative organisations, should determine the extent to which these procedures should be used for the purpose of consultations on other matters of mutual concern, such as--
 - (a) the preparation, implementation and evaluation of technical co-operation activities in which the International Labour Organisation participates;
 - (b) the action to be taken in respect of resolutions and other conclusions adopted by the International Labour Conference, regional conferences, industrial committees and other meetings convened by the International Labour Organisation;
 - (c) the promotion of a better knowledge of the activities of the International Labour Organisation as an element for use in economic and social policies and programmes.
7. In order to ensure adequate consideration of the matters referred to in the preceding Paragraphs, consultations should be undertaken at appropriate intervals fixed by agreement, but at least once a year.
8. Measures appropriate to national conditions and practice should be taken to ensure co-ordination between the procedures provided for in this Recommendation and the activities of national bodies dealing with analogous questions.
9. When this is considered appropriate after consultation with the representative organisations, the competent authority should issue an annual report on the working of the procedures provided for in this Recommendation.

RECOMMENDATION No. 159

Labour Relations (Public Service) Recommendation, 1978

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-fourth Session on 7 June 1978, and

Having decided upon the adoption of certain proposals with regard to freedom of association and procedures for determining conditions of employment in the public service, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Labour Relations (Public Service) Convention, 1978,

adopts this twenty-seventh day of June of the year one thousand nine hundred and seventy-eight, the following Recommendation, which may be cited as the Labour Relations (Public Service) Recommendation, 1978:

1.

(1) In countries in which procedures for recognition of public employees' organisations apply with a view to determining the organisations to be granted, on a preferential or exclusive basis, the rights provided for under Parts III, IV or V of the Labour Relations (Public Service) Convention, 1978, such determination should be based on objective and pre-established criteria with regard to the organisations' representative character.

(2) The procedures referred to in subparagraph (1) of this Paragraph should be such as not to encourage the proliferation of organisations covering the same categories of employees.

2.

(1) In the case of negotiation of terms and conditions of employment in accordance with Part IV of the Labour Relations (Public Service) Convention, 1978, the persons or bodies competent to negotiate on behalf of the public authority concerned and the procedure for giving effect to the agreed terms and conditions of employment should be determined by national laws or regulations or other appropriate means.

(2) Where methods other than negotiation are followed to allow representatives of public employees to participate in the determination of terms and conditions of employment, the procedure for such participation and for final determination of these matters should be determined by national laws or regulations or other appropriate means.

3. Where an agreement is concluded between a public authority and a public employees' organisation in pursuance of Paragraph 2, subparagraph (1), of this Recommendation, the period during which it is to operate and/or the procedure whereby it may be terminated, renewed or revised should normally be specified.

4. In determining the nature and scope of the facilities which should be afforded to representatives of public employees' organisations in accordance with Article 6, paragraph 3, of the Labour Relations (Public Service) Convention, 1978, regard should be had to the Workers' Representatives Recommendation, 1971.

RECOMMENDATION No. 163

Recommendation concerning the Promotion of Collective Bargaining

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-seventh Session on 3 June, 1981, and

Having decided upon the adoption of certain proposals with regard to the promotion of collective bargaining, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Collective Bargaining Convention, 1981, adopts this nineteenth day of June of the year one thousand nine hundred and eighty-one the following Recommendation, which may be cited as the Collective Bargaining Recommendation, 1981:

I. METHODS OF APPLICATION

1. The provision of this Recommendation may be applied by national laws or regulations, collective agreements, arbitration awards or in any other manner consistent with national practice.

II. MEANS OF PROMOTING COLLECTIVE BARGAINING

2. In so far as necessary, measures adopted in national conditions should be taken to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative employers' and employees' organisations.
3. As appropriate and necessary, measures adapted to national conditions should be taken so that
 - (a) representative employers' and employees' organisations are recognised for the purposes of collective bargaining;
 - (b) in countries in which the competent authorities apply procedures for recognition with a view to determining the organisations to be granted the right to bargain collectively, such determination is based on pre-established and objective criteria with regard to the organisations' representative character, established in consultation with representative employers' and employees' organisations.
4.
 - (1) Measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels.
 - (2) In countries where collective bargaining takes place at several levels, the parties to negotiations should seek to ensure that there is coordination among these levels.
5.
 - (1) Measures should be taken by the parties to collective bargaining so that their negotiators, at all levels, have the opportunity to obtain appropriate training.
 - (2) Public authorities may provide assistance to employees' and employers' organisations, at their request, for such training.
 - (3) The content and supervision of the programmes of such training should be determined by the appropriate employees' and employers' organisation concerned.

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- (4) Such training should be without prejudice to the right of employees' and employers' organisations to choose their own representatives for the purpose of collective bargaining.
6. Parties to collective bargaining should provide their respective negotiators with the necessary mandate to conduct and conclude negotiations, subject to any provisions for consultations within their respective organisations.
7. (1) Measures adapted to national conditions would be taken, if necessary, so that the parties have access to the information required for meaningful negotiations.
- (2) For the purpose —
- (a) public and private employers should, at the request of employees' organisations, make available such information on the economic and social situation of the negotiating unit and the undertaking as a whole, as is necessary for meaningful negotiations; where the disclosure of some of this information could be prejudicial to the undertaking, its communication may be made conditional upon a commitment that it would be regarded as confidential to the extent required; the information to be made available may be agreed upon between the parties to collective bargaining;
- (b) the public authorities should make available such information as is necessary on the overall economic and social situation of the country and the branch of activity concerned, to the extent to which the disclosure of this information is not prejudicial to the national interest.
8. Measures adapted to national conditions should be taken, if necessary, so that the procedures for the settlement of labour disputes assist the parties to find a solution to the dispute themselves, whether the dispute is one which arose during the negotiation of agreements, one which arose in connection with the interpretation and application of agreements or one covered by the Examination of Grievances Recommendation, 1967.

III. FINAL PROVISIONS

9. This Recommendation does not revise any existing Recommendation..

RECOMMENDED READING LIST

1. Anstey, M	<i>Managing Change – Negotiating Conflict</i> , Edition 2, Juta & Co, Ltd., 1999
2. Brand, J; Lötter, C; Ngcukaitobi, T and Steadman, F	3. Labour Dispute Resolution, Juta and Co Ltd, Cape Town, 2009.
4. Fisher, R and Ertel, D	<i>Getting Ready to Negotiate</i> , Penguin Books, 1995
5. Fisher, R and Ury, W	<i>Getting to yes</i> , Edition 2, Business Books Ltd, 1991
6. Kochan, T A and Osterman, P	<i>The Mutual Gains Enterprise</i> , Harvard Business School Press, 1994
7. Lax, D and Sebenius, J	<i>The Manager as Negotiator</i> , Macmillan, Toronto, 1986.
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Handout

REFLECTION – DAY ONE

Individually, record your responses to the following questions:

1. What have I learned today?

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2. How can I apply what I've learned?

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Handout

REFLECTION – DAY TWO

Individually, record your responses to the following questions:

1. What have I learned today?

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2. How can I apply what I've learned?

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Handout

REFLECTION – DAY THREE

Individually, record your responses to the following questions:

1. What have I learned today?

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2. How can I apply what I've learned?

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Handout**REFLECTION – DAY FOUR**

Individually, record your responses to the following questions:

1. What have I learned today?

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2. How can I apply what I've learned?

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3. To what extent have the objectives that I identified at the outset of the course been met?

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