PART 2

The Middle (Functional) Level of Labor Relations

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LABOR RELATIONS IN A GLOBALIZING WORLD

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5 Employment Systems–Informal, Bureaucratic, and Human Resource Management

Chapters 5, 6, and 7 start the movement downward in our framework by considering how employment practices are shaped at the firm or enterprise level. We first examine the various employment patterns that guide how labor and management interact in the workplace and determine the conditions under which employees work. As we will see, these patterns consist of combinations of various employment practices that involve how much and how employees are paid, how work is organized, the role of supervisors, and the extent to which any training or employment security is provided to employees. As we define the various employment patterns, we also provide examples of each type of employment system/pattern.

Where unions exist, one of management's key tasks is to make agreements with unions that regulate employment terms and the role and rights unions have in the workplace. In chapter 6 we review how negotiations occur, focusing on the factors that determine the power labor and management have in a given negotiation. We also analyze how management and unions prepare for negotiations and how they conduct labor relations on the shop floor and within the enterprise. One key factor in any negotiation is who is covered and affected by the terms of a negotiated agreement.

In any negotiations, labor and management might not reach an agreement but can instead come to an impasse. What procedures or practices are followed when an impasse is reached? In chapter 7 we analyze various impasse resolution procedures, including types of mediation used to bring an end to an impasse or types of arbitration that can be used to settle disputes between labor and management.

ALTERNATIVE EMPLOYMENT SYSTEMS (PATTERNS)

In emerging countries, a handful of alternative employment systems, or patterns, dominate where structured employment relationships exist. As noted in the introduction to this book, a sizeable, although often shrinking, agricultural sector also commonly exists in emerging countries. Our schema does not cover the work relationships that exist on farms as there is little scope for labor-management bargaining and structured employment relationships in agricultural work.

Each of the employment patterns that are common in emerging countries has a set of key personnel practices (see table 5.1). A key relationship that guides the existence and functioning of these patterns is that various employment practices commonly cluster together and employment practices reinforce one another. For example, how employees are paid intersects with how work is organized, the type of training those employees receive, and the extent to which those employees have any employment security or access to a complaint procedure. Although it is clearly an oversimplification to try to fit every firm into one of these four patterns, this categorization scheme clarifies the basic employment systems that exist in emerging countries.

Table 5.1. Features of Employment Systems (Patterns)

	Informal	*Low-end bureaucratic*	*High-end bureaucratic*	*Human resource management*
Rules	Few	Formal	Formal	Flexible
Management style	No managers, or, if present, managers make all decisions	Rule bound	Rule bound	Strong corporate culture
Complaint procedure	None	None	Some form of appeal	Ombudsman
Work organization	At discretion of independent contractors or managers (where present)	Detailed job classifications	Detailed job classifications	Teams or individual orientation
Pay structure	Piece rates or earnings from sales of merchandise	Hourly	Hourly	Pay-for-knowledge and contingent pay
Job security	None	Very little	Some stability	Very little
Worker-manager relations	Hierarchical and based on personal interactions	Hierarchical	Hierarchical with some due process	Personal

Our schema does not distinguish explicitly between union and nonunion employment patterns, as it would make sense to do when analyzing employment systems in advanced industrialized countries. In emerging countries the effects of unions on work conditions are modest and the nature of the employment pattern commonly matters more than the presence or absence of unions. In addition, the proportion of the work force in individual firms that is represented by a union typically varies greatly and there may be multiple unions representing workers in a firm. Furthermore, the power or rights of the union or unions inside a firm may be limited. For all these reasons, unionization in emerging countries is not an all-or-nothing thing, as it commonly is in firms in the United States.

As discussed below, in some of the employment patterns, especially the bureaucratic and human resource management patterns, some of the employees are represented by unions and those unions will commonly have at least a modest (and perhaps even a significant) amount of bargaining power. In those cases, the union version of the employment pattern may differ in important ways from the nonunion version. Unions use their bargaining leverage in these settings to push for improvements in employment outcomes and for more formalization and more due process in the determination of employment outcomes.

In some cases, the firm uses a particular employment pattern to set employment practices for all of its employees. That is why we speak below of the employment pattern in a firm, even though firms increasingly are choosing to vary employment practices for different types or categories of employees. For example, a firm might choose to categorize its production employees or the craft-based employees under one employment pattern but implement a different employment pattern for its professional or technical employees. In this case, it would make more sense to speak of employment subsystems in a firm.[1]

The Informal Pattern

In the **informal employment pattern,** personnel policies tend to be administered in an unstructured and often ad hoc manner. Where middle managers are present (many informal enterprises are run by owners and lack managerial hierarchies), they are given substantial discretion regarding employment decisions. Informal work includes self-employment, homework, casual labor, and handicrafts and is sometimes performed in very small firms. Street vendors, household (domestic) workers, and day construction laborers are all common examples of informal workers. These businesses/enterprises have minimal personnel policies or none at all.

Table 5.2. Informal employment in Brazil, China, India, and South Africa

	Persons in informal employment	
Country (Year)	*(thousands)*	*% of non-agricultural employment*
Brazil (2009)	32,493	42.2
China (2010)	36,030	32.6
India (2009 and 2010)	185,876	83.6
South Africa (2010)	4,089	32.7

Sources: ILO Department of Statistics, *Statistical Update on Employment in the Informal Economy*, June 2011, http://laborsta.ilo.org/applv8/data/INFORMAL_ECONOMY/SU-2011-06-Informal_Economy.pdf, accessed October 5, 2013; ILO Department of Statistics, *Statistical Update on Employment in the Informal Economy*, June 2012, http://laborsta.ilo.org/applv8/data/INFORMAL_ECONOMY/2012-06-Statistical%20update%20-%20v2.pdf, accessed October 5, 2013.

The informal sector accounts for a large share of employment in emerging countries. For example, of the approximately 430 million workers in the Indian labor market, 49 percent of the workforce is employed in the nonagricultural sector and 84 percent of the nonagricultural work force is engaged in informal employment.[2] Table 5.2 shows that although the share of informal employment in Brazil, China, and South Africa is smaller than it is in India, the informal sector stills represents a sizeable share of total employment (about one-third) in those countries, as it does in many other emerging countries. There is also evidence that the share of informal employment has not dropped sizably in a number of countries, contrary to more optimistic assumptions that economic development would lead to a decline in the importance of informal employment.[3]

The employment practices in the informal sector are generally unstructured and favor the interests of employers. NGOs and membership-based organizations of the very poor, as discussed in chapter 11, use campaigns and lobbying to press for social protections for informal sector workers. And yet it unfortunately continues to be the case that in many emerging countries legal protections are not systematically enforced and legislated social benefits are not regularly provided in the informal sector.

The Bureaucratic Pattern

As firms get larger, they find that a complete absence of structured employment practices and policies, as is common for economic activity in the informal sector, is too unsettling and costly. In their efforts to achieve economies of scale, even small firms find it advantageous to standardize and bureaucratize personnel policies, thereby creating a **bureaucratic pattern**

of employment practices. These larger firms find that variation in policies can spur unionization if some employees believe that other employees elsewhere in the firm are benefiting from more favorable policies. There are two variants of bureaucratic firms. The first are low-end firms, which tend to pay low wages and lack modern personnel practices. In these firms, managers exert total and often despotic control. These firms typically have no formal leave and sickness policies and its supervisors grant paid leaves on a case-by-case basis. Supervisors and other managers in these firms also exercise a high degree of control over other discipline and pay policies. The employment conditions of employees in these firms differ substantially across work groups, plants, and firms.

This pattern is common among manufacturing firms in the apparel sector and in other industries that have long and hierarchical supply chains. This employment pattern also exists in small retail stores (such as grocery stores and gas stations), in most start-up firms, and in small manufacturing plants.[4] Managers in firms that follow this pattern like the discretion they gain through informal policies. Often these firms are family owned or operated and family members personally direct personnel policies. Family owners dislike losing control over decisions and particularly fear the reduction of control that would occur if unions represented employees. Union avoidance is often a prime policy objective in the firms that follow the paternalistic pattern.

An example of a firm that implements low-end bureaucratic employment practices is Foxconn. In Foxconn's Chinese plants, 800,000 workers make electronic products that include Apple's iPhones. In June 2010, news stories reported a wave of suicides at Foxconn's plants that were allegedly related to harsh working conditions.[5] Those conditions included long hours (shifts of up to thirty-four hours), military-style drills, no air conditioning, crowded and dirty dormitories, intense pressure to meet rigid production targets, and low pay. In Shenzhen, China, 400,000 Foxconn workers toiled under strict discipline. Their pay was docked for numerous reasons under a system where points were deducted for "crimes" such as having long nails, being late, yawning, eating, sitting on the floor, talking, or walking quickly.

In response to the critical press coverage of the harsh working conditions and frequent suicides, Apple and Foxconn agreed to have the Fair Labor Association (FLA), an NGO that promotes workers' rights, investigate working conditions at Foxconn and provide suggestions for improvement (the FLA is described more fully in chapter 11). Box 5.1 provides a summary of the FLA's findings and suggestions and describes subsequent events at Foxconn, including the company's recent shift of some of its production from China to Indonesia.

BOX 5.1

Fair Labor Association Investigation at Apple Supplier Foxconn

Foxconn, an Apple supplier, is the largest private employer in China. After recent reports of accidental deaths at the Foxconn factories in Guanlan, Longhua, and Chengdu, the Fair Labor Association decided to conduct an in-depth investigation of the operations at the plants. The FLA found serious noncompliance with its Workplace Code of Conduct and Chinese labor law.

To commence the investigation, the FLA distributed workplace perception and satisfaction surveys to 35,000 randomly selected Foxconn employees. It also conducted an assessment using its Sustainable Compliance Initiative. This methodology advances workers' rights by effecting progressive and sustained improvements in employment practices and working conditions. After collecting the results, the FLA found that there were over fifty violations of its Workplace Code of Conduct and Chinese labor law at the facilities. These issues were related to health and safety wages, and working hours.

The investigation found that Foxconn violated the law by allowing employees to work more than seven days in a row without the required 24-hour break. To remedy this issue, Foxconn agreed to reduce hours and stabilize workers' pay. As a result, the company will need to increase employment to maintain current levels of output. These actions brought Foxconn into compliance with the FLA's Workplace Code of Conduct and Chinese labor law.

The investigation found inconsistent policies, procedures, and practices regarding health and safety at the facilities. The survey results revealed that workers felt uncertain about their health and safety while at work. For example, the investigation found aluminum dust in the Chengdu plant from an explosion at the facility the previous year. Foxconn has already made efforts to increase personal protective equipment, fix blocked exits, and get permits that were missing. Now Foxconn has also decided to change its system for reporting accidents. The new system will disclose and address all accidents that result in an injury at work.

The investigation found that there was little representation of workers on the health and safety committees. The committees were dominated by management and were typically reactive rather than proactive. As a remedy, Foxconn agreed to guarantee worker representation

without management interference. The company also promised to provide each employee with a copy of the collective agreement and notify new employees about union activities at the plant.

The investigation found that although the wages Foxconn pays are above the Chinese average and above the legal minimum wage, the company does not fairly compensate its workers for unscheduled overtime work. Foxconn has agreed to pay workers fairly for overtime work and for any meetings that occur outside of their regular workday. Also, as a result of the *hukou* residence registration system in China, workers who migrate from other cities can't collect insurance when they return to their hometowns. Workers are not motivated to enroll in social security and other insurance programs that they don't benefit from because of an obligatory co-pay. Foxconn has agreed to look further into the issue of the insurance programs and investigate alternative private options to provide insurance to migrant workers. They have also arranged to work with government officials to expedite the transportability of benefits so that migrant workers will receive benefits in the city where they work and live.

Since the FLA's investigation at several of Foxconn plant's in China, the Apple supplier has taken various steps to lower work hours by limiting workers to sixty hours per week including overtime, while still protecting salaries. Because the FLA found that most workers at the Foxconn factories want to work overtime hours because they want to make more money, Foxconn said that it would raise hourly salaries to compensate workers for the reduction in hours. In addition, the company has taken steps to correct its safety violations, including removing the remnants of aluminum dust from the Chengdu plant.

Apple, which has experienced pressure from consumers in response to press coverage of the suicides and poor work conditions at Foxconn, has vowed to continue auditing its global supply chain regularly to ensure, among other things, that there are no underage workers at any Apple supplier. Meanwhile, Foxconn has announced plans to expand and diversify its production by investing in Brazil, Indonesia, Malaysia, Mexico, and Indonesia.

Sources: Fair Labor Association, *Foxconn Investigation Report*, March 2012, http://www.fairlabor.org/report/foxconn-investigation-report; Tim Worstall, "FLA's Report on Apple and Foxconn: Little Found and Even Less to Do," *Forbes*, March 30, 2012, http://www.forbes.com/sites/timworstall/2012/03/30/flas-report-on-apple-and-foxconn-little-found-and-even-less-to-do/; Apple Web

site, "If Companies Want to Do Business with Us, They Must Uphold the Highest Commitment to Human Rights," http://www.apple.com/supplierresponsibility/labor-and-human-rights.html; Samantha Page, "Foxconn Moves into Indonesia, Worrying Labor Groups," *Christian Science Monitor*, September 5, 2012, http://www.minnpost.com/christian-science-monitor/2012/09/foxconn-moves-indonesia-worrying-labor-groups.

The second type of bureaucratic firm is the high-end firm, which has better and more structured personnel practices. This variant of the bureaucratic pattern is characterized by highly formalized procedures, such as clear (and typically written) policies on pay, leave, promotion, and discipline. Firms that follow the bureaucratic pattern also use highly detailed and formalized job classifications and job evaluation schemes to determine pay levels and job duties. Examples of firms in many emerging countries that follow this pattern include public sector firms and the industrial or production operations of multinational firms.

Call center service work is a good illustration of high-end bureaucratic work. In this type of work, customer service representatives respond to inquiries from consumers and perform administrative tasks associated with billing, service, repair, and installation. Call center service work has grown significantly since 2000 in part as a result of the expansion in mobile and other telecommunication services and the use of call centers in the financial services and banking sectors. Box 5.2 reports the results of an important recent study that examined the evolving nature of call center work. This study set out to explore whether this sort of work was organized and compensated differently across countries and especially whether work practices in this sector differed greatly in emerging and advanced industrialized countries. As box 5.2 reports, differences in work practices across countries were found to be less significant than in-country differences within and across firms. However, the bureaucratic nature of work practices in call centers was similar within and across countries.

BOX 5.2
The Globalization of Call Center Service Work

In 2003–2006, over fifty scholars in seventeen countries participated in a multiyear collaboration that provides important evidence on

the nature of call center work and how work practices compare and contrast across countries. The countries represented in the study include both emerging countries and advanced industrialized economies, and each country team used a similar methodology and survey. The resulting international data includes information on almost 2,500 establishments. Researchers also conducted extensive field research to complement the surveys.

The research considers the role of unions in shaping the quality of jobs; the factors that influence wage levels and wage inequality; cross-national similarities and differences in the use of contingent work arrangements; and the relationships among strategic human resource management, work design, and organizational outcomes.

The emerging countries in the study (Poland, Brazil, India, South Africa, and South Korea) are characterized by a legacy of decentralized bargaining; a weak overall union movement, albeit with some pockets of strength and militancy; economic crises that have undermined union strength; and ongoing problems of unemployment and an informal economy that create highly segmented labor markets.

The study found that the call center sector has a complex pattern of convergence and divergence in management and employment practices that is best understood as a multilevel phenomenon. It varies according to the specific dimension of an employment system. Across all countries, for example, the sector looks quite similar in terms of service offerings, technologies, the scope of markets, and some organizational features—dimensions of work that are less influenced by institutional rules or norms. However, the research documents divergent patterns in the organization of work, human resource practices, and labor relations—dimensions that are more influenced by national laws, labor relations systems, and institutional norms.

In addition, important patterns of subnational variation exist in most countries, based on the roles unions and works councils play and the business strategies of market segmentation and subcontracting. These are related to within-country variation in work organization, the use of contingent staffing, and levels of pay, although the size and significance of these differences vary across countries.

Employment appears to be growing in most countries but faster in emerging countries than in advanced industrialized economies. For example, despite the rapid growth of employment in India and the

Philippines, those nations still handle only a small percentage of service interactions for the two major user countries—the United States and the United Kingdom. In addition, with the exception of a few export-oriented countries (India, the Philippines, Canada, and Ireland), the extent of global trade in call center services is relatively limited, as most call center sectors primarily serve their own domestic markets.

In general, call centers are known for their extensive use of part-time and temporary workers to handle demand fluctuations and keep labor costs low.

Among emerging countries there are no consistent patterns in the use of contingent workers and large differences among countries: in South Korea, 85 percent of the work force of the typical call center was working under temporary contracts, but in India and South Africa, few call centers hired temporary workers. Field research suggests that these patterns depend not only on labor market regulation but also on the countries' specific histories and the market conditions in countries at the time the call center sector emerged.

The study found patterns of convergence internationally along some dimensions of organizations but divergence along other dimensions at multiple levels of analysis, not only at the level of economic systems but also at national and subnational levels.

Call centers in most countries are quite similar in the ways markets have been organized and centers have specialized in particular products, industries, or service offerings. Flat organizational structures, a predominantly female work force, and relatively standardized work based on call center technologies are characteristic of these establishments across most countries and suggest patterns of widespread diffusion and organizational learning.

Also noteworthy is the fact that media coverage and policy debates have focused particularly on the threat off-shoring poses for labor in advanced industrialized economies. This study finds, however, that off-shoring still accounts for a relatively small proportion of overall employment in the sector. The study also finds that outsourcing to subcontractors in the domestic market may represent a threat to the quality of jobs and pay in these types of new service jobs.

Source: Rosemary Batt, David Holman, and Ursula Holtgrewe, "The Globalization of Service Work: Comparative Institutional Perspectives on Call Centers," *Industrial and Labor Relations Review* 62, no. 4 (2009): 453–488.

The Human Resource Management Pattern

In recent years, as an outgrowth of their efforts to increase flexibility and cost competitiveness, a number of firms have begun to adopt a new pattern of personnel policies in emerging countries, the **human resource management (HRM) pattern.** Like the high-end bureaucratic pattern, the HRM pattern relies on formal policies, but the nature of those policies is different from those traditionally found in bureaucratic firms. The HRM pattern includes policies such as **team forms of work organization, skill- or knowledge-based pay,** and elaborate communication and complaint procedures.

While HRM firms subsidize employee training and career development, they warn employees that their individual career development might require them to transfer to a different employer and not just job changes within the firm. In effect, employers who follow this strategy force employees to take on more of the risk and instability associated with the modern economy.

HRM practices are typically used for professional and technical employees, especially among the multinational firms operating in emerging countries. HRM firms generally try to avoid unionization. Where they differ from other nonunion firms is in the extent to which they seek to avoid unions when making decisions such as where to locate a new plant or store. Union avoidance issues also influence how these firms design other personnel policies, such as complaint and communication policies. HRM firms also are noteworthy for the extensive measures they take to try to induce employees to identify their interests with the long-term interests of the firm. These measures include publishing company newsletters, offering salaries (rather than hourly wages) to all employees, and nurturing a strong corporate culture.

In some employment subsystems, the HRM pattern follows what can be called a "lean" variety. The employment practices in the lean pattern have much in common with the HRM pattern, especially the prevalent use of the team system and pay for performance. Firms that employ the lean type, however, also use a number of work practices that are similar to practices common in Japanese firms, especially Japanese firms that use the Toyota production system. In the lean variety of HRM, there is a strong drive to create a company identity rather than an individualistic identity, similar to the enterprise focus common among firms operating in Japan. Japanese (and lean-oriented) firms also go to great lengths to avoid layoffs, often rotating employees to suppliers or other parts of the firm or shifting employees into training during downturns. Some lean-oriented firms in emerging countries also use some form of bonus component in pay packages, here again imitating the approach that is common in Japan. An example of a firm that operates with a Japanese/lean-style employment pattern is the Brazilian firm Brasilata, which is described in box 5.3.

BOX 5.3
BRASILATA: A Brazilian-Owned Company with Japanese-Style Work Practices

The Brazilian-owned company Brasilata S/A Embalagens Metálicas, which was founded in 1955, is the third largest producer of metal cans in Brazil; it employs more than 900 workers in four plants. Since 1985, the company has used Japanese management techniques such as *kanban* and just-in-time production. The communications problems that emerged right after these methods were adopted led the company to reformulate its goals in 1987, in a process that included the participation of executives and middle managers. Among other things, a policy of continuous employment was defined as the main objective for company employees.

In that same year the company created the Simplification Project (Projeto Simplificação), which sought to open a formal channel through which any employee could present ideas about work processes and product innovation. Twenty-five years later, in 2012, the project had generated many new ideas. In 1988, the company signed an agreement of nontermination with its employees, and in 1990 it began a process of participatory planning. One year later, the company initiated a profit-sharing scheme that distributes up to 15 percent of the company's net profits after tax. This is the method the company found to collectively recognize the efforts of all the employees who bring new ideas through the Simplification Project. In addition, those who generate the best ideas are formally recognized with symbolic prizes in annual events that Brasilata's CEO attends.

To implement its continuous employment goal, the company stated that no employee is to be terminated without cause, and whenever a termination is considered, a multilevel group that includes the employee is formed to discuss and analyze the causes for dismissal. The company also has an open-door policy; any employee can talk directly with the executives at any moment. Brasilata management does not see conflict as dysfunctional, and when it occurs it is solved by the group that is involved, with higher management acting as a facilitator. Furthermore, the company promotes a policy of continuous learning for all employees and gives them opportunities to rotate jobs. The company also pays part of the cost for external training.

In the first half of the 1990s, when Brazil was suffering from a severe economic crisis that also affected Brasilata, the company underwent a process of restructuring and downsizing with the direct participation of all the employees, who took part in the decisions about terminations and the elimination of certain positions.

In the last few years, the company's commitment to its continuous employment agreement has led to situations in which employees generated ideas that altered the production procedure in ways that eliminated their own current positions.

Sources: A. C. T. Álvares, *Banco de Férias: uma inovação em gestão para momentos de crise* (Sao Paulo: Fórum de Inovação—FGV, 2009); J. C. Barbieri, *Organizações inovadoras: estudos e casos brasileiros* (Sao Paulo: FGV Editora, 2003); J. C. Barbieri, A. C. T. Álvares, and J. E. R. Cajazeira, *Gestão de Idéias para inovação contínua* (Sao Paulo: Editora Bookman, 2009); T. Sendin, "Na Brasilata há estabilidade de emprego após 2 anos de casa," *Revista Você S/A* (September 2012), http://exame.abril.com.br/revista-voce-sa/edicoes/17102/noticias/na-brasilata-ha-estabilidade-de-emprego-apos-2-anos-de-casa.

The Participatory Pattern Another variant of the HRM pattern operates where strong unions have used some of their bargaining leverage to demand engagement in strategic and workplace decisions that guide the enterprise. The participatory pattern tries to create mechanisms through which workers can directly solve production and personnel problems. Quality circles or team meetings are used to facilitate direct discussions between supervisors and workers in many firms. In these firms workers also are called on to become involved in business decisions such as scrap control or issues concerning how best to implement new technology. Not all organizations that set out to create greater participation by employees, however, end up with more employee participation. There are a number of reasons for these failures, including the resistance of supervisors or employees to change.

Unions in these settings also commonly push for extensive worker training and some form of employment security or a commitment by the enterprise not to readily resort to layoffs during economic downturns. Where these practices prevail it makes sense to speak of a "participatory" variant of the HRM pattern. And although the use of this employment pattern is relatively limited in emerging countries (it is more common in U.S. or European enterprises), some noteworthy examples do exist of the participatory employment pattern in emerging countries.

The Role of Business Strategy in Shaping Employment Patterns

A number of factors influence which of these patterns a firm follows. Management values and strategies play an important role. For instance, many of the HRM firms had strong founding executives who helped initiate a strong corporate culture.[6] Business strategy also makes a difference. The HRM pattern seems to provide the advantage of more flexible and adaptable work organization through the use of team systems and skill-based pay.[7] These characteristics are particularly attractive to firms with rapidly changing technologies and markets. Thus, it is no surprise that many firms in high-technology industries follow the HRM pattern.

Korea provides an example of a shift in the use of employment patterns. In that country, there has been recent controversy surrounding the growth in nonregular (or nonstandard) jobs. This type of employment can be characterized as low-end bureaucratic work in our employment pattern schema.

In the aftermath of a deep financial crisis in 1997–1999, which included a significant number of layoffs and pay cuts, there has been a significant increase in the amount of nonregular (i.e., temporary and part-time) employment in Korea.[8] Nonregular employees lack employment security and fringe benefits and typically receive substantially lower wages than regular employees. A number of nonregular employees, including many in the banking industry, had previously worked as regular employees, but after being laid off they were rehired as nonregular employees by the same firm, even though they continued to perform many of the same job duties.

Since 1999, the growing presence of nonregular labor has become a contentious issue in Korea.[9] While the established unions in Korea have launched several campaigns to organize nonstandard workers, those workers at some firms have initiated their own unions and engaged in strikes and other actions to improve their working conditions. When laws were passed in Korea to protect nonstandard workers in 2006, many firms ended their contracts with nonstandard workers and replaced them with subcontracted workers.

Summary

Firms generally follow an informal, a bureaucratic, or a HRM employment pattern in emerging countries. Each of these patterns is associated with an integrated set of basic personnel policies. Which of these patterns is followed is, in part, shaped by the business strategy the enterprise uses. Because of the changing nature of corporations and changes in what work is performed within corporations and what is outsourced to specialized firms, the nature

of labor relations is changing. In firms where unions represent some of employees, management must make a number of strategic choices about its relations with unions, including decisions about how to aggressively resist the expansion of union representation and how to relate to any unions that represent employees in a firm. These strategic choses are discussed more fully in the next chapter.

Discussion Questions

1. Briefly describe the bureaucratic labor relations pattern. What distinguishes the low- and high-end variants of this pattern?
2. If you were an employee in a firm that was choosing a labor relations pattern, which pattern would you prefer to work under and why?
3. How does a firm's business strategy influence its decisions about employment practices and patterns?
4. Why do you think it is difficult, in Korea and elsewhere, for unions to represent nonregular (temporary and part-time) employees?

Related Web Sites

Eastman Kodak: http://www.kodak.com/ek/US/en/Home_Main_new/About_Kodak.htm

South Korea Non-Regular Workers: http://www.ilo.org/legacy/english/protection/travail/pdf/rdwpaper21c.pdf

Toyota Production System: http://www.toyota-global.com/company/vision_philosophy/toyota_production_system/

Suggested Supplemental Readings

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Notes

1. Paul Osterman, "Choice of Employment Systems in Internal Labor Markets," *Industrial Relations* 26 (Winter 1987): 46–67.

2. Michael Gillan, "Parting of the Ways: Trade Unions, NGOs and Social Movements in India," n.d., http://artsonline.monash.edu.au/mai/files/2012/07/michaelgillan.pdf.

3. Richard B. Freeman, "Labor Regulations, Unions, and Social Protection in Developing Countries: Market Distortion or Efficient Institutions," in *Handbook of Development Economics*, vol. 5, ed. Dani Rodrik and Mark Rosenzweig (Amsterdam: Elsevier B.V., 2009).

4. See Peter Doeringer, "Internal Labor Markets and Paternalism in Rural Areas," in *Internal Labor Markets*, ed. Paul Osterman (Cambridge: MIT Press, 1984).

5. Andrew Malone and Richard Jones, "Revealed: Inside the Chinese Suicide Sweatshop Where Workers Toil in 34-Hour Shifts to Make Your iPod," *Mail Online News*, June 11, 2010, www.dailymail.co.uk/news/article-128598, accessed October 8, 2013.

6. For evidence on the role of the founding executives, see Fred Foulkes, *Personnel Policies in Large Nonunion Companies* (Englewood Cliffs, N.J.: Prentice Hall, 1980).

7. Thomas A. Kochan, Robert B. McKersie, and John Chalykoff, "The Effects of Corporate Strategy and Workplace Innovations on Union Representation," *Industrial and Labor Relations Review* 39 (1986): 487–501.

8. See Wonduck Lee and Joohee Lee, "Will the Model of Uncoordinated Decentralization Persist? Changes in Korean Industrial Relations after the Financial Crisis?" in *The New Structure of Labor Relations: Tripartism and Decentralization*, ed. H. Katz, W. Lee, and J. Lee (Ithaca, N.Y.: Cornell University Press, 2003).

9. This account of nonstandard work in South Korea draws from Byoung Lee, "Employment Relations in South Korea," in *International & Comparative Employment Relations: Globalisation and Change*, 5th ed., ed. Greg J. Bamber, Russell D. Lansbury, and Nick Wailes (Australia: Allen & Unwin, 2011), 301.

6 The Negotiations Process and Structures

FROM PROTESTS TO STRIKES

This chapter examines the process by which unions and employers negotiate collective agreements and the structures they use for those negotiations, continuing the analysis of the middle (functional) level of labor relations activity. It explains the dynamics of negotiations and the factors that lead to strikes and then goes on to discuss the different bargaining structures used in negotiations.

Labor conflict in emerging countries often takes on the form of spontaneous outbreaks and protests against government policies that cut workers' wages or benefits or against rising prices or violations of labor rights. This was the case in China during much of the first decade of this century as a growing number of workers reacted in frustration to the harsh conditions of migrant labor, which involved working away from their homes and families, living in large and sometimes cramped dormitories, working long hours, and being denied access to the social benefits and legal protections that other local citizens received. Foxconn, the large manufacturing firm, was the most visible protest site. Pressures for better approaches to workplace conflicts went global when it became known that as many as seventeen Foxconn workers committed suicide in protest of the company's harsh working and living conditions. In Greece, when the European Commission and other international financial agencies mandated economic reforms and cutbacks in pensions and other benefits as conditions for the funds they had provided so the country could avoid national bankruptcy, coalitions of unions and NGOs called a series of short strikes.

Often a pivotal and highly visible strike leads others in a country to engage in similar workplace actions, and then pressures and support build for the development of a more complete labor relations system and negotiations process. The 2010 strike at Honda's manufacturing facility had this effect in China (see box 6.1). Strikes by black trade unionists in South Africa played an even more significant political role. By bringing attention to the injustices of apartheid, they helped usher in a transformation to a more representative and democratic government. Strikes in the early 1930s in the United States similarly were a driving force that led to the passage of legislation that established collective bargaining as the cornerstone of labor policy in the United States. Today, history is repeating itself in the United States, albeit on a more modest scale, as periodic labor protests or one-day strikes by groups of Walmart workers and workers at various fast food chains seek to establish ongoing representation and negotiations with these giant retail chains.

BOX 6.1
2010 Honda Strike in China

Workers demanding higher wages rallied outside a Honda plant in southern China today, part of a rash of industrial action at Chinese factories highlighting growing restiveness among migrant workers.

Several hundred workers gathered at the front gates of parts supplier Honda Lock in Zhongshan, Guangdong, where staff walked off the job yesterday.

Today's rally came as Honda was resuming production at two other car assembly plants after resolving a three-day strike at parts supplier Foshan Fengfu Autoparts.

Honda said the factory employees agreed to a pay raise of 366 yuan (£36) per month for each full-time worker. That would increase pay for a new employee to 1,910 yuan (£190) per month.

Some workers held out for more and the union said about 30 people fought with union officials on Monday.

Geoffrey Crothall, spokesman for the Hong Kong-based China Labour Bulletin, said "workers had largely been willing to bide their time and accept their salaries during the recent economic slowdown. But since the economy began to improve again last year, longer hours with no appreciable improvement in income have prompted some to take action."

"They see strikes have been successful elsewhere and decide to try their luck," he said.

Crothall said the strikes also revealed deep disdain for official union representatives, who are appointed by management and the Communist party rather than elected by the workers themselves.

However, he questioned media reports saying the Honda Lock workers wanted to form their own independent union, saying it was more likely a desire simply to elect their own leaders who represented their own, and not management's, interests.

In an unusually open commentary yesterday, the People's Daily, the official paper of the Communist party, exhorted the government-affiliated labour umbrella, the All-China Federation of Trade Unions, to do a better job as a mediator.

"Labour relations are increasingly complex and important today, but unions lack the talent needed to gain workers' trust and do their jobs well," it said.

"There is no shortage of enthusiastic, diligent cadres but there is a lack of professional personnel qualified to deal with new challenges and tasks."

Source: Reprinted from "Honda Factory Workers in China Strike over Pay and Conditions," *The Guardian*, June 11, 2010, http://www.theguardian.com/business/2010/jun/11/honda-workers-strike-china-pay.

THE ROLES OF STRIKES AND NEGOTIATIONS IN A LABOR RELATIONS SYSTEM

In contrast to the spontaneous strikes such as the one at the Chinese Honda plant, negotiations and strikes are highly regularized parts of labor relations systems in many developed countries. Most established labor relations systems try to reverse this sequence—to provide for scheduled periodic negotiations that try to reach an agreement without resort to a worker-initiated strike or an employer-initiated lockout of the work force. In this way a labor relations system can function to make strikes or lockouts last resorts and well-planned tactics that complement the negotiations and agreement-seeking process. But even when they are built into a labor relations system in this way, worker- or union-initiated strikes or employer-initiated lockouts impose significant costs on the parties and on an economy. Recent strike experiences in South Africa illustrate some of these costs and suggest why most members of society prefer to see negotiations resolved without recourse to work stoppages (see box 6.2).

BOX 6.2

South African Strike Wave, September 2013

Thirty thousand South African automobile workers ended a three-week strike in September 2013 and returned to work after accepting a revised wage offer from employers, including Volkswagen AG, Ford Motor Co. and Toyota Motor Corp. The auto workers, represented by the National Union of Metalworkers of South Africa (NUMSA), accepted wage increases of 11.5 percent for 2013, 10 percent for 2014, and 10 percent for 2015. Night shift premium was also part of the settlement. NUMSA and the Automobile Manufacturers Employers Association also agreed to investigate the possibility of instituting an industry-wide medical aid and housing program.

The strike cost the industry as much as 700 million rand ($68.66 million) each day. Automotive output accounts for about 7 percent of South Africa's gross domestic product.

South Africa was plagued by strikes in 2013 as unions representing workers in sectors from construction to gold mining asked for wage increases. After a 48-hour walkout, more than 60,000 of the country's gold miners began returning to work on September 6, 2013, after they accepted an 8 percent pay increase. On September 27, 2013, workers at South Africa's gas stations accepted an improved wage offer and ended a three-week strike (these workers were represented by NUMSA). The gas station workers received an 11.6 percent salary increase in 2013 and 9 percent increases are scheduled for 2014 and 2015. The employers' initial offer had been a 7.5 percent raise.

In late September 2013, strikes in other sectors of the motor industry involving auto parts manufacturers, truck body and trailer builders, and car and parts dealers were still ongoing. In January 2014, another round of strikes in the platinum and coal mining industries broke out that led business groups and the World Bank to pressure the government to intervene to avoid further loss in confidence by international investors.

Meanwhile, consumer prices in South Africa rose 6.3 percent in July 2013, exceeding the central bank's target (3–6 percent) for the first time in fifteen months. Africa's largest economy is forecast to expand by 2 percent in 2013, its slowest pace since 2009.

Source: Bloomberg Newsroom, Janice Kew, Kamlesh Bhuckory, and Amogelang Mbatha, September 8, 2013; "South Africa Faces Challenges in Wooing Investors to Its Strike-Hit Economy," *Wall Street Journal*, February 5, 2014.

Collective negotiations provide labor and management with a predetermined time to set or revise the terms of the agreement governing their relationship. The pressures of a contract deadline and perhaps of a strike threat focus attention and clarify how important each party feels critical issues are and whether current practices should be changed or maintained. From time to time, negotiations may produce a strike that provides headlines for popular press coverage of collective negotiations. But in a well-functioning labor relations system, a strike is not an act of desperation but rather is connected to negotiations and other regular activities that occur over time at the workplace and strategic levels of the relationship between labor and management. The strategies and tactics used in negotiations are likely to reflect the level of trust labor and management representatives have for each other at the outset of negotiations, and the results of negotiations will in turn affect the trust that carries over to the relationship the parties maintain during the term of any agreement. Thus, negotiations offer labor and management a pivotal event that can reinforce or change their future relations.

As we will see, some parties to collective negotiations today are attempting to bring new approaches to negotiations, often labeled *interest-based* bargaining or *mutual-gains* bargaining.[1] The new approaches seek to move away from more traditional *positional* bargaining in an effort to increase the potential for problem solving in negotiations. Thus, in this process negotiations involve making choices about how to bargain and making tactical decisions about which approach will best represent the parties' separate and joint interests.

To examine the various components of the negotiations process, this chapter uses the framework developed by Richard Walton and Robert McKersie.[2] The Walton and McKersie framework is particularly useful in identifying the wide variety of pressures and competing interests that bear on the negotiators and the negotiations process.

THE FOUR SUBPROCESSES OF NEGOTIATIONS

Although the Walton and McKersie framework was originally developed to describe and analyze the traditional positional approach to bargaining that was quite common in the United States in the 1950s and 1960s when they developed their framework, their work also provided the theoretical basis for interest-based techniques that were developed in the 1980s. So we will summarize their framework first and then discuss how the dynamics of bargaining vary depending on the approach taken.

Walton and McKersie argued that there are four **subprocesses of bargaining** in the negotiation of any collective bargaining agreement: distributive

bargaining, integrative bargaining, intra-organizational bargaining, and attitudinal structuring. Each subprocess is analyzed below, as are the interrelations between the various subprocesses.

Distributive Bargaining

Distributive bargaining involves negotiations in which one side's gain is the other side's loss. It is win-lose bargaining, also called zero-sum bargaining. In distributive issues or processes, what labor gains, management gives up. Examples of issues that are most often related to issues of distribution include wage rates and fringe benefits. Labor gains more income from a higher wage, while management gives up some profit to pay that wage.[3] Similarly, workers lose when a fringe benefit (e.g., paid vacation time) is reduced, while management gains higher profits when paid vacation time is reduced.

Since distributive issues involve gains for one side and losses for the other, these issues lead to conflicts across the bargaining table. Determining how distributive issues are resolved involves the exercise of bargaining power. The union, for example, tries to convince management to agree to its request for a higher wage by threatening to strike if management does not give in to this demand. Meanwhile, management threatens the union with the loss of income associated with such a strike and might also point out that a wage increase would entail additional costs to the work force in the form of reductions in employment. In this way, the components of bargaining power, strike leverage, and elasticity of demand for labor emerge as the critical determinants of how distributive conflicts are resolved.

Distributive issues are at the center of the negotiation of a collective agreement, since disagreement over how to distribute the profits from what labor produces lies at the core of labor-management relations. Nevertheless, it would be a mistake for students of collective negotiations or participants in the bargaining process to lose sight of the fact that there are other dimensions to bargaining besides distributive issues.

Integrative Bargaining

Integrative bargaining issues and processes are those in which a solution provides gains to both labor and management, leading to joint gain, or win-win, bargaining. Labor and management both gain when they resolve problems that are impeding productivity and organizational performance. If the productivity of the firm increases, for example, the employees can benefit in the form of higher compensation or shorter work hours, while the firm can benefit in the form of greater profits.

Numerous problems that arise in the workplace provide the opportunity for integrative gains. Work is rarely performed in the most productive way possible: cumbersome practices or outdated work rules often stand in the way of peak performance. Labor and management can improve a firm's performance by addressing such practices, by changing job classifications or seniority rules, or by creating procedures that promote high organizational performance in other ways.

The introduction of new technology often provides an avenue for integrative gains. The effective use of new technology can increase productivity, which can then provide rewards both to employees and the firm. Yet the introduction of new technology onto the shop floor or in the office does not in itself lead readily to such productivity increases. Technology works best if it is accompanied by changes in work practices—personnel levels might have to be reduced, training programs adopted, or supervision adjusted. Integrative bargaining would entail the negotiations about how and to what extent these productivity-enhancing changes in work rules are made as the new technology is introduced.

But why do the parties not automatically make integrative changes, since such changes open the possibility of joint gain? In other words, why is integrative bargaining so difficult? The answer to this question is one of the key issues in industrial relations.

Why Integrative Bargaining Can Be So Difficult Integrative bargaining is an ever-present and sometimes difficult component of the negotiations process for a number of reasons. For one thing, although integrative issues contain the possibility of providing joint gains to both sides, it is also true that the parties are simultaneously confronted with the question of how to divide up any joint gain. In effect, any integrative bargain also prompts distributive bargaining, and the difficulty in resolving the distributive issue can make integrative bargaining difficult.

Consider, for example, what happens when a new technology is introduced into a work site. If it is effectively introduced, the new technology offers the possibility of joint gains in the form of income to both employees and the firm. Yet the parties involved cannot escape the fact that if productivity goes up when the new technology is implemented, it must then be decided how the increased income that technology makes possible will be divided. In this way, every integrative bargain prompts a distributive discussion. The problem for the bargaining parties is that it can be difficult for them to agree on how to resolve the distributive issue (namely, how to share the integrative gain). Thus, integrative solutions are sometimes blocked by a disagreement

between labor and management over how they would divide up the gains that result from resolving a problem.

Integrative and Distributive Bargaining Involve Different Tactics Integrative bargaining also can become difficult because the parties send confused signals and mixed messages to each other. This confusion springs from the fact that integrative and distributive bargaining involve very different tactics and negotiating styles. Table 6.1 lists the different tactics used in distributive and integrative bargaining.

Remember, distributive bargaining concerns matters in which one side's gain is the other side's loss. To do well in such bargaining, the negotiator typically finds it valuable to, among other things, overstate demands, withhold information, and project a stern and tough image. Effective integrative bargaining, on the other hand, involves first identifying and then solving problems. The tactics that are typically effective in such problem solving include an open exchange of information, the airing of multiple voices, and information sharing. Distributive and integrative bargaining styles contrast sharply with each other.

The problem for labor and management negotiators is that it is difficult to be effective at both distributive and integrative bargaining in the same negotiations. One side might set into a distributive bargaining mode just at the

Table 6.1. Distributive versus integrative bargaining tactics

	Distributive tactics	*Integrative tactics*
Issues	Many issues	Specific concerns
Positions	Overstatement of real position at outset as "demands"	Focus on objectives; no final positions
Use of information	Information is seen as power and is held close and used selectively	Information is treated as data and is openly shared
Communication process	*Controlled*: —Single spokesperson —Use of private caucuses to air internal differences and discuss responses	*Open*: —Multiple voices —Use of subcommittees
Interpersonal style	*Hard bargaining*: —Each side is focused on its own goals and interests —View is about the short run; not concerned about long-term relations —Low trust	*Problem solving*: —Concern about mutual goals —Concerned about long-term relations —High trust

moment when the other side is ready for integrative problem solving. And when the latter party confronts hard distributive tactics, it might become discouraged about the possibility of integrative bargaining, making it difficult for such bargaining ever to occur.

Integrative bargaining also can be difficult because the problems that impede productivity are not always obvious to the two parties, even when they agree on how to divide up the possible joint gains. If that does not make negotiations hard enough, consider that there are two other subprocesses in the bargaining process.

Intra-Organizational Bargaining

Intra-organizational bargaining occurs when there are different goals or preferences among the members of the union team or the management team. For example, intra-organizational bargaining arises when the members of the union (or the union negotiating team) have different preferences about what the union should strive for during negotiations. Senior union members may prefer that the union focus its negotiating strategy on attainment of better retirement benefits, whereas younger union members may prefer up-front wage increases. Or the craft workers in the union might be in favor of restricting the use of outside contractors for maintaining plant machinery, whereas production workers might be concerned with having safer conditions on the line. Box 6.3 describes one of the most intense and highly visible examples of intra-organizational conflict in South Africa—the battle over which organization represents workers in the mining industry. Tragically, this conflict cost forty-four workers their lives. So the stakes in resolving intra-organizational differences can be quite significant.

BOX 6.3

Intra-Organizational Issues in the Marikana, South Africa, Bloody Strike of 2012

A strike that occurred in South Africa at the Marikana mine in August 2012 led to the death of forty-four workers. It was the most violent conflict in the post-apartheid era in South Africa and has been compared to the infamous Sharpsville massacre.

The conflict began when two workers were reported to have been shot as workers marched on the offices of the National Union of Mineworkers (NUM). The NUM, which is closely associated with the

African National Congress, the ruling political party in South Africa, was in dispute with employers over pay at the Marikana mine. Significant growth had occurred in the price of platinum, prompting arguments that workers were not sharing in the benefits of the increase. The dispute also involved interunion conflicts and pay issues, as the NUM was in conflict with a rival union called the Association of Mineworkers and Construction Union (AMCU).

Police were called in after the two workers were shot, and additional people were shot in conflicts that continued for about a month. Resolution was finally achieved on September 22 with the help of mediators. The result was a 22 percent wage increase and a one-time payment (2,000 rand) for returning to work. The mediators included the leader of the Council of South African Churches and South Africa's official mediation agency, the Commission for Conciliation, Mediation, and Arbitration.

It was reported that an unknown number of strikers left the unions that had previously represented them after the settlement was announced. Additional labor conflicts spread to other parts of the mining industry after the resolution of the Marikana conflict.

Source: http://www.theguardian.com/commentisfree/2012/aug/17/marikana-action-strike-poor-state-haves.

Members of the management team may also have different preferences or opinions about what is feasible in negotiations. This is especially the case when multinational firms are involved. Differences can and often do arise between corporate executives whose mindset is shaped by practices and traditions in their home country and local managers who are sensitive to host country values, norms, and policies. This became an issue for Walmart in China. Walmart's corporate stance in the United States is to strongly resist any unionization efforts. This approach did not work in China (or in Brazil, Germany, the UK, and several other countries with stronger legal and/or political norms regarding union representation). It took a lot of internal management debate plus pressure from the Chinese government to convince executives at Walmart's headquarters in the United States to allow its Chinese managers to accept unions in its stores in China. Debates like these are very common while global labor relations processes are being developed and implemented.

Intra-organizational conflict also can occur when one or both of the parties bring insufficient decision-making authority to the bargaining table. Nothing is more frustrating to negotiators than to realize they are engaging in what is

called shadow boxing, or **surface bargaining**—that is, bargaining opposite a representative who lacks the authority necessary to make commitments that will stick in his or her organization. Inadequate decision-making power or authority on the part of a negotiator greatly increases the probability of an impasse or a strike as the opponent turns to the strike to force the real decision makers to the bargaining table. This source of impasse is especially prevalent in public employment in many countries, including state-owned enterprises in China, and in other settings where a higher authority must approve major budget or funding decisions.

Intra-organizational conflict is common in the public sector because of its complex decision-making structures and numerous political constituencies. Multiemployer negotiation structures in industries where there is wide variation in the goals or financial status of the employers is another likely environment for intra-management conflicts. This has been cited as a particular problem in South Africa, where national-level negotiations set specific wages for firms of different sizes and circumstances. This has produced calls for more flexibility in wage setting to better accommodate differences among firms in ability to pay and differences in labor market conditions.

Attitudinal Structuring

Negotiations are deeply influenced by cultural norms and by the interpersonal relationships the parties have developed (or not developed) with each other. Moreover, trust or distrust can carry over from past experiences, so how the parties end one bargaining process often will have a profound influence on how the next experience begins. Thus, it is important to consider the interpersonal or, in Walton and McKersie's term, the attitudinal aspects of negotiations.

Negotiations also can be extremely emotional. The stakes involved are usually high, and the tactics often used in traditional negotiations—threats, bluffs, grandstanding for one's constituents, exaggerated anger—are hardly conducive to building rapport among the parties to the process. Add to these the fact that any single round of negotiations typically is part of a larger and longer-term power struggle between parties who are separated by an inherent conflict of interests. One can readily see why hostile attitudes can, and sometimes do, develop in a bargaining relationship and why they can constrain effective negotiations.

Consequently, **attitudinal structuring** (the degree of trust the respective sides feel or develop toward each other) is another subprocess in bargaining. This subprocess has come to be seen as primarily about trust. If labor and management, for example, have a high degree of trust in one another, then it should be easier for the parties to engage in integrative bargaining, since trust

can facilitate the identification of problems (or solutions). In contrast, interpersonal mistrust can make it difficult to move from initial bargaining positions to compromise settlements. Mistrust hampers communications between the parties and can lead both parties to hold back on concessions they might otherwise be willing to make. Obviously, intense hostility can get in the way of serious discussion of the substantive merits of the issues.

Labor and management can try to build trust by meeting before or during negotiations in forums that facilitate an open exchange of views and concerns. Here is where what is happening during the term of an agreement at the workplace and strategic levels of the relationship can make a big difference. If union leaders and managers are working together on an ongoing basis to share information, create employee participation processes, and consult on important issues, the trust that develops from these activities may carry over to the negotiations process. Alternatively, actions that demonstrate a lack of trust to the rank and file, union leaders, or managers during the term of a contract will likely carry over into negotiations as well.

Personality traits of negotiators also appear to play a role in trust building. Some personality traits, such as excessive authoritarianism, have been found to hinder the compromising that is necessary to bring about negotiated settlements. This may pose challenges for both managers and workers in emerging countries that historically have placed a high value on deference to hierarchy and/or command-and-control managerial styles or cultures. Korea has struggled with this managerial culture and tradition for many years and as a result has experienced long periods when workers were unable to openly express their grievances. Periodically, these grievances built up to a boiling point and exploded in violent protests such as those that occurred in the heart of the Korean auto industry in 1961, which were repressed by military force. It wasn't until 1987 that another episode of conflict convinced the Korean government to begin modernizing its labor policies to promote a more orderly form of collective negotiations (see the recent example of protests erupting over railroad privatization in box 10.2).

MANAGEMENT'S BARGAINING OBJECTIVES

The formation of management's bargaining **objectives** (i.e., targets) is a critical part of the negotiations process. Negotiators often have limits for bargaining, or bottom-line terms of what they will accept short of taking a strike. The development of bargaining targets for wages and other key issues is the heart of the internal management planning process that takes place before or during the early stages of negotiations.

Since top management is responsible for approving or authorizing targets for wages or other bargaining issues, the negotiating team must recommend targets that reflect top management's goals for the organization. Recommending too high a wage target, for example, risks rejection of the recommendations and the loss of influence that results from such a rejection. On the other hand, once these targets are established, they play a pivotal role in the negotiations process because they indicate the negotiator's latitude for compromise. These discussions can be especially difficult in cultural settings where top executives tend to generally keep their specific preferences/views about an issue to themselves and their subordinates are expected to infer from more general comments what would be acceptable. It can also be complicated in settings where the final decision maker is in an office in central headquarters in another country. Intra-management coordination in setting objectives is even more critical in these settings than in solely domestic settings.

Thus, the labor relations staff has to develop bargaining targets that are realistic and achievable. The criteria that go into this decision-making process are discussed below.

MANAGEMENT STRUCTURES FOR COLLECTIVE NEGOTIATIONS

This section considers how management structures itself to engage in collective negotiations. There are three basic characteristics of management's labor negotiations structure: the size of the labor relations staff in relation to the number of employees in the organization, the degree of centralization in decision making about labor relations issues, and the degree of specialization in decision making about labor relations. The latter concerns the extent to which decision-making power is placed in the hands of the labor relations staff instead of in the hands of the operating, or line, managers.

The term **labor relations staff** refers to staff who are responsible for handling union-organizing attempts, negotiations, contract administration, and litigation related to union activity. Other professionals whose work relates to human resources tend to handle recruitment, staffing, equal employment opportunity, safety and health, and wage and salary administration. Most firms now integrate human resource and labor relations activities in a broad human resource management unit.

The management staff must first formulate labor relations strategies.[4] Once basic strategic decisions are made, they must be implemented on a day-to-day basis. Management must allocate responsibility for decisions in a way that allows the organization to adapt to new pressures from its environment. In

short, management must develop a structure that enables the firm to bargain effectively and to manage its day-to-day relationship with the union or unions that represent workers in the organization.

When a firm's business strategy changes, this often leads to changes in the managers involved in the negotiations process and in their respective roles. A key change in recent years is that power has shifted from labor relations staff to operations and production managers and human resource specialists as firms have shifted to business strategies that include tight cost controls.

Specialization of the Labor Relations Function

There is evidence that power has shifted downward in management structures in recent years. Labor relations specialists have been losing power to operations and production managers and, to a somewhat lesser degree, to human resource specialists. The main reason for this is that firms now have less need for the traditional expertise of the labor relations specialist, which focuses on achieving stability, labor peace, and predictability. Instead, many firms want expertise in union avoidance, cost control, and flexibility in work rules, and achieving these goals requires making changes in workplace practices.

This does not mean, however, that labor relations specialists are no longer necessary. Indeed, case studies reveal that lower-level labor relations managers secretly delight in the "mistakes" some of the operations and production managers and human resource management specialists make as they take greater control over critical labor relations decisions. In one large firm, a career labor relations manager related to us the story of how the new vice president of labor relations who was transferred from another functional area had to call in the "old hands" to find out how the contract ratification procedures worked.

As a result of their continuing need for technical expertise, most firms continue to depend on teams of labor relations specialists to conduct negotiations and implement policies and agreements. But a number of major firms have established strategic planning groups for labor relations, and others have used cross-functional teams to develop new bargaining proposals.

The careers of labor relations professionals are changing dramatically and thus require new types of education and training. The labor relations professionals of the future will need the following:

1. Business, analytical, and planning skills
2. Expertise in both traditional labor relations activities and personnel or human resource management activities
3. A thorough understanding of operating management issues

4. An ability to work as a member of a multidisciplinary team in implementing labor relations strategies and policies
5. Skills in managing innovative labor-management organizational change efforts
6. Expertise in Web-based communications and service delivery

THE UNION'S NEGOTIATING TARGETS

Management must also take the union's preferences into account when setting targets for bargaining. Unless management is powerful enough to totally dominate bargaining, the management team will have to consider the potential acceptability of its wage offer to the union.

Unions will usually establish their own targets for wage bargaining. In setting those limits, union leaders employ two basic criteria for evaluating a proposed settlement: (1) the potential effects of the settlement on the real wages of the membership (the wage adjustment minus any increase in the cost of living); and (2) a comparison of the proposed settlement and settlements the firm has made with other bargaining units or with other employees.

Comparisons with other units are important to unions for both economic and political reasons. One of the union's economic goals is to standardize and raise wages. This leads unions to favor wage increases that maintain established patterns or differentials among employee groups within an organization or across similar employers in an industry or region. Union leaders also face pressure from their members to preserve "coercive comparisons" with the settlements other unions have achieved.[5] Rank-and-file union members often evaluate their leaders by comparing their own settlement to settlements leaders of other unions have achieved or those that other employers have granted. Comparisons are especially relevant when one or more rival union might challenge another union for the right to represent a group of employees.

Thus, the union tries to persuade the firm to consider higher wages than the firm would consider if no union was present. The union's bargaining power will determine the extent to which management takes into account the union's preferences.

Local Labor Market Comparisons

One factor an employer considers when setting wage targets is the prevailing wage level in the **local labor market.** If the employer were to ignore the local labor market and allow wages for its employees to become low relative to wages at the other employment sites, high employee turnover might

follow. Low wages also might produce a dissatisfied work force and difficulty in recruiting workers with the ability to perform effectively. Setting wages too high relative to the local labor market invites an excess of qualified job applicants and unnecessary costs.

This does not mean that the employer seeks to pay the lowest wage possible that will attract workers to a given job. Given a particular local labor market, the employer must choose the quality of employees it wishes to hire. The employer must decide if increasing the wage level will attract employees of sufficiently high quality and lower indirect personnel costs (such as training, turnover, and supervision). Labor market comparisons are more likely to be used in bargaining relationships where the union is weak. Where unions are strong they use their bargaining power to do better than the local labor market and gain what they consider to be a fair wage.

Product Market Factors

Product market comparisons play an increasingly important role in management decision making. The ability of current or potentially new competitors to compete on the basis of lower labor costs has in fact been the dominant factor in management's drive to hold down or reduce wages, particularly for those with entry-level and low-skill jobs. The threat of outsourcing this work has also been an important part of many employers' approach to negotiations in recent years. In emerging countries, the threat of moving factories to lower-wage countries is likewise a constant factor that influences wage setting.

The Firm's Ability to Pay

The effects of wage adjustments on the profits of the firm also influence management's wage target. Employers approaching the wage decision examine their **ability to pay** wage increases. Ability-to-pay considerations are likely to be especially salient in small firms and in firms facing a weak union.

A union generally is reluctant to give a firm a lower settlement on ability-to-pay grounds unless the firm can demonstrate that a serious economic crisis would result otherwise. Union leaders and members often must be convinced that there would be sizable employment loss before they will agree to a low settlement.

Internal Comparisons

Every negotiation is carefully watched by all of a firm's employees. Management must consider how a wage settlement might influence the expectations and demands of other employees in the firm whether or not they are

represented by unions. Management, for example, often considers whether wage increases provided to unionized hourly workers will lead to pay increases for supervisors and other white-collar employees not covered by the union. One reason management provides white-collar employees with pay increases in some situations is to try to weaken these employees' potential attraction to unionization.

THE DYNAMICS OF MANAGEMENT'S DECISION-MAKING PROCESS

So far we have painted a rather static picture of management's decision making. Yet the actual process of making decisions over the course of a bargaining cycle (from the pre-negotiation planning stage to the signing of the final agreement) is dynamic. The process is replete with ambiguities over who has the authority to set policies, conflicts among decision makers over the appropriate weight to be attached to different goals, and power struggles among competing decision makers.

The process by which management establishes negotiation strategies involves extensive intra-organizational bargaining, which is every bit as intense as the bargaining between the union and management. Because the successful resolution of internal differences is a prerequisite to a smoothly functioning bargaining process, it is important to understand how firms prepare for negotiations.

To provide a more complete picture of how management prepares for collective negotiations, a typical case is described in box 6.4.[6] This firm was preparing to negotiate a contract with the major bargaining unit in its largest manufacturing facility. The contract traditionally sets the pattern for the economic settlements with several smaller units at other locations.

Before negotiations (or very early in negotiations) the labor relations staff tries to predict as closely as possible what it will take to get a settlement. But the staff is ready at all times to revise its estimates based on new or better information about the union's position as the negotiations proceed.

The case in box 6.4 illustrates the diversity of interests that exists in the different levels in any modern organization. It shows that the development of a management strategy for negotiations is a highly political process, one in which the different goals of various groups must ultimately be accommodated. Although the labor relations staff serves as a key participant in the development of the strategy, the concerns of operating/business management, financial staff, and other interest groups in the corporation are also integral to any final decision.

BOX 6.4
Key Steps in Management's Typical Preparations for Negotiations

Input at the Plant Level

The first step in the process of preparing for negotiations takes place at the plant level. The plant labor relations staff holds meetings with plant supervisors to discuss problems that have been experienced in administering the existing contract. From these discussions the staff puts together a list of suggested contract changes. The staff also conducts a systematic review of the grievances that have arisen under the current contract and collects information about local labor market conditions and wages other firms in the community are paying.

The staff then holds a meeting with the plant manager, who discusses the labor relations problems confronted in the plant. The plant's concerns are classified into two groups: contractual problems and problems that should be addressed outside the negotiating process. In addition, the labor relations staff asks the plant manager to rank suggested contract changes on the basis of their potential for making a significant improvement in plant operations.

Input from Higher Levels of the Firm

Next, a series of meetings are held at the division level involving the division labor relations staff, operations/business management at the division level, and the corporate labor relations director and staff. From time to time, outside industrial relations consultants also sit in on these division-level meetings. Here the concerns of the various plants are evaluated against two criteria: (1) the operational benefits expected from proposed contract changes; and (2) the likelihood that the changes desired can be achieved in the negotiations process.

The corporate labor relations staff plays a vital role in these division-level discussions, since the expected benefits of different contractual changes can be a matter of dispute across the various plants. In addition, the division labor relations staff is responsible for carefully examining the contract language in the various local agreements for inconsistencies or problems that could be removed by clauses that reflect corporate labor relations preferences. Sometimes corporate labor relations representatives object to changes suggested at the division level because they do

not correspond to the priorities of the corporation's officials and because those corporate officials do not understand the purpose or value of existing plant practices.

The corporate labor relations staff works closely with the vice-president for finance to develop the wage targets. Information about plant labor costs, corporate earnings, and the long-term financial prospects of the company and the industry are built into the wage target the corporate staff ultimately recommends.

Input from Research

A research subgroup in the labor relations staff of the company also conducts background research that is used in management's preparations for negotiations. At least a year and a half before the opening of formal negotiations, the research staff starts preparing the background information necessary for the development of the company's proposals.

The researchers use a database of information on employee demographic characteristics and analyze personnel statistics such as turnover, absentee, and complaint (or grievance) rates. They also monitor internal union developments, such as convention resolutions, union publications, and union leaders' statements about the upcoming negotiations. In addition, they survey plant managers for their views on their relations with the union and on the problems they would like to see addressed in the negotiations. The staff also consults plant labor relations staff members to obtain their suggestions. This firm probably invests more resources in and assigns more authority for bargaining preparation to its research staff than do most other corporations.

The research staff is ultimately responsible for putting together a summary report that goes to the vice-president of industrial relations and the corporate director of compensation. These executives then work with the manager of the research and planning department to develop targets for bargaining.

The Final Step in Management's Preparation

The final step in management's preparation for negotiations is a meeting involving the corporate labor relations staff, the chief executive officer, and the board of directors. At this meeting the corporate labor relations director presents for board approval the proposed wage targets and other

proposed contract changes and the reasons for seeking the proposed changes. Sometimes this meeting does not take place until after the first negotiations session with the union. The labor relations director might prefer waiting until then because it may be useful to hear from the union before making a recommendation to top management. This helps him identify both the relative importance the union is likely to place on pay issues and the intensity of the union's concern about other areas of the contract.

The labor relations director described to us how he presents his recommendation to top management in this way: "I always number my proposed target settlements as proposed settlement target number 1. Someone once asked me what that meant. I said that this is what I think it will take to get a settlement but I number it because I may have to come back to you at some point with my proposed settlement number 2 or even my proposed settlement number 3, et cetera."

Corporate Restructuring and Governance

Over the past two decades, corporations have increasingly moved toward a "core competency" business model. Functions that are deemed central to the core business processes of a firm have continued to be done within the firm, but other functions have increasingly been outsourced to other firms. This trend has affected labor relations in two ways. First, and most important, many firms outsourced aspects of their manufacturing, maintenance, or construction operations, and this often had the effect of reducing the number of unionized employees.

The second effect of recent corporate restructuring has been the outsourcing of many of the human resource services that in the past were provided in house. Many companies have outsourced training, benefits management, payroll, and other routine employee services. This reduces the career advancement opportunities for human resource professionals, including those who serve in the labor relations function. As a result, labor relations professionals now spend an increasing amount of their time negotiating and coordinating employment practices with specialized (outside) human resource service providers who work for outside contractors/consultants. This adds further complexity to this task, since evidence shows that the enforcement of safety and health practices and other basic labor standards often is weaker in contractor firms than in large, more professionally managed firms.[7] Increasingly,

therefore, management and supervision of labor relations occurs across as well as within the formal boundaries of a single firm.

The next section reviews the common procedures unions and workers follow during labor negotiations. This material parallels the discussion of the procedures management follows in preparing for negotiations.

THE ROLE OF THE UNION NEGOTIATING COMMITTEE

The union is represented by a negotiating committee in negotiations with management. The makeup of the **union negotiating committee** varies across unions. For large national unions or union confederations with multiple local affiliates, it typically includes union officers, support staff (such as members of the local or the national union's research staff or both), and elected worker representatives. Often the leaders of the union's negotiating committee are the highest elected officers of the union that is covered by the collective agreement under negotiation.

The negotiating committee will normally meet a number of times before the start of negotiations to formulate the union's list of demands and to begin to establish expectations about what the union can win in negotiations. Before these meetings, the negotiating committee will solicit demands from union members, either directly through membership meetings called to discuss the upcoming negotiations or through surveys.

A union negotiating committee typically also receives information and advice from the national union's research staff during its preparations for bargaining. The information provided frequently covers the financial performance of the company, forecasts the future performance of the company and the economy, and summarizes recent settlements in other unions or the pay improvements unorganized workers have received in the same city, firm, or industry.

Some unions undertake extensive research and analysis of economic developments and the financial situation of each company in their industry. Prior to entering negotiations, the research staff will conduct extensive briefings with the bargaining committee and in some cases will meet with company representatives to compare financial data. It is not uncommon for union and company research staff to request or share information from each other, if for no other reason than to avoid debates over some of the basic facts that both need to prepare for their respective teams. Obviously, small unions or unions limited to one specific location often lack the resources to do the extensive research that is needed on their own. An increasing number of Internet sites

are now available that provide comparative data on wages paid for particular occupations. Similarly, a number of financial services firms provide data on the financial performance and market prospects of publicly traded firms. Some unions also maintain Web sites with sample contract language on a wide variety of topics. Unions frequently use all of these external and internal sources as they prepare for negotiations.

Many unions now use surveys, focus groups, and/or direct interviews with rank-and-file members to gather information about their concerns and priorities for negotiations. This serves as a two-way communication process: it provides data on rank-and-file priorities and begins to engage the rank and file in the negotiations process by informing them of some of the issues that may come up.

Acquisition of Strike Authorization if Negotiations Reach an Impasse

If a union comes to an impasse with management during the negotiations and is considering going on strike over unresolved disputes, two steps commonly occur. The union's constitution may require that the union seek **strike authorization** from the national (or international) union. Strike approval is an important process because, among other things, it enables striking workers to receive strike benefits from the union's strike fund.

A union considering a strike also typically will poll its members. The strike vote serves a dual purpose: it tells the union leadership whether the union's members support such an action and it helps rally the workers around the purpose of the strike.

Contract Ratification

When an agreement is reached between the union's negotiating committee and management's representatives, the union will often then proceed through **contract ratification** procedures. Here there is much variation in the exact procedures unions use. Some unions first send a proposed agreement to a council made up of lower-level union officers. Some union constitutions require that the workers covered by a negotiated agreement vote on any proposed settlement.

THE ROLE OF UNION LEADERS IN SHAPING STRATEGIES

The actual bargaining demands of unions reflect more than just an averaging of their members' preferences. Several factors combine to produce the complex process by which union leaders arrive at their bargaining objectives.

First, in addition to considering the preferences of their members, union leaders must evaluate objectives in light of the probability that they can be attained. Unrealistic goals must be discarded during pre-negotiation planning sessions or early on in negotiations.

Second, individual union members have varying degrees of political influence in the union. Older or more skilled workers, for example, may be more politically influential than other members. Thus, the objectives that are ultimately selected may reflect some workers' goals more than others.

Third, union leaders must also be concerned about the long-run survival of the union and must take steps to preserve those interests. There is always the risk that union leaders will emphasize matters relating to union representation rights or union dues even though the union members might not put a high priority on such items.

Finally, it should be recognized that a central job for union leaders, like all leaders, is to lead! Union leaders must weigh strategic options, make decisions, and secure the ongoing support of their members for those decisions.

One of the keys to union leadership is effective internal communication. Union leaders need regular upward communication from the rank and file and from local union officers. Effective union leadership also requires that decision makers communicate their activities and decisions back to the members. Unions use techniques such as opinion surveys, Internet (or intranet) conferencing technologies, newsletters and in-house magazines, and even television or other media advertising to communicate with their members. Indeed, the Internet is becoming a key resource in bargaining today. Union leaders are learning that if they do not develop skills in using this tool to communicate with members, rival groups within the union will do so. The role and means of communication in unions and in negotiations in general are changing rapidly in the age of the Internet.

THE CYCLE OF TRADITIONAL NEGOTIATIONS

Negotiations often proceed through a cycle in which the four subprocesses of bargaining emerge and interrelate.[8] A typical cycle for a labor negotiations process is described below.

The Early Stages

In the initial stage of a traditional negotiation the parties present their opening proposals. This stage often involves a larger number of people than will be involved in the negotiations of the final agreement. The union, for example, may bring in representatives from various interest groups and levels of the

union hierarchy. These people participate in developing the initial proposals and later become involved in securing ratification of any agreement. The involvement of all these different representatives can resolve any intra-organizational disputes within the union.

The union then presents proposals that cover its entire range of concerns. Some of the proposals will be of critical importance and will be at the heart of the discussions as the strike deadline approaches. Some are important but may be traded off at the last minute. Some may be translated into more specific demands at a later stage of bargaining or may be issues to which the union will assign a high priority in some future round of negotiations. Other issues are of low priority and will be dropped as negotiations proceed into the serious decision-making stages.

The Presentation of a Laundry List

The union's presentation of a **laundry list** of issues serves several purposes. Such a list allows union leaders to recognize different interest groups by at least mentioning their proposals. Some unrealistic demands will be aired, the problems underlying these demands can be explored, and the employer can then reject these demands. This process takes the pressure off union officers who might otherwise appear to have arbitrarily rejected some group's pet proposal. In addition, either side can also introduce issues in a laundry list that it hopes can be pursued in future negotiations.

Initially presenting a long list of proposals and inflated demands might also be useful for camouflaging the real priorities of the union. Or a long list of proposals can assist integrative bargaining by facilitating problem solving.

Employer Behavior in the Early Phase

Employer behavior at the outset of bargaining varies considerably. Sometimes the employer will present a set of proposals to counterbalance the demands of the union. At other times the employer will receive the union demands and promise a response at a future negotiating session. Many management representatives prefer to delay making any specific proposal about wages or other economic issues until well into the negotiation process. Because the wage issue can be emotional and divisive, management often tries to resolve nonwage issues first.

Management may also initially try to camouflage its bottom-line position and it, too, may have unresolved internal differences at the start of negotiations. In some firms a decision about what the bottom line is will not be made until after the union offers its initial proposals and gives some preliminary indication of its priorities.

In the early stages the speakers for each side will argue strongly and often emotionally for the objectives of their constituents, both to fulfill their obligations as representatives and to determine how strongly the opponent feels about the issues at stake. It should be no surprise that these initial stages are the forum for a good deal of grandstanding by both parties (and this grandstanding may be a part of intra-organizational bargaining).

The Middle Stages

The middle stages of negotiations involve more serious consideration of various proposals. The most important tasks performed in the middle stages of bargaining are (1) developing an estimate of the relative priorities the other side attaches to the outstanding issues; (2) estimating the likelihood that an agreement can be reached without a strike; and (3) signaling to the other side which issues might be the subject of compromise at a later stage of the process.

Often the parties choose to divide the issues into economic and noneconomic categories. Separating the issues in this way may facilitate problem resolution and integrative bargaining. It is at these intermediate stages that any obstacles to a settlement may begin to surface.

The Final Stages

The final stages of bargaining begin as the **strike deadline** approaches. At this point the process both heats up and speeds up. Off-the-record discussions of the issues may take place between two individuals or small groups of representatives from both sides, perhaps in conjunction with a mediator. These discussions serve several purposes: because they are private, they enable a negotiator to save face in front of his or her constituents; they allow each party to clarify its position more fully; and they enable the parties to explore possible compromises.

The bargaining that takes place at the table, in many cases, is only the formal presentation of proposals and counterproposals. At this point the negotiators have a better idea of their opponent's bottom-line positions and they may have had private discussions over what it will take to reach a settlement.

Whether the real bargaining occurs at the table or in the back room is less important than the factors that determine whether a settlement will be reached without an impasse. In these final stages before a strike deadline, each party is seeking to convince the other of the credibility of its threats related to the strike issue. Each side also is trying to get the other side to change its bottom line in order to prevent a strike. And each party is trying to accurately predict the other side's real positions on the issues to avoid backing into an

unnecessary strike. At this stage, therefore, usually only a small number of decision makers are involved in the process.

Even if the key bargainers may agree on how a bargaining settlement can be reached, agreement is not yet assured. Even at this late point in the process, if bargainers aren't able to sell a settlement to their constituents, the agreement might not be reached and an impasse may occur.

INTEREST-BASED BARGAINING: AN ALTERNATIVE TO TRADITIONAL NEGOTIATIONS

The traditional approach to negotiations outlined above has often been criticized for its limited potential for solving problems. The dominance of distributive issues and tactics, the overstating of demands, and the tactical use and withholding of information have all been viewed by critics as ways that traditional bargaining reinforces rather than overcomes arm's-length or adversarial tendencies in labor-management relations. As an alternative, a number of researchers and a growing number of practitioners have suggested using **interest-based,** or **mutual-gains,** bargaining techniques.

Interest-based bargaining is essentially an effort to apply integrative bargaining principles from the Walton and McKersie model to the overall negotiations process. This approach to bargaining was first popularized by Roger Fisher and William Ury's best-selling book on negotiations, *Getting to Yes*. In interest-based bargaining, parties are encouraged and trained to (1) focus on their underlying interests; (2) generate options for satisfying these interests; (3) work together to gather the data and share the information needed to evaluate options; (4) evaluate the options against criteria that reflect their interests; and (5) choose options that maximize their mutual interests.

Consider how use of these principles alters the typical negotiations process described above. Instead of each party beginning the bargaining process with a laundry list of inflated demands, each separately produces a list of problems that need to be addressed in negotiations to address their core interests. In some cases, the parties may even frame the problems jointly by building on the reports of labor-management committees that have been set up to collect data and study vexing problems such as safety and health hazards, health plan costs, or quality. A subcommittee might then be formed to collect additional information needed to generate options for the full negotiating teams to consider. Ideally, options can be generated through use of brainstorming (a free-flowing discussion in which members of a group are encouraged to generate ideas without committing themselves to a fixed position and without criticizing the ideas others suggest). Analysis of the root causes of problems and

extensive data sharing are also encouraged at this pre-bargaining or early stage of the negotiation process. As bargaining proceeds to a decision-making phase, standards or criteria are developed to evaluate the options that have been generated. The goal is to then choose the options that do the best job of serving the interests of both parties.

Box 6.5 describes how one firm prepared for a recent round of interest-based bargaining. While much of the background research and information gathering is similar, some of this is done jointly with the union. In this case, the problem-solving processes that had been put in place in the company-union relationship at the workplace provided the foundation for taking a problem-solving approach to negotiations as well.

BOX 6.5

How Preparations for Interest-Based Bargaining Occurred in One Firm

In this firm, the shift to a new approach to negotiations was a gradual and natural outgrowth of the firm's employee involvement process. Some steps in this direction were taken in negotiations ten years ago and more in the most recent round of labor negotiations. All of the union and management representatives have training in problem-solving tools and essentially asked each other: "Why can't we apply these tools in negotiations?"

As in the past, the labor relations managers kept a file of issues and problems that came up during the term of the agreement and started preparations by reviewing this file and interviewing plant managers about their concerns. But this time, when this material was brought together in a meeting with top division executives, the director of labor relations said he didn't want to take a laundry list of issues into negotiations, only to have some or many of them discarded. Instead, he asked his colleagues: "What are your critical problems? What are their root causes? What are the costs involved? If we can agree on these things, then let's go into negotiations and fix them."

Paring the list down and agreeing on what was needed to solve the firm's problems (which were severe at that particular time) involved tough internal discussions and negotiations. Eventually, the chief executive officer had to decide on a couple of key points since these could conceivably affect the long-term future of the operations.

In the end, management decided to bring eight issues to the table and the union only brought fifteen or sixteen. In the past the parties each would have brought many more issues.

The parties also had smaller bargaining committees than in the past. On the management side there was one representative each from legal, finance, and manufacturing, along with the labor relations director, who chaired the committee.

To promote communication that was more open and more oriented to problem solving, the parties decided to use a large round table for bargaining. During the actual negotiations, the parties brought in specialists from time to time with expertise on particular issues such as contract language guiding how workers could be transferred to different jobs within the firm. Instead of simply exchanging proposals and working from each other's lists, the parties scheduled times to discuss issues and problems. When they did so, they asked: "Why is that a problem? Who is affected? What might we do about it? How would it affect things? Can we live with the solutions proposed?"

When it came time to discuss the tough wage issues, bargaining took on more traditional features. Union leaders felt that they needed to be able to demonstrate to their constituents that they had squeezed management as hard as they could to get the best deal possible concerning wages. Management understood the pressures union leaders were facing.

Still, there was better communication because of the integrative problem-solving approach.

In theory, an interest-based process does not differentiate between distributive and integrative issues. Instead, by focusing on basic interests and problems that lie in the way of achieving those interests, the parties attempt to use problem-solving or integrative strategies to address the full range of concerns each party brings to the table. However, experience has shown that some issues are harder to resolve through purely interest-based techniques, since they do involve clear trade-offs. When such situations arise in interest-based negotiations, the parties may resort to more traditional tactics and thus combine the two approaches to negotiations.

Interest-based bargaining requires a high level of trust among the negotiators and between the negotiators and their principals and constituents. Thus,

it is difficult to make this process work when attitudes in the larger relationship are hostile or when there are significant intra-organizational conflicts among the members of one party or the other.

When should one consider using interest-based techniques and how should negotiators go about trying it out? Most experts agree that both negotiating teams need to be trained in these techniques well in advance of the start of negotiations. To overcome constituents' suspicion, some further recommend bringing rank-and-file union members and managers who are not on the negotiating team into the training, data gathering, and subcommittee processes. Often a specially trained *facilitator* (as opposed to a traditional mediator) is also brought in to coach and assist the parties in interest-based negotiations.

While the record of interest-based bargaining to date is still modest and some cases of failure have been reported, it is clear that the growing complexity of the problems labor and management face are pressuring them to find better ways to produce "win-win," or mutual gains, solutions.

STRIKES

As noted earlier in this chapter, most labor relations systems expect negotiations to precede any work stoppage. Indeed, a key goal is to reach an agreement without invoking a strike. Whether a strike actually occurs or is merely threatened, the strike or threat of a strike plays a key role in motivating the parties to move toward an agreement and in determining the outcomes of any negotiation. We explore the role of the strike and strike threat in this section.

How Strike Threats Influence Negotiated Settlements

In negotiations, the bargaining parties are unlikely to settle on terms that differ substantially from whatever terms they think would settle a strike if one were to occur. Consequently, strikes are an important determinant of the bargaining power of both parties.

During negotiations, both labor and management negotiators formulate expectations as to what might happen if the negotiations were to reach impasse and a strike were to follow. At the same time, both sides have a strong incentive to avoid a strike, as each loses income during a strike.

In a strike, workers give up wages. They may try to make up for those lost earnings by taking a short-term job. Workers also turn to union strike benefits, the earnings of a spouse, or savings to support themselves and their families during a strike.

Firms lose profits during a strike. They try to decrease the amount of profits lost through tactics such as bringing in replacement workers for the strikers, converting available inventories to sales, or shifting production to an alternative site. The firm relies on assets or earnings from other lines of business to meet any financial obligations (such as equipment expenses) during a strike. In service businesses such as airlines, where business lost during a strike cannot be made up through built-up inventory or post-strike deliveries, strikes are especially costly. This is one reason why more extensive efforts are made to avoid strikes in these settings, as we will see when we discuss dispute resolution procedures and proposals for reform in the airline industry in the next chapter.

The Hicks Model of Strikes

The material below examines more closely the role the strike threat plays in the negotiation process and identifies the factors that lead to strikes. John R. Hicks developed a very insightful model to analyze the role strike leverage plays in shaping negotiated outcomes.[9] Figure 6.1 diagrams the **Hicks model of strikes.** To simplify the discussion, assume the parties are negotiating only over wages (or assume that all items in dispute can be reduced to monetary terms and represented by a simple wage).

In the Hicks model, bargainers form an expectation of what they would eventually agree to if there was a strike. In case A in figure 6.1, both parties expect that if there was a strike it would be ended with a wage settlement of *w(es)*. If a strike occurs, however, both labor and management will have to absorb income losses during the strike. Workers will forgo earnings during

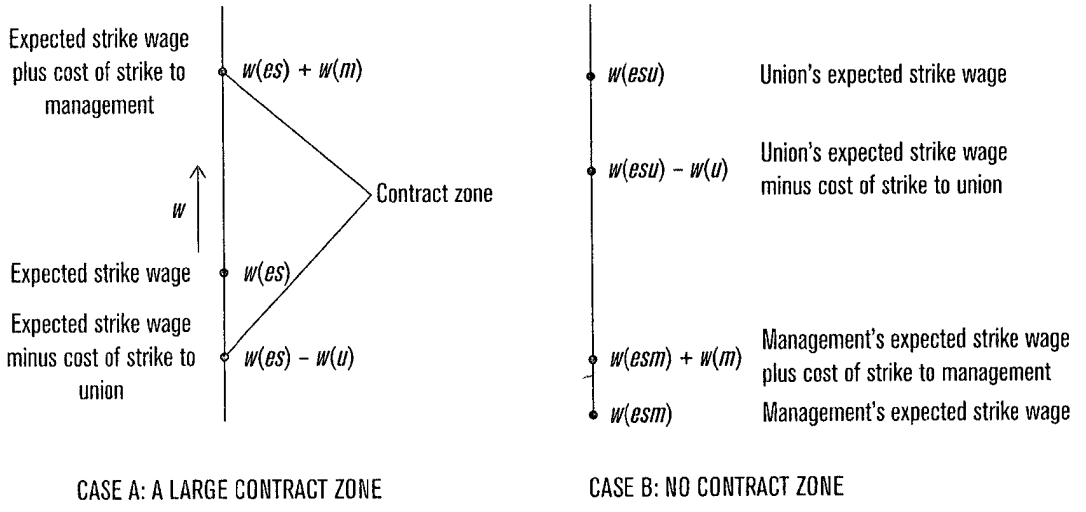

Figure 6.1. The Hicks model of strikes

the strike, and management will lose profits because of the stoppage in production.

Cognizant of these potential income losses, the parties should be able to find a negotiated wage settlement *during the negotiations* that they prefer over the wage settlement they would end up with at the end of a strike, or *w(es)*.

The income that management would lose during a strike is equivalent to a particular increase in the hourly wage cost to management of *w(m)*. Given that they expect a strike to end with a wage of *w(es)*, management should be willing during negotiations to agree to a wage as high as the expected strike outcome plus the cost to management of the potential strike, or *w(es)* + *w(m)*.

Labor in this case also expects a strike to end with a wage of *w(es)*. The income workers would lose during a strike would amount to an hourly wage cost to labor of *w(u)*. The workers, *during negotiations*, therefore, should be willing to accept a wage as low as the expected strike outcome minus the hourly cost of the strike to labor, or *w(es)* – *w(u)*.

The difference between what management is willing to accept during negotiations and what labor is willing to accept during negotiations creates a **contract zone** of potential settlements. Both sides should prefer to reach settlements in the contract zone during negotiations over the alternative of taking a strike and ending up with the strike wage outcome and income losses during the strike.

It is, of course, possible for there be no contract zone. Case B in figure 6.1 diagrams such a situation. In this case management expects a very low strike outcome of *w(esm)*, while the union expects a very high strike outcome of *w(esu)*. Even in the face of the expected strike costs, *w(m)* and *w(u)*, there is no contract zone because *w(esu)* – *w(u)* is greater than *w(esm)* + *w(m)*.

The important point that Hicks noted is that in this framework, there is *no* contract zone *only* if the parties have very different expectations of the strike outcome. The fact is that there is a true strike outcome. If labor and management have divergent expectations of the strike outcome, one or both of the parties is making **miscalculations** in their prediction of the strike outcome. One or both of the parties must be excessively optimistic about what it thinks will settle a strike for there to be no contract zone at all.

Hicks concluded that strikes occur only when there is miscalculation. The key point is that since a strike imposes costs on both sides, it should be less attractive than a negotiated settlement. Strikes can occur even if there is a contract zone, but in the Hicks framework this also requires miscalculation. Hicks argued that there may be situations where the parties do not locate a settlement within the contract zone even if that zone exists. This occurs

because—through previous bluffing or intransigence—the parties are unable to find the negotiated settlements they both would prefer over the strike outcome.

In the Hicks model, negotiators have great latitude to further their side's interests. Given a particular contract zone, it is in management's interest to reach a settlement at the lowest wage in the contract zone and it is in labor's interest to reach the highest wage settlement in the contract zone.

Furthermore, during negotiations it is in each side's interest to attempt to change the other side's expectation of the strike outcome. Management would like to convince labor that the potential strike outcome is in fact a very low wage and labor has an interest in convincing management that the potential strike outcome is a very high wage. The risk the parties face is that in their efforts to change the other side's expectation of the potential strike outcome, they might engage in tactics (such as bluffing or threats) that result in miscalculations, a strike, and the associated income losses.

Some of the Sources of Miscalculation

Hicks's model is a very useful starting point for analyzing the negotiations process. Building on his approach requires an understanding of the factors that influence the willingness and ability of either side to engage in a strike. These factors determine the wage the parties expect they will end up with at the end of a strike. Furthermore, the Hicks framework suggests the need to uncover the factors that lead either side to be overly optimistic about the potential strike outcome or to miscalculate during negotiations in other ways.

Behavioral Sources of Strikes **Behavioral factors** such as the degree to which labor is integrated into the surrounding social community may be one source of miscalculation that leads to strikes. In a classic study, Clark Kerr and Abraham Siegel analyzed strike data across countries and industries. They found that strike rates were consistently higher in certain industries, such as mining and longshoring.[10] The authors proposed that behavioral factors peculiar to certain industries were at least partly responsible for the higher strike rates. Workers in longshoring and mining often have their own subculture, they are distant from major population centers, and their work involves harsh physical labor. Kerr and Siegel argued that workers in these industries are comparatively poorly integrated into society and take out their frustrations by instigating strikes relatively frequently.

In Hicks's terminology, Kerr and Siegel identified a set of factors—social and geographic isolation—that contribute to the likelihood of miscalculation

in bargaining. Kerr and Siegel also emphasized that strike occurrence may have very little to do with the issues on the bargaining table.

Militancy as a Cause of Strikes Strikes also may occur as a result of the militancy of the work force or the union. Over time (and across countries) strikes tend to occur more frequently during business upturns. This association is difficult to explain with the Hicks model, which predicts that wage settlements should be higher during business upturns but not strike frequency.[11]

Other theorists instead argue that the higher frequency of strikes during favorable economic times (i.e., the pro-cyclical movement in strike frequency) demonstrates that conflict is a product of the bargaining power of labor. This bargaining-power model of strikes focuses on the fact that strikes are typically initiated by the union and the work force. Thus, during periods when the union's bargaining power is relatively weak, the union is less likely to press its demands and less likely to resort to a strike when seeking more favorable contract terms.

The bargaining-power thesis also recognizes that strikes are frequently initiated by workers on the shop floor who are upset by management's actions or by official union policies. (These sorts of strikes often would be counted as unauthorized, or wildcat, strikes.) Workers are less likely to engage in this sort of shop-floor action when labor markets are slack and workers fear the possibility of layoffs.

It is important to recognize that negotiations involve a large number of issues, that what would actually occur in a strike is highly uncertain, and that labor negotiations typically occur repeatedly between the same parties. These factors make it extremely difficult to predict the settlement point or the causes of an impasse in any given negotiation.

The Role of Strategy in Negotiations and Strikes

To understand the course of negotiations and strikes it is necessary to consider the roles the strategies of management and unions play. This provides another illustration of a point made throughout this book, namely that activities at one level of the labor relations system interrelate with activities at other levels.

Management strategies have a major effect on the negotiations process and on the strike record. Management behaviors in response to both spontaneous protests and scheduled negotiations often are shaped by a combination of ideology and practical strategy. Management's ideology about unions will influence its willingness to negotiate and often its preparation to do so. Employers

who are most strongly opposed to union representation often first attempt to ignore or suppress a demand from workers or unions that they negotiate.

Once management goes beyond its ideology, attention turns to how to relate its labor relations and negotiation strategies to its business strategies. Management's decisions about investment and products affect its bargaining power and negotiation strategies. For example, whether management chooses a low-cost, high-volume product strategy or a high-quality, high-innovation strategy shapes the extent to which the employer is concerned with lowering wage costs. In addition, a company's overall human resource strategy has an effect on negotiations, particularly on employee attitudes.

ALTERNATIVE BARGAINING STRUCTURES

Labor and management do not necessarily make agreements that cover only the workers who initially joined or created the union or successfully demanded representation rights. For example, the employees in the various work sites of one employer represented by a union may wish to join together to negotiate a common agreement covering the whole company. In a number of emerging countries, company-wide, regional, or industry-wide (sometimes call sectoral) labor agreements exist in manufacturing industries such as the auto or steel industries. Employee and union preferences are not the only determinants of the bargaining structure, however. Before we trace some of the determinants of bargaining structure, we need some definitions.

Definitions of Bargaining Structure

The **formal bargaining structure** is defined as the bargaining unit or the negotiation unit—that is, the employees and employers who are legally bound by the terms of an agreement. The **informal bargaining structure** is defined as the employees or employers who are affected by the results of a negotiated settlement through pattern bargaining or some other nonbinding process.

Types of Bargaining Units

The two primary characteristics of a bargaining structure are (1) the scope of employee or union interests represented in the unit, which can be narrow (craft-based), broad (industry-based), or multiskill-based; and (2) the scope of employer interests represented in the unit, which can be regional, industry-wide, or sectoral or some other form of multiemployer unit. All of these types are considered variants of centralized bargaining. Bargaining structures also can be single employer–multiplant or single employer–single plant (decentralized).

Determinants of Bargaining Structures

The major forces that affect the degree of centralization in bargaining structures are bargaining leverage, public policies, and organizational factors.

Unions can increase their bargaining leverage if they organize a large share of the firms that produce a particular product. One of the primary mechanisms for raising wages is expanding the bargaining structure so that a large share of the firms making a particular product is covered by the same collective agreement. But to achieve a highly centralized bargaining structure, unions usually must first organize a large proportion of the **product market** and then successfully maintain union coverage over time—a tall order.

Unions representing construction workers, for example, have a strong incentive to equalize the wage costs among competitive bidders on the same product. Thus, in the construction industry, unions prefer bargaining with the multiple employers who compete for specific construction projects. For example, where builders across a city bid for the contract to build an office building, the union representing carpenters in that city will try to bargain in a structure that spans the contractors across the city.

Employers Prefer Centralized Bargaining Structures in Some Cases It should not be inferred that unions always gain (and employers always lose) a tactical advantage in larger or more centralized bargaining structures. Employers in companies that provide local services such as hotels, restaurants, laundries, and truck haulers have often found it to their advantage to form associations and to bargain in multiemployer units.

For instance, consolidating the bargaining function allows employers to avoid being whipsawed by local union leaders. Union **whipsawing** occurs when a union negotiates a bargain at one plant or company and then puts pressure on the next plant or company to equal or surpass the contract terms negotiated at the first site. By consolidating the bargaining structure, however, employers can sometimes reduce the possibility of union whipsawing. (Employers can also whipsaw a union when they gain a power advantage.)

Centralized Bargaining Can Stabilize Competition In some cases a centralized bargaining structure can serve employer interests by stabilizing competition. Employers in small firms in a highly competitive industry may find it to their advantage to bargain centrally with a union. This can reduce the union's ability to whipsaw the small firms. If a strike occurs, the centralized bargaining structure also ensures that no single employer can gain an advantage because all the firms are shut down simultaneously.

Centralized bargaining in highly competitive industries can also work to the advantage of larger employers that are willing to pay a higher wage but are concerned about being undercut by smaller firms or new entrants to the industry. This was the case in the U.S. apparel industry for many years before most clothing manufacturing moved overseas. Interestingly, a similar motivation has led to the emergence of sectoral bargaining in the woolen, ceramic, and plywood industries in several provinces in China. Box 6.6 describes the plywood example as it developed in recent years in the city of Pizhou, Jiangsu Province.

BOX 6.6
Sectoral Bargaining in China's Plywood Industry

The plywood industry in Pizhou city, Jiangsu Province, includes about 2,000 enterprises and 200,000 workers. It accounts for 30 percent of the city's GDP and a third of China's plywood exports. In 2003, to avoid the negative effects of unconstrained competition, the larger enterprises set up a sectoral employers' association for both trade and labor relations purposes. Around 300 mid- and large-size enterprises in the plywood sector joined.

In 2005, the local union federation and the employers' association conducted a joint survey of wages in thirty large enterprises. Based on the results of this survey and on subsequent negotiations, the two sides signed an agreement that fixed sectoral minimum wages. This agreement covered sixty enterprises on a trial basis. The two sides moved toward a full sectoral wage negotiation in 2006. Since then, there have been six annual rounds of negotiations.

There are a number of points of interest in the resulting agreements. First, they activated the provisions of China's 1994 labor law that relate to appropriate premium payments for overtime working. This provision has been widely ignored in China. But the 2006 and 2007 Pizhou plywood agreements achieved full compliance with the 1994 law.

Second, at the height of the global financial crisis in 2009, the two sides agreed to freeze piece rates and to reaffirm the legal procedures governing redundancies. Even though the union association was on the defensive in the context of the worsening economic situation, it was nonetheless able to gain a concession from the employers' side in the form of the introduction of seniority allowances.

Third, a skill grade system that was introduced by the 2009 agreement was a high negotiating priority for the provincial union. Together with seniority allowance, it may prove to be a first step away from the prevailing piece-rate system and toward more secure internal labor markets. Finally, there have been rapid increases in negotiated wage rates over the six rounds of wage negotiation, ranging up to 33 percent in 2008.

Both sides have agreed to augment the members on the workers' side, who were mostly union officials and a few workers' representatives, with equal numbers of workers' representatives and third-party professionals, such as lawyers and government advisors. In 2008, they agreed to have 250 workers' representatives as observers at the formal bargaining sessions, to train workers' representatives at the enterprise level, and to encourage workers' representatives to begin supplementary negotiations at the enterprise level following the completion of the sectoral agreement.

Source: Chang-Hee Lee, William Brown, and Xiaoyi Wen, "What Sort of Collective Bargaining Is Emerging in China?" *British Journal of Industrial Relations*, forthcoming.

The Chinese plywood case illustrates how centralized bargaining, even at the regional level, requires the development of parallel employer and union associations. These associations, in turn, need to create internal governance and decision-making processes to ensure internal cohesion and acceptance of and compliance with negotiated agreements. This often requires significant intra-organizational bargaining. One way of avoiding overcentralization is to limit the scope of issues that get negotiated at the centralized level, often to basic wages and other common terms of employment, while giving individual enterprises the flexibility to negotiate on other issues to fit their particular circumstances and needs. This might include topics as diverse as child care provisions, scheduling arrangements, or work system innovations.

The Bargaining Structure in Brazil

Brazil provides another example of how bargaining structures evolve over time, in this case starting with a strong influence of the national government in centralized bargaining that has gradually evolved to the municipal level. We review this evolution of bargaining in Brazil. Note how bargaining in this country is integrated with other provisions of labor and employment

law. Few other countries have been able to achieve this level of coordination.

Collective negotiations in Brazil has its roots in the Consolidated Labor Laws passed by President Getúlio Vargas in the late 1930s. These laws and their system of collective negotiations were loosely based on the political and labor laws of Mussolini's Italy. In this system, which is known as corporatism, the state plays the central role in organizing and channeling labor-management conflict. Workers and employers are both organized into separate representative bodies: labor unions for workers and employer organizations for companies. Collective negotiations plays an important role in the Brazilian system. Vargas and the designers of the corporatist system sought to create institutions that would resolve labor-management conflict but avoid more radical and class-oriented organizations such as those in Western Europe.

The labor relations system in Brazil is characterized by three key factors: exclusive representation by job category and geography, a union tax to fund labor organization, and a system of labor courts. Unions are organized by job category through exclusive representation by geographical region and are the primary site for collective negotiations. Unlike in unions in Western Europe, where bargaining is organized by a limited number of "industries" such as metalworking, chemicals, transportation, and education, Brazilian unions are organized by job category. Job categories are not legally defined and are subject to legal challenge by rival unions hoping to represent the same groups of workers. For example, there cannot be two unions of metalworkers in São Paulo. However there may be different unions for welders, drillers, autoworkers, truck workers, steel workers, and so forth, all in the same geographical jurisdiction. Unlike in countries where unions are organized by a limited number of industries—all metalworkers from the same area bargaining together and providing greater bargaining power for these workers—unions in Brazil are highly fragmented, are in fierce competition with each other, and often are not in contact with other workers from the same company in different regions of the country.

Unions and employers are organized into four legally recognized levels based on geography: the municipal *sindicato*, the state/regional *federação*, and national-level *confederação*, and the national, cross-industry *central*. Brazilian law makes no provision for in-plant representation, which means that most Brazilian workplaces do not have any type of shop steward, union representative, or grievance procedure. Some unions have tried to build European-style works councils, notably in the auto and chemicals sectors, but employer resistance is often fierce and the bargaining power of unions is limited.

Collective negotiations are conducted primarily at the municipal level and have limited scope and content, mostly related to base wages. The majority of statutory regulations, including those related to minimum wages, hours, safety and health standards, and vacations, are covered by the federal labor code, and collective negotiations at the local level attempt to build from these federal regulations. Negotiations are conducted annually and are concerned mostly with wages, profit sharing, and employment guarantees.

Multiemployer conventions and firm-level agreements are allowed and are designed to improve on the national minimum levels set in federal law, but for the majority of unions the scope of bargaining remains narrow and is focused on annual wage adjustments. Some unions, mostly the larger industrial unions in the São Paulo region, have been able to make broader agreements at the firm and multi-firm levels, but these are by far the exception and unions face immense challenges in trying to build coordinated bargaining structures.

In many countries, the trend has been toward greater decentralization in bargaining structures. South Africa is a case in point. Employers in South Africa have argued for more exceptions to the industry-level bargaining structures the country's labor law calls for. As the variations in the size and competitive conditions employers face have increased, fewer firms have been willing to participate in industry associations and instead seek to negotiate separately. Yet examples can also be found where one or both parties seek to move toward more centralized bargaining. To enhance their bargaining leverage, a number of Korean unions have pursued industry-wide bargaining. In the banking industry, the first industry-wide collective agreement was signed in 2001.

In summary, there is no single best bargaining structure for all industries or countries. But it is not impossible to change bargaining structures that are no longer well matched to industry, regional, firm, or union needs.

Pattern Bargaining

Pattern bargaining is an informal means of spreading the terms and conditions of employment that have been negotiated in one formal bargaining structure to another. It is an informal substitute for centralized bargaining that is aimed at taking wages out of competition.

The employees working in the same firm typically are very aware of what other employees in the firm are receiving in terms of pay or fringe benefits and are very jealous when any differentials emerge. Internal promotion (and other features of an internal labor market) within a firm serves to heighten such comparisons. Pattern bargaining follows where more than one

negotiation affects employees of the same firm. This is most common for the blue-collar employees of the same firm, but it can also occur where unions represent both blue- and white-collar employees.

A number of emerging countries are experiencing pressures to both strengthen and weaken pattern bargaining arrangements. The mining strike in South Africa described in box 6.5 created strong pressure on other companies in the industry to match the wage settlement the strikers received in order to avoid similarly violent clashes. In China, the 2010 Honda strike described in box 6.1 led other auto companies to increase wages to avoid copycat protests. Yet in South African industries other than mining, a growing number of firms have resisted accepting the industry wage levels that have historically served as the pattern even for firms that did not formally join an industry's employer association.

CULTURAL ISSUES IN NEGOTIATIONS

Cultural differences can also make negotiations difficult when people from different parts of the world negotiate with each other, as is often the case today. One study found that agreements took longer and were less likely to be reached when Chinese and Americans negotiated with each other than when the negotiating pairs came from the same country. Chinese negotiators tended to put a higher emphasis on process considerations and preferred to allocate more time to building relationships with their counterparts, whereas American negotiators wanted to move more quickly to discussion of the substantive issues involved. Paying attention to these cultural differences and their effects on negotiating style therefore is critical to the success of cross-cultural negotiations.[12]

Jeanne Brett provides a comprehensive assessment of the role cultural issues can play in negotiations.[13] Below we provide a summary of the findings in Brett's research on negotiating globally.

To understand the role that culture can play in negotiations it is first important to define culture. Culture is the distinct character of a social group that emerges from the patterned ways people in a group respond to problems during social interactions.

To avoid cultural biases when negotiating globally, it is valuable to have a "cultural interpreter," someone who not only knows the language but also can interpret the body language and the strategic behavior being exhibited across the negotiating table. A cultural expert should also be able to help parties understand the cultural context of the negotiation, for example, the institutional environment in which the negotiation is embedded.

It is important to avoid confusing a cultural prototype (a central tendency) with a cultural stereotype (the idea that everyone in a culture is the same, that there is no distribution around the mean). This is inappropriate, as there is always variance within a culture.

It is critical to keep in mind that the values shared by a group differ across national cultures. Two key differences in cultures that are particularly important for negotiations are the degree of individualism versus collectivism and the degree of hierarchy versus egalitarianism in each culture. In individualist cultures, social, economic, and legal institutions promote the autonomy of individuals, reward individual accomplishment, and protect individual rights. In collective cultures, institutions promote the interdependence of individuals with the others in their families, firms, and communities by emphasizing social obligations. In a collectivist culture, individual accomplishment reflects back on others with whom the individual is interdependent and legal institutions support collective interests above individual interests.

The type of culture negotiators come from may affect their interests, goals, and strategic choices. For example, individualistic cultures promote self-interest, which may be reflected in negotiators' preference for confrontation and/or face saving. In hierarchical cultures, social status determines social power and social power generally transfers across situations. In hierarchical cultures social inferiors are expected to defer to social superiors, who have an obligation to look out for the well-being of lower-status parties in return for the power and privilege conferred on them by right of their status. No such obligations exist in egalitarian cultures. In egalitarian cultures, social boundaries are more permeable and social status may be both short-lived and variable across situations.

Western cultures, especially northern European cultures, tend to be egalitarian. As you move south from North America to Central and South America, culture tends to be more hierarchical. Asian cultures are usually classified as hierarchical.

Norms (i.e., standards of appropriate behavior) about directness or indirectness of communication are also important when negotiating globally. When people communicate indirectly, for example, the same words take on different meanings in different contexts. Cultures that favor indirect communication tend to be collectivist in nature. People in direct-communication cultures, in contrast, understand each other because they share a vocabulary. Direct-communication cultures also tend to be individualistic.

Research does not support the idea that negotiators from some cultures primarily use integrative strategies and those in other cultures primarily use

distributive strategies. Research also shows that there is a substantial variation within cultures in the ability to use integrative strategies.

Summary

The structures and processes of negotiations vary considerably across countries, reflecting differences in the stage of development of labor law, the ideologies and strategies of employers and labor organizations, shifting bargaining power, and national cultures and institutions. While most well-developed labor relations systems seek to regularize negotiations processes as means of limiting strike activity, breakdowns in negotiations still generate strikes from time to time. When well-developed labor relations laws and established structures for negotiations do not exist, it often takes protests, strikes, or other confrontations to initiate negotiations.

Once it is clear that a negotiation process is called for, the parties need to develop skills and abilities to adapt negotiation practices as conditions change over time. These skills and abilities include

- Separating distributive (conflicting) issues from integrative issues (those where the parties share common goals) and using modern negotiation tools so the parties can avoid miscalculating each other's bottom lines regarding distributive issues and missing opportunities to pursue shared interests regarding integrative issues;
- Building positive, constructive relationships with counterpart negotiators so the parties can trust each other's statements as negotiations proceed toward either an agreement or an impasse;
- Adapting the structure of bargaining as competitive conditions and or the mix of employers or unions change over time;
- Exploring new ways to negotiate, such as using interest-based bargaining processes or other ways of improving problem solving in negotiations;
- Building ongoing processes for implementing and administering agreements reached in negotiations and for resolving disputes during the term of the agreement; and
- Recognizing and appropriately adapting to any cultural issues that might be prevalent in a negotiation.

In summary, negotiation processes serve as the central activity at the middle tier of the three-tiered labor relations framework introduced in chapter 1. They need to be supported and complemented by effective mediation and

arbitration or other dispute resolution processes, topics we turn to in the next chapter.

Discussion Questions

1. Describe the four subprocesses of negotiations developed by Walton and McKersie.
2. What are the key aspects of the three stages in a typical negotiation cycle?
3. Describe the Hicks model of strikes.
4. Give some examples of how management strategy has influenced the course of negotiations or strikes in recent years.
5. How do traditional and interest-based negotiation processes differ?
6. Define bargaining structures and discuss some of their determining factors.

Related Web Sites

"Labor Legislation in Brazil": http://www.v-brazil.com/government/laws/labor.html

Labour Law of the People's Republic of China (1994): http://english.mofcom.gov.cn/article/policyrelease/internationalpolicy/200703/20070304475283.shtml

National Union of Metalworkers of South Africa (NUMSA): http://www.numsa.org.za

National Union of Mineworkers (NUM): http://www.num.org.za

Suggested Supplemental Readings

Brett, Jeanne M. *Negotiating Globally.* 2nd ed. New York: John Wiley and Sons, 2007.

Fisher, Roger, and William Ury. *Getting to Yes: Negotiating Agreement without Giving In.* New York: Penguin Books, 1981.

Kahn, Jeremy. "Foreign Ventures Come to Terms with China's Labor Unions," *World Trade*, December 2006: http://jeremy-kahn.com/articles/Dec06-Walmart China.pdf.

Morse, Bruce. *How to Negotiate the Labor Agreement.* 10th ed. Southfield, Mich.: Trends Publishing, 1984.

Walton, Richard E., and Robert B. McKersie. *A Behavioral Theory of Labor Negotiations.* New York: McGraw-Hill, 1965.

Walton, Richard E., Joel Cutcher-Gershenfeld, and Robert B. McKersie. *Strategic Negotiations: A Theory of Change in Labor-Management Relations.* Boston: Harvard Business School Press, 1994.

Notes

1. See Edward Cohen-Rosenthal and Cynthia Burton, *Mutual Gains: A Guide to Union Management Cooperation* (Boston: Pitman, 1981); Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement without Giving In* (Boston: Penguin Books, 1981); and Richard E. Walton, Joel Cutcher-Gershenfeld, and Robert B. McKersie, *Strategic Negotiations: A Theory of Change in Labor-Management Relations* (Boston: Harvard Business School Press, 1994).

2. Richard E. Walton and Robert McKersie, *A Behavioral Theory of Labor Negotiations* (New York: McGraw-Hill, 1965).

3. It is of course possible that some joint gain is associated with a higher wage rate if labor productivity increases when wages are increased. This might result from the greater motivation workers feel when their pay goes up or from the better-qualified workers the firm can recruit when it offers a higher wage. We ignore such considerations in the text discussion.

4. Alfred D. Chandler Jr., *Strategy and Structure: Chapters in the History of the Industrial Enterprise* (New York: Anchor Books, 1966), 15.

5. Arthur M. Ross, *Trade Union Wage Policy* (Berkeley: University of California Press, 1948), 45–74.

6. This case is from a real firm we encountered in our field work. The firm preferred not to be identified by name.

7. See David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (Cambridge: Harvard University Press, 2014).

8. This cycle is discussed in Carl M. Stevens, *Strategy and Collective Bargaining Negotiations* (New York: McGraw-Hill, 1963), 41–46.

9. John R. Hicks, *The Theory of Wages* (New York: Macmillan, 1932), chapter 2.

10. Clark Kerr and Abraham Siegel, "The Interindustry Propensity to Strike: An International Comparison," in *Industrial Conflict*, ed. Arthur Kornhauser, Robert Dubin, and Arthur M. Ross (New York: McGraw-Hill, 1954), 189–212.

11. Economists have also constructed models that involve "asymmetric information" to explain strike occurrence. These models rely on the notion that management knows the profitability of the firm, whereas the union must guess about this information and use wage offers to get the firm to reveal its true profitability. See, for example, Joseph S. Tracy, "An Investigation into the Determinants of U.S. Strike Activity," *American Economic Review* 76, no. 3 (1986): 423–436.

12. Leigh Anne Liu, Ray Friedman, Bruce Barry, Michel Gelfand, and Zhi-Xue Zhang, "The Dynamics of Consensus Building in Intracultural and Intercultural Negotiations," *Administrative Science Quarterly* 57, no. 2 (2012): 269–304.

13. Jeanne M. Brett, *Negotiating Globally*, 2nd ed. (New York: John Wiley and Sons, 2007).

7 Dispute Resolution Procedures

THE KEY ROLE OF MEDIATION IN DISPUTE RESOLUTION

When two or more parties cannot reach a negotiated agreement, they often turn to a neutral third party for assistance in resolving the issues that separate them. This is very common in workplace disputes, both those involving individuals seeking to enforce their legal or contractual rights with their employer and collective negotiations between unions or other worker groups and one or more employer. In this chapter we focus on dispute resolution techniques commonly used in *collective negotiations*. We are still in the middle (functional) level of figure 1.1. We describe various dispute resolution techniques, show how these techniques affect the negotiations process, and assess how well the techniques function in settling impasses.

The chapter first describes **mediation**, a process by which a third party tries to lead labor and management to a negotiated settlement through enhanced communication and recommendations. The discussion then turns to compulsory (interest) arbitration, where the parties must adhere to the decision of the third party, the arbitrator, typically about an issue related to pay or a key work rule.[1]

As with other aspects of collective negotiations, in the area of dispute resolution a number of new techniques and roles are emerging. Some mediators are now using interest-based techniques to facilitate labor-management negotiations, consistent with the principles of interest-based bargaining, as described in chapter 6. We will describe this approach and contrast it with mediation in more traditional negotiations. Highly skilled and experienced

professionals mix and match different aspects of mediation, facilitation, arbitration, and other techniques to fit the particular circumstances of a dispute. This chapter finishes by discussing how new third-party roles are emerging to better respond to the environmental pressures that confront the parties and to improve labor-management relations.

The Widespread Use of Mediation

Mediation has a very long tradition in many countries. In China, it dates back as far as the Ming Dynasty, when respected community elders would help resolve disputes among neighbors and/or in business relationships. In South Africa, mediation played a pivotal role in fostering a transition to a post-apartheid democratic government. A private mediation system was created prior to the end of apartheid that was acceptable to both black and white workers and unions. It then served as the model for mediation in the post-apartheid era both in the field of labor relations and in broader community and political processes. (See box 7.1.)

BOX 7.1

The Independent Mediation Service of South Africa (IMSSA)

In 1984, a group of white and black labor union leaders and employer representatives were brought together at the University of Witwatersrand to discuss the idea of creating an independent mediation service. The number of labor conflicts in South Africa had been increasing since 1979, when the government granted black workers freedom of association. Some of these conflicts had been violent.

The historic meeting was the first time black and white unions and employers had met together on neutral ground. Out of that meeting emerged a mediation agency that during its first ten years

- Mediated 3,678 labor management disputes
- Helped resolve a bloody dispute between the South African Railway and its employees that produced the first-ever recognition of a black union by a government agency
- Trained a panel of 195 mediators who could be called in to help resolve specific disputes
- Oversaw balloting for the first African National Congress National Convention
- Supervised the balloting in the 1994 national election

- Expanded its services into mediating community disputes
- Developed education and training courses and programs in dispute resolution for universities, business societies, and trade unions
- Helped form the first government mediation service, which continues to serve these functions today

IMSSA not only served the interests of labor and management in resolving specific disputes but also played a significant role in helping South Africa achieve a political transformation to a democratic society before and during the transition and after the end of apartheid.

Source: "Independent Mediation Service of South Africa: 1984–1994," review paper no. 16, Independent Mediation Service of South Africa, September 1994.

Mediation is the most widely used yet the most informal type of third-party intervention in labor relations. In **mediation,** a neutral party helps workers and management negotiators reach a labor agreement. A mediator has no power to impose a settlement but works with the parties to reach a settlement that is mutually acceptable to them.

Mediators keep the parties talking, they carry messages between the parties, and they make suggestions. Mediators must rely on their persuasiveness and communication skills to get each side to step back from its declared position in order to help the parties to reach a voluntary agreement. A mediator's power is limited by the fact that he or she is an invited guest who can be asked to leave by either labor or management. Mediators must also be sensitive and responsive to cultural differences in negotiating norms when working with parties from different countries and/or backgrounds.

Mediation in the United States

In this section we review how mediation works in the United States. We do so because the United States has a well-developed mediation system that might provide some lessons for countries that are developing their own mediation systems.

In the United States, federal and/or state government agencies typically provide labor mediation services. These agencies, however, are careful to maintain their independence and except in very unusual circumstances do not seek to impose government policy preferences on the parties. The U.S. National Labor Relations Act specifies that the party proposing changes in a collective bargaining agreement (usually the union) must notify the Federal

Mediation and Conciliation Service (FMCS) at least thirty days before the start of a strike. Although the law does not require the parties to use mediation if they reach an impasse, the FMCS includes a staff of experienced mediators who are always ready to assist the negotiating parties if the parties ask them to so. Most states have state mediation and conciliation agencies that also make mediators available to negotiating parties. Both federal and state mediators are typically available free of charge. Sometimes the parties jointly choose a private mediator and share the cost of the mediator's services.

FMCS annual reports estimate that approximately 15 to 20 percent of all cases in which 30-day strike notices were filed involved at least some informal (by telephone) type of mediation and between 8 and 10 percent involved a formal mediation effort. The FMCS, the U.S. secretary of labor, other members of the president's cabinet, or the president are sometimes brought into the mediation process in important disputes.

A more extensive use of mediation is built into the law governing labor relations in the airline and railroad industries because of concern about the disruption a strike in these key transportation industries would cause the public. In these industries, mediation is a mandatory step before a dispute can go to the next step of the impasse resolution process.

Mediation is also more commonly used in the public sector than in the private sector in the United States because many state governments allow public employees to engage in collective negotiations but limit or outlaw the right to strike. Instead, bargaining statutes that cover state and local government employees call for mediation as the first phase of the impasse resolution process. In New York State, for example, on average, about 30 percent of all public sector negotiations reach an impasse and require mediation. Other states have reported somewhat lower rates of reliance on mediation, but all states report rates that exceed the reported average for the private sector.

In the public sector, mediation is the province of staff mediators employed by the various state agencies that administer the public employment bargaining statutes, and in some states it is the province of ad hoc, part-time mediators. These ad hoc mediators generally hold other full-time jobs as college professors, arbitrators, lawyers, or members of the clergy or work in an occupation related to labor-management relations.

International Models of Mediation

Countries have a variety of different models to choose from when designing mediation systems. In South Africa, a private model evolved into the public system, as noted in box 7.1. There, the Commission for Conciliation, Mediation and Arbitration (CCMA) provides direct mediation services and

contracts with a number of industry bargaining councils to support their own mediators. In some very difficult cases, such as the 2012 mining dispute, CCMA mediators partner with respected citizens to help resolve disputes. In a recent mining dispute, the head of the South African Council of Churches helped bring a tragic dispute to a close.

China has a government-run mediation system that covers individual disputes about workers' legal rights, but it has yet to create a counterpart to deal with its growing number of collective disputes. This has prompted proposals about and experiments with the development of a private dispute resolution center, analogous to the approach South Africa has taken (see box 7.2). This is still in the developmental stage. Whether it will grow to a scale large enough to meet the exploding need for effective third-party assistance in China's workplace conflicts remains to be seen.

BOX 7.2
Proposal for a Chinese Dispute Resolution Center

There is growing concern and tension in China over an increasing number of strikes and protests, some of which have turned violent. These events demonstrate that the current statutes and procedures and workplace processes for channeling workplace conflict are not meeting the needs of Chinese society.

Because workplace disputes include multiple parties, solutions increasingly involve coordinating groups of workers, company executives, human resources directors, representatives of MNCs, attorneys, and community leaders. Thomas Kochan and Arnold Zack have proposed the establishment of a dispute resolution center that would include representatives of such players in the hope that communication and the sharing of experiences prior to the outbreak of workplace conflicts would help stimulate relationships that would lead to their resolution.

Such a center could sponsor periodic meetings at a different location from the setting of a crisis, provide a venue for periodic lectures and training programs, and help nurture the establishment of a body of neutrals who could assist in resolving disputes through facilitation and even mediation. The center could become the administrator of a mediation program whose design and deployment is guided by advice from players who anticipate that a neutral panel structure would be helpful in their dispute resolution efforts.

Kochan and Zack also propose that business and law school curricula and research programs be strengthened to include an integrated analysis of global best practices in human resource management, industrial relations, negotiations, conflict management, dispute resolution options (including informal communications, information sharing, problem solving, consultation, facilitation, and mediation), Chinese labor laws and practice, and comparative labor law.

Sources: Thomas Kochan and Arnold Zack, "The Continuing Quest for Dispute Resolution in the Chinese Workplace: A New Look at Partnership and Training," unpublished paper in authors' possession; Arnold Zack, "Essentials of an Effective Mediation System for Workplace Disputes in China," video; and Thomas Kochan, "Building Capacity for Effective Resolution of Workplace Disputes in China," video, both at The China Workplace Project, http://mitsloan.mit.edu/group/iwer/china-workplace-project.php, accessed May 6, 2014.

Brazil uses another model of mediation that is found in several other countries. It has a labor court that plays a role in approving the right to strike and in mediation and from time to time arbitrates both collective disputes and claims of employment law violations brought by individuals. Thus, it combines its labor law enforcement efforts into one agency that has mediation, adjudication, and inspection responsibilities.

In some cases, crisis situations lead to the invention of new institutions that provide a combination of consultation, mediation, arbitration, and legal enforcement of employment relations standards. Table 7.1 summarizes the provisions of the Accord on Fire and Building Safety in Bangladesh that a combination of NGOs, the International Labour Organization, multinational companies and their suppliers, and trade unions created in the aftermath of the 2013 deadly Rana Plaza factory collapse mentioned in chapter 6. In this case, these multiple parties created a private institution to fill the gap left by the failure of the government to enforce workplace safety.

As these examples illustrate, mediation can be carried out by government or private professionals chosen by the parties themselves or by private or quasi-private institutions. The key requirements, as will be noted below, are that the mediator be acceptable to the parties, that he or she be someone whom the parties trust to be neutral about the issues involved and their interests, and that he or she be someone who is skilled at helping the parties find a mutually acceptable agreement.

Table 7.1. The Accord on Fire and Building Safety in Bangladesh

Provision	*Description*
Scope	Covers all suppliers producing products for signatory companies.
Governance	Steering Committee (SC) with equal representation chosen by union signatories, company signatories, a representative of the ILO, and a neutral chair.
Inspections	SC appoints independent inspectors; all factories undergo an initial inspection using internationally accepted safety codes; inspection results are shared with factory union and/or safety committee and made public.
Remediation	Factories are required to implement remediation process to bring factory into compliance; employees may not be dismissed and incomes must be maintained if factory is closed for remediation; companies must make efforts to move employees to safe suppliers when orders are lost by unsafe suppliers; workers have right to refuse to do unsafe work without retaliation or discrimination.
Training	SC will develop and deliver safety training programs in cooperation with union and company experts. Joint safety and health committees are required in all plants.
Complaints	Safety inspectors will establish a worker complaint process along with a hot line to be available to workers in all factories.
Transparency/ Reporting	SC shall publish list of all factories used by signatory companies. Written inspection reports shall be made public. Factories shall be identified that are not acting expeditiously to implement remedial recommendations; quarterly aggregate reports on compliance and remediation results shall be made public.
Supplier incentives	Signatory companies must require that all suppliers participate in all the activities in this agreement. Suppliers that fail to do so will receive notice, warning, and termination of business. Companies will negotiate financial terms that make it possible for suppliers to comply with this agreement and to maintain safe workplaces. Signatory companies commit to maintaining long-term sourcing of goods from Bangladesh at volumes comparable to those that existed prior to this agreement.
Financial support	Each signatory company will contribute to the costs of the SC, the inspectors, and the training coordinator in proportion to its business volume in Bangladesh up to a maximum of $500,000 per year for the five years of this agreement.
Dispute resolution	Disputes arising under this agreement shall first be referred to the SC. Either party can appeal a SC decision to final and binding arbitration. Arbitration decisions are enforceable in the court of law in the country of the signatory company.

Source: "Accord on Fire and Building Safety in Bangladesh," May 13, 2013, http://www.laborrights.org/creating-a-sweatfree-world/resources/bangladesh-fire-and-building-safety-agreement.

TYPES OF DISPUTES THAT CAN BE SETTLED BY MEDIATION

Mediation is most successful at addressing conflicts that arise from poor communications and misunderstandings that are caused, for instance, by one party or both becoming overcommitted to their negotiation positions, by a lack of

experience on the part of the negotiators, or by one or both parties being insensitive to differences in the cultural norms of other parties related to negotiations. Mediation is less likely, on the other hand, to resolve conflicts caused by the economic context of the dispute, such as the employer's inability to pay or major differences in the parties' expectations.

Where there is a wide divergence in the demands of labor and management, the mediation process is limited because some form of outside pressure is often necessary to convince the parties to make major changes in their bottom-line positions. Thus, the mediation process is best suited to helping the parties understand their differences and move beyond their initial positions. When a large gap exists between the parties, mediation can be expected to succeed in getting the parties to adjust their bottom lines and reach agreement only in conjunction with some external pressure.

Disputes that arise out of intra-organizational conflicts or situations where it is unclear who speaks for or represents one or other of the parties or who has the power or control of the funds are also difficult to resolve through mediation. Consider again the example of the violent series of strikes in the South African mining industry in 2012, when an apparent majority of workers lost faith in the National Union of Mineworkers and were represented by the Association of Mineworkers and Construction Union. In China, the ACFTU is the officially designated union that is sanctioned by the government for all workers, but its lack of independence from both the government and employers often leads workers to take job actions on their own. Determining who represents the work force is thus an issue that has to be sorted out in such situations.

The less frequently the mediator becomes involved in trying to mediate disputes within one of the parties' organizations, the greater the likelihood that the mediator will be accepted by both parties and the more open the parties will be to him or her. The difficulty for mediators is that a failure to resolve this sort of internal dispute can make it impossible to resolve the labor-management dispute.

WHAT MEDIATORS DO

What mediators do and the dynamics of the mediation process vary across cultures. As noted above, mediators try to improve communications between parties that may not be talking to each other simply by relaying messages. They also offer alternative positions that the parties have not presented or possibly have not even thought of as potential steps to bringing them closer together. Mediators also serve a number of generic functions at different

phases of a negotiation or conflict resolution process. We will first describe some of these generic functions and then note how differences in cultures may affect how these functions are carried out.

The ultimate objective of a mediator is to help the negotiating parties reach an agreement. Yet there is more to mediation than the final step that settles a dispute. Mediation often follows an ever-narrowing course as the mediator seeks to whittle away at the various issues in the dispute. Progress toward a resolution is possible without necessarily completely resolving any of the issues. In other words, progress has been made if the parties have succeeded in narrowing their differences over the open issues, at which point the mediator might withdraw and the parties will revert to direct negotiations on their own.

Mediation is also designed to help the parties "come clean without prejudice" or "save face" by having the mediator explore informally or off the record what would happen if one or both parties were to move away from their hard-line positions. Mediators commonly undertake this exploratory effort to prevent the parties from miscalculating. Thus, one major function of mediation is to allow tacit negotiations to take place, either directly between the parties or indirectly by having both parties share confidential information with the mediator.[2]

The mediator also tries to prevent the parties from holding back on concessions they would be willing to make to avoid a strike. It is by no means an easy task for the mediator to identify what the bottom-line positions of the parties are, since in most instances the negotiators are extremely wary of sharing this information openly with the mediator and in fact may not have a specific resistance point in mind. Instead, the mediator must often probe to find the parties' true positions, relying on the statements or implications they make as a guide. Mediators often urge the parties in private to clarify how far they are willing to compromise to avoid a breakdown in negotiations and then try to get the parties to put forward their best offer.

What mediators do is influenced by whether the parties are using traditional or interest-based strategies in their negotiations. When negotiators use interest-based techniques, they expect mediators to be skilled facilitators of this type of process. The mediator must know how to use brainstorming to generate options, know when to suggest that a subcommittee or other device for gathering additional information be formed, and be able to offer suggestions that are more than simple compromises based on existing positions—he or she must help invent new options that satisfy both parties' interests. Most of all, the mediator needs to be alert to statements or actions by one party or the other that might indicate that the process is reverting back to traditional

positional bargaining and coach the parties about how to avoid this tendency. Finally, mediators must also be skilled teachers of these new approaches to negotiations and be sensitive enough to know when to recommend that parties try interest-based techniques. This must be done well before the start of a negotiations process since, as indicated in chapter 6, most negotiators need to be trained in these techniques before they can use them successfully in actual negotiations.

Mediating disputes involving parties with different cultural backgrounds poses particular challenges because parties enter negotiations with their own cultural frames of reference about how they expect others to act. Again, as noted in chapter 6, researchers who have studied differences in the negotiating behavior of Asian and American cultures have found that Asians put a higher value on building relationships with their counterparts than negotiators from Western cultures do. Typically, for example, Chinese and Japanese negotiators expect to spend more time at the beginning of negotiations on "non-substantive" issues and discussions. A skilled mediator needs to understand and help educate the parties about these cultural differences. In cross-cultural mediation, it may be particularly important to bring to the surface and discuss differences in negotiating norms and to reach an agreement at the beginning of the process about the ground rules and expectations of the parties. Sometimes this is called "bargaining over how to bargain."

Traits of Successful Mediators

What are the traits of a good mediator? Perhaps the most important requirement is that the mediator must be acceptable to the parties. Because this form of intervention is voluntary, no mediator can function well without the trust of the parties. That trust must be maintained throughout the process, for if it is breached, the mediator loses all credibility and usefulness.

That trust is also important because the mediator usually receives confidential information about the negotiations from the parties. If this information is used indiscriminately, it could destroy a party's negotiation strategy and the long-term relationship between the parties involved. Most experienced negotiators will be hesitant to divulge confidential information to a mediator just because he or she has a good reputation. Thus, the early stage of most mediation efforts (when the mediator is not personally known to the parties) is often taken up with the mediator's attempts to establish his or her credibility.

Trust can also be compromised as the process unfolds. When this occurs, a mediator may voluntarily withdraw from the case or the parties may seek other means of resolving the dispute.

Evidence suggests that nothing substitutes for having experience with the mediation process and with the substantive topics that are being mediated.

Experience helps a mediator gain the trust of the parties and in other ways promotes successful mediation. Mediation is an art that one must learn by trial and error through on-the-job training.[3] The U.S. FMCS, for example prefers to hire individuals who have years of experience in representing either labor or management in collective negotiations. Even then, these new hires normally will work with experienced mediators on a number of disputes before being assigned cases on their own.

This "experience bias" poses a challenge for young people who want to enter the mediation field. Increasingly, this challenge is being resolved by providing more courses in law, business, and other professional schools on negotiation and conflict resolution in combination with opportunities for young, aspiring mediators to observe and assist experienced mediators in real cases. This teaching and apprenticeship model can help new mediators overcome the "experience bias" and can develop a new generation of acceptable and experienced neutrals who can bring new ideas and techniques into the labor relations process. Some law schools have developed mediation clinics that gives students an opportunity to mediate cases with government agencies under the supervision of government staff mediators.

Young mediators may still experience difficulties in some cultures. Chinese culture reserves high respect for authority and age, for example. This suggests it would be hard for a young mediator to be effective with one or more older negotiators. It also may be difficult for younger employees to openly negotiate with older managers. An experienced mediator can be particularly useful in helping parties negotiate in settings like this, provided that both parties have reasons to respect the mediator.

It is important for mediation agencies to obtain feedback about how satisfied the parties are with the services provided. Mediators often don't get any feedback until they learn that they are not invited back when new disputes arise. Surveys of parties who have experienced mediation have been used to obtain feedback on a more systematic basis. Mediators, like their labor and management colleagues, are under pressure to change and learn new approaches to their occupation and to help the parties involved update and improve the process of labor relations process. In doing so, they need to be aware of the different expectations that some labor and management representatives have for them and for labor relations processes.

THE DYNAMICS OF MEDIATION IN TRADITIONAL BARGAINING

In a mediation involving a traditional bargaining process, the strategies of the mediator often proceed through a number of stages.[4]

The Initial Stage: Gaining Acceptability

During the initial stages of mediation the mediator is primarily concerned with achieving acceptability and identifying the issues in the dispute, the attitude of the parties toward each other, and the distribution of power in each negotiating team. The initial stages of mediation often call for the mediator to listen passively and ask questions. Normally the mediator will shuttle between the two negotiating teams to explore issues. Separate sessions with the mediator also give the parties an outlet for their pent-up emotions and frustrations.

In these stages the parties will often lash out at the other side, exaggerate their differences, and try to convince the mediator of their own rationality and the unreasonableness of their opponent. It is in these early sessions that bonds of trust and credibility can be established between the mediator and the parties. The mediator has to be careful not to identify with or endorse the charges against the other party and not to respond to such challenges in a way that might create the impression of favoritism toward the opposition.

In short, in the early stage of mediation the parties are testing the mediator. Some of the same grandstanding that occurs in the early stages of the negotiating cycle is repeated at this point in mediation for the benefit of the newest entrant into the process. The mediator should also test the parties in this process by asking questions that might lead that side to challenge or rethink their long-held beliefs and statements about the other side.

The biggest challenges for the mediator at this stage are (1) to accurately diagnose the nature of the dispute and the obstacles to a settlement; and (2) to get something started that will produce movement toward a final resolution. The mediator is often faced with the statement by one party that "we made the last move so the next move is up to them," only to proceed to the other side and hear the same thing. The mediator cannot let either party's hesitance to move first stop the process before it is given a chance. Neither party, in all likelihood, wants this to happen. Turning to an issue that both have mentioned and then asking "What if I could get the other side to do thus and so?" is often so enticing to the stubborn advocates that they turn to the substance of the issue before them and ask "Could you get that?" or say "We could move on that if . . ."

The Middle Stage: Probing for Potential Compromises

Once the mediator overcomes the initial stalemate, the next step is to begin an exchange of proposals and test for potential areas of compromise. At this point it is crucial that the mediator's diagnosis of the underlying sources of conflict be accurate. The mediator is now beginning to intervene more actively by trying to establish a framework for moving toward a settlement. If

the mediator has misjudged the underlying difficulties and tries to push the parties toward a settlement prematurely or in a way that does not overcome some of the major obstacles, his or her credibility can be lost. A retired mediator once told the following story about how he learned he was pushing for a settlement prematurely while mediating a strike:

> I started the mediation in the normal way, and the parties responded by discussing their differences in a serious fashion. I then broke the parties into separate caucuses. When I went to talk with the union team I found them playing cards. To my dismay, I could not convince them to stop playing cards and get down to the business of settling the strike. Instead, I was told to go back to my hotel room and that they would call me when they needed me. Later I learned that the major obstacle to a settlement in this case was a structural one—the longshoremen on one coast of this country were waiting for the longshoremen on the other coast to settle their contract so that they could then use it as a pattern for their own settlement.

During this second stage of the mediation process, the mediator continues to probe to identify the priorities and bottom-line positions of the two parties. The mediator actively looks for possible acceptable solutions to the outstanding issues. Once the parties have begun to discuss specific proposals, the mediator attempts to determine whether their bottom-line positions are close enough. If they are, then the mediator presses for modifications that would yield an agreement.

The mediator's ability to estimate the parties' bottom-line positions is crucial at this stage, as is timing. When the mediator judges the bottom-line positions to be close enough to push toward a settlement, he or she takes a more assertive role. The mediator can suggest compromises, push the parties to make compromises they earlier stated they would be unwilling to make, and, in general, try to close the gap between the parties. Engaging in such active tactics prematurely (that is, when the parties are still too far apart) damages the mediator's credibility and acceptability.

When conditions are not ripe for settlement, the mediator must hold back from using overly aggressive tactics. When the time is ripe, however, the mediator must take action or risk losing the opportunity to forge a settlement. The mediator's prior experience helps guide him or her in judging timing. At this point in the process the art in mediation comes to the forefront.

The Final Stage: The Push to Compromise

As the pressure to reach a settlement builds and the mediator senses that the time for the final push toward a resolution is at hand, he or she becomes

increasingly proactive. No longer passively listening to the parties' arguments and rationalizations, the mediator tries to get the parties to face reality and adjust their expectations. The mediator may push for compromise solutions while at the same time being careful to avoid becoming identified with a specific settlement point.

If the mediator were to become too committed to a solution that one or both parties reject, that would limit his or her continued usefulness. Thus, any suggested compromises should be offered as "Suppose I could get them to . . ."or "Do you think the other side would be willing to split the difference? Would you?"

The dynamics within each of the negotiating teams often change at this point as well. Frequently, team members will differ on the substantive issues. The mediator will often look to the professional negotiators on each team for help in dealing with the more militant team members. Sometimes the reverse is true as well: the negotiator will look to the mediator for help in calming a militant faction on the negotiating team. Bringing the spokespersons from each team to an off-the-record caucus, if done at the right time, can elicit courses of action or routes the professional negotiators can embrace to help their own team agree to move closer to settlement.

These final-hour sessions often require that someone—the mediator, the professional negotiator, or both—convince the hard-liners that the best deal is on the table and that the final compromises that are necessary for a settlement to be reached should now be made. Again, the parties' confidence in the mediator is critical to the dynamics of these final steps.

Sometimes the mediator is called on during these final stages to make what are called mediator proposals. Mediator proposals are riskier and more formal ventures than the many other suggestions a mediator will make during the course of an intervention, since if they do not succeed, it is likely that the mediator's usefulness will come to an end. A mediator proposal is normally made only when both parties are close to a settlement and the mediator believes that the proposal will induce the parties to come to agreement.

In some cases the mediator may make a proposal that the parties have already tacitly endorsed but for political or other reasons they prefer not to offer themselves. Some mediators believe that a proposal should never be made unless he or she is sure it will be acceptable to both parties.

The preceding description of the dynamics of mediation points out that a mediator must be proactive in pushing the parties toward a settlement—when the climate, the timing, and the pressures on the parties are right. The parties often prefer active mediators, and proactive mediator behavior has been shown to be related to the effectiveness of the mediation process.[5]

Mediation in Interest-Based Negotiations

We have already noted that in interest-based processes, the mediator takes on more of the role of an active facilitator, teacher, and coach than is the case in a traditional negotiations process. In addition, in interest-based processes, the cycle of negotiations is likely to be altered to focus less on a final agreement or strike deadline as the defining moment. Since training is required, the mediation process may begin well before the negotiation process starts.

In box 7.3, an experienced mediator describes how and when he uses interest-based techniques to facilitate the negotiations process.

BOX 7.3

How Interest-Based Mediation Works

Well before negotiations are scheduled to begin, I provide parties who express an interest in or who we believe might be good candidates for an interest-based approach with a 90-minute informational briefing. We discuss factors to think about in deciding whether or not to use this approach. In the process of this discussion, I probe to see if there are any factors that would lead me to recommend against using the process, such as no evidence of cooperation in the relationship or a history of contract rejections by one side or the other.

If the parties agree to take the next step, we then hold a two-day required training session for all members of the union and employer negotiating committees. At the end of the training, we make a trilateral (union, employer, and mediator) decision on whether or not to go forward with the process.

The next step is to hold a pre-negotiations meeting to agree on two sets of ground rules. The first set are *transitional* ground rules that outline what will happen if at some stage the interest-based process breaks down and the parties need to return to a more traditional process. This serves as a "road map" back to the traditional process and provides a safety valve for the parties. The second set are *process* ground rules. Here we deal with rules such as how we define consensus decision making, how we will deal with press releases, how and when information will be communicated to constituents, and so on.

Then we are ready for an exchange of issues using an interest-based format. This exchange takes the place of a traditional exchange of proposals or a laundry list of demands. Each issue is framed as a question

that cannot be answered in a yes-or-no fashion. For example, an issue might be framed as: "How can we accommodate employee needs to have greater time off for funerals and handle staffing needs effectively?" We also agree at this stage on the order to take issues up and on any information that needs to be obtained in order to discuss them. Negotiations dates are set at this time after giving adequate consideration to the time needed to collect the necessary data.

For the actual negotiations, we commit to participating in the first two sessions or until the first issue is settled, to returning when the economic issues are taken up, and to being present as the process is coming to an end.

What do I do in these sessions? My basic role is to facilitate the process, to keep the process on a problem-solving track, and to make sure [the parties] lay out all the issues and problems and don't stray into a general discussion mode that will take them back to traditional positional bargaining. If, in the rare instance, I feel the need to make a substantive suggestion, I indicate that I am stepping out of my facilitating role to do so.

One of the hardest tasks the parties have is to agree on standards for evaluating options. I suggest three simple standards, but the parties are encouraged to develop their own as well. The three I use are: (1) Can we do it? (2) Does it convey benefits (related to their interests)? (3) Is it acceptable to the constituents?

The parties take up noneconomic issues first. Then, in perhaps about 35 to 40 percent of the cases, I find us using more traditional approaches to resolve the deep-gut economic issues. But even here, when the interest-based process has been successful on the earlier issues, we generally find more of a problem-solving focus and willingness to listen to each other that is often absent in the final stages of a traditional negotiation. The parties are more apt to stay in an interest-based bargaining frame of mind.

Two big differences in my experience with this approach are that the deadline and the strike threat are not major factors. In only three out of sixty cases I've mediated in this way has a strike notice been issued, and then it was done to satisfy constituency needs rather than as a serious threat across the table. The overwhelming majority of cases have settled prior to the deadline date, while some have gone beyond the expiration with no serious repercussions. On only one occasion did I hold a mediation session beyond 8 p.m.

I like to use two criteria to judge whether the interest-based approach has been successful. The first is whether the parties use it again the next time. About 80 percent do so. The second is whether the number of relationship or noneconomic issues brought to negotiations are lower the second time around. If interest-based bargaining is able to really solve problems, the number of "relationship" or noneconomic" issues should go down.

Source: Mediator and U.S. FMCS commissioner George Buckingham.

Complex and Multiparty Negotiations

Employment disputes are becoming increasingly complex in terms of the substantive issues and the number of parties involved. For example, parents and other community groups may be involved in teacher and education-related negotiations. Environmental groups and other NGOs contractors, multinational firms, and local government officials may be parties to negotiations regarding an environmental issue. In these complex settings, mediators often use a variety of technologies to keep track of ideas and options and draft texts of possible agreements. These include flip charts, electronic devices for taking notes, computers and/or large-scale projector screens for joint editing, and single text-drafting processes. Mediators use any combination of these tools to facilitate negotiations on complex issues or those that involve multiple parties.

The "single text" strategy was famously used by President Jimmy Carter in mediating an agreement between Egyptian president Anwar Sadat and Israeli prime minister Menachem Begin in 1978. In this approach, the mediator drafts language that he or she thinks reflects a potential agreement on all the outstanding issues and then works with the parties to edit the language until the final draft is mutually acceptable to all the parties. Obviously this technique is now considerably easier and faster to implement given the instant editing and track change capabilities of computer software. Undoubtedly, additional techniques for negotiations and mediation will be invented as new generations of mediators who are experienced at using social media and other tools enter the employment relations profession.

The Effects of Mediation on Settlements

What has the track record for mediation been? Although international data are scarce, data from the U.S. FMCS surveys have shown that mediation led

to an agreement in 46 percent of the cases in which an FMCS mediator was involved in negotiations. In another 35 percent of these cases, the labor or management respondent indicated that mediation brought the parties closer together. Thus, in over eight out of ten cases, mediation had a positive effect on the process of reaching an agreement. Mediation was somewhat more successful in reaching agreements in situations where the dispute affected fewer than 250 workers. As another indicator of the acceptability of the mediator and satisfaction with the mediation process, over 90 percent of FMCS's clients indicated they would use its mediation services again in the future whenever it was needed. In general, parties who like and continue to support mediation do so because it helps them reach agreements and because they feel they have control over both the process and the results. If one or both of these features are missing, support of the parties for mediation tends to erode. This appears to be happening in China, where government-appointed mediators are losing the trust of workers. As a result there is a trend toward returning to using community leaders as mediators in employment disputes in China.

The Potential Tension between What Is Right and What Will Bring a Settlement

In theory, the mediator is not supposed to be concerned with the substance of the outcome. Instead, the traditional view is that mediation works because the job of the mediator is simply to bring the parties to agreement. Yet there are definitely times when mediators have trouble accepting this principle.

All mediators must struggle from time to time with the moral question of how far to compromise their personal values or perceptions of equity in attempting to fashion a contract settlement. The traditional answer to this question has been that the mediator's primary responsibility is to help the parties reach an agreement and to keep his or her values and preferences or the values and preferences of the larger society out of the process. According to this view, the mediator should not endeavor to create a settlement that would be most consistent with "the public interest." In this traditional view, that the way the mediator best represents the public interest is by helping prevent or end an impasse.[6]

The moral dilemma is even more difficult to resolve if questions of individual rights are part of the settlement package preferred by one of the parties. Mediators will continue to struggle with this moral dilemma and decide how high a priority they are willing to put on the singular goal of achieving a settlement.[7]

Some mediators, especially those who favor interest-based techniques, reject the traditional view. Instead, they argue that an effective mediator will

help the parties articulate their basic interests and then help steer the process toward results that best serve those interests. In this view, the substantive terms of the settlement are as important to the success of mediation as is the settlement itself. As labor and management become more conversant with interest-based processes, their expectations of the mediator and their indicators of success for both negotiations and mediation are likely to increase.

COMPULSORY ARBITRATION

Compulsory arbitration involves the use of a third party (an arbitrator) who is empowered to impose a settlement covering the future terms and conditions of employment in a dispute between workers and an employer. In the United States and a few other countries this type of arbitration is referred to as "interest" arbitration to distinguish it from the "grievance" arbitration that can occur in those countries. Grievance arbitration involves issues related to the interpretation and implementation of a collective agreement and not the actual terms of that agreement (see chapter 8).

Most management and labor representatives prefer not to use compulsory arbitration because they have to give up some control over the terms and conditions of employment to an outside decision maker. For example, in China, while a government-provided arbitration process for resolving individual ("rights") disputes exists, there is no provision for compulsory arbitration of collective disputes.

There is also a long-standing philosophical argument that the right to strike is essential for preserving the rights of labor and management in collective negotiations and that compulsory arbitration should be used to resolve impasses only rarely. As one scholar put it many years ago:

> In the case against compulsory arbitration there are distinguished prosecutors galore, and the catalog of inevitable disasters runs the gamut from simple bad decisions to dislocation of the economic foundations of free enterprise. The division is not liberal/conservative, nor labor/management—there is no division. All the principal authorities are in agreement.[8]

In this view, compulsory arbitration should be limited to cases of dire national emergencies or to disputes in which the parties themselves decide it is in their interest to submit their dispute to a procedural substitute for the strike.

A Combined Mediation-Arbitration Approach

Arbitrators often choose between two different processes to reach a decision: (1) a mediation-arbitration process; and (2) a judicial decision-making

process. Advocates of the **mediation-arbitration** process view compulsory arbitration as an extension of the bargaining process in negotiations in which the neutral arbitrator seeks to shape an award that is acceptable to the parties.[9] Mediation-arbitration (generally referred to as med-arb) places a premium on using the compulsory arbitration proceeding as a forum for continued negotiations or mediation, although the arbitrator has the ultimate authority to decide on the outcome/resolution.

Those who advocate the mediation-arbitration approach claim that no system of compulsory arbitration can hope to survive for long unless it produces outcomes that are acceptable to the parties. They also argue that the parties should maintain maximum control over the discretion of the arbitrator and should participate in the decision-making process as much as possible in order to maximize the amount and accuracy of the information the arbitrator uses in making the final decision. Detractors of the med-arb process raise the problem of the neutral arbitrator gaining information from one party in mediation that may be kept from the other party but be used as the basis for the arbitration decision. The confidentiality that is so important to communication during mediation may reveal things that are never subject to cross-examination or even disclosure yet may be crucial in leading the arbitrator to a final decision.

Another variant in this approach is to reverse the med-arb sequence; that is, to do arb-med. The way this is sometimes done is that an arbitrator drafts a decision without sharing its contents with the parties and then engages them in a mediation process. If mediation produces an agreement, the draft arbitration decision is not issued. The advantage of this approach to the parties is that they have one last chance to shape their own agreement. The advantage to the neutral arbitrator is that he or she can make subtle or not-so-subtle hints to each party that they might be better off making a compromise agreement than having to live with the outcomes the arbitrator has included in the draft award.

A Judicial Approach

The countervailing view of compulsory arbitration holds that the arbitrator should focus on the "facts" of the case. In this judicial approach, the arbitrator adheres strictly to predetermined criteria and is not influenced by the power or preferences of the parties.

Preventive and Other Forms of Dispute Resolution

The need for skilled third parties in conflict resolution and problem solving is not limited to the formal negotiations process. Over the years a variety of

new dispute resolution roles have emerged in settings where labor and management have been attempting to achieve fundamental changes in their relationship.

Many mediation agencies, for example, provide education and training services aimed at building skills, relationships, and practices that prevent disputes from arising. The British mediation service puts it nicely: "When we are not working on today's crises we are working on tomorrow's prevention."[10] This agency devotes nearly half its time and resources to preventive activities that include education, training, disseminating best practices, and operating telephone help lines. Private firms and some universities also provide such services. Some of these services are governed by the parties that use them, such as the Massachusetts Education Partnership, an institution that was created to promote innovation and improvement in education through the collaboration of labor and management (see box 7.4).

BOX 7.4

The Massachusetts Education Partnership in the United States: An Example of a Collaborative Approach

The Massachusetts Education Partnership, which was launched in 2012, seeks to improve student achievement and success through collaborative labor-management relations in school districts across Massachusetts. The partnership's purpose is to help labor-management teams of superintendents, union leaders, school committee members, teachers, and administrators develop active collaborations in the area of labor-management relations and school site operations, with the goals of

- Accelerating student achievement and promoting student success;
- Increasing teacher engagement and leadership in school and district governance;
- Improving the productivity of bargaining practices; and
- Instituting policies, structures, and practices for sustainable collaboration and reform.

The partnership's vision is that all Massachusetts K–12 district and union leaders collaboratively will develop the capacity to design and jointly implement systemic changes in practices that advance student achievement. Its long-term purpose is to establish sustainable cultures of

collaborative practices in schools, districts, and the commonwealth. The partnership has launched two initiatives:

The District Capacity Project, which provides facilitators to help district labor-management teams work intensively on particular problems or challenges facing their district.

The Interest-Based Bargaining Institute, which provides training and direct technical assistance to school districts who want to transform the way they engage in contract negotiations, moving from a positional and often adversarial process to one grounded in a full exploration of the parties' shared and competing interests.

Source: Massachusetts Education Partnership Web site, http://www.massedpartnership.org.

New Roles for Labor Relations Neutrals

Neutrals are also increasingly being called on to chair or facilitate labor-management committees, to serve as consultants to labor and management in employee participation and workplace improvement programs, to facilitate the joint planning or design of a new plant or work system, or to work on other projects designed to solve long-standing problems in a bargaining relationship. All of these roles require the skills of a labor mediator. However, these roles differ from traditional mediation or arbitration roles in several important ways.

First, most require that problems be addressed on an ongoing basis. Often this requires that the parties first undergo a team-building effort to change their attitudes and increase their levels of trust with each other.

Second, these third parties must have specialized knowledge of the substantive problems the parties face. The third party is expected to be a consultant who brings technical expertise to bear on the problem and also is sensitive to the needs of both labor and management.

Third, the time horizon of the process tends to be very long. Whereas the traditional mediator is mainly concerned with achieving a settlement of the immediate impasse, third parties involved in these new roles must focus on the effects of any decision on the quality of the longer-term relationship.

The behavior of the parties to these new processes is also significantly different from traditional labor-management behavior. For example, to be successful, long-term problem solving requires the parties to share information more readily than they do in traditional collective negotiations.

These services are provided by a growing number of individuals and private companies and some government agencies. In Singapore, the Manpower Ministry has supported a range of different technical assistance agencies and groups aimed at helping employers and unions improve productivity and the quality of work. As the issues involved in labor management relations become more complex and the public interest in having highly efficient and equitable employment relationships grows, the number and range of such programs is likely to increase.

At the same time, however, the parties may still need to turn to traditional mediation and arbitration processes. In short, effective conflict resolution and longer-term problem solving are both critical to the success of contemporary labor relations.

Summary

This chapter describes the two major impasse resolution procedures—mediation and compulsory arbitration. The use of these procedures has varied extensively. Mediation has been commonly used in most countries. It is the most flexible form of dispute resolution, since it can be adapted to fit different cultural norms and the parties maintain control over its use and over the final outcomes of the dispute. Compulsory arbitration has been used less frequently, most often in settings involving essential public (or private) services.

The degree to which these two procedures constrain the actions of labor and management also vary. At one extreme is mediation, where the parties can (and sometimes do) dismiss the mediator or ignore the advice the mediator gives. At the other extreme is binding compulsory arbitration, where the parties must follow the decision of the arbitrator.

The purpose of any impasse resolution procedure is to help the parties achieve a contract settlement that both labor and management find acceptable, that helps sustain a successful labor-management relationship, and that provides outcomes that benefit society. Good mediators, arbitrators, and other neutrals understand the issues that divide labor and management and have the ability to offer creative solutions to these problems.

Discussion Questions

1. Describe the objectives of mediation.
2. What three stages typically occur in mediation?
3. Why do you think union and management leaders often express a dislike of compulsory arbitration?
4. Contrast mediation-arbitration and judicial arbitration.

Related Web Sites

Commission for Conciliation, Mediation & Arbitration (South Africa): http://www.ccma.org.za

Federal Mediation and Conciliation Service (FMCS): http://www.fmcs.gov/internet/

Suggested Supplemental Readings

de Lange, Jan. "The Rise and Rise of Amcu," Miningmx, August 2, 2012 (about the Association of Mineworkers & Construction Union (South Africa): http://www.miningmx.com/special_reports/mining-yearbook/mining-yearbook-2012/A-season-of-discontent.htm.

Gelfand, Michele J., and Jeanne M. Brett. *The Handbook of Negotiation and Culture.* Stanford, Calif.: Stanford University Press, 2004.

Goldberg, Stephen B., Eric D. Green, and Frank E. A. Sander. *Dispute Resolution.* Boston: Little, Brown, 1985.

Kolb, Deborah. *The Mediators.* Cambridge: MIT Press, 1982.

Pruitt, Dean G., and Jeffrey Z. Rubin. *Social Conflict: Escalation, Stalemate, and Settlement.* New York: Random House, 1986.

"Trade Unions in China: Membership Required," *The Economist*, July 31, 2008 (about the All-China Federation of Trade Unions): http://www.economist.com/node/11848496.

Notes

1. The parties must adhere to the decision in a binding arbitration procedure. As discussed below, nonbinding arbitration is occasionally used.

2. Carl Stevens, *Strategy and Collective Bargaining Negotiation* (New York: McGraw-Hill, 1963).

3. One empirical study of mediation in the public sector did find a positive relationship between the level of experience of mediators (measured as the number of previous mediation cases) and the effectiveness of mediation, especially in terms of convincing parties to move toward settlement and decreasing the number of open issues in the dispute. See Thomas A. Kochan and Todd Jick, "The Public Sector Mediation Process: A Theory and Empirical Examination," *Journal of Conflict Resolution* 22, no. 2 (1978): 209–240.

4. For analysis of mediation strategies, see Kennet Kressel, *Mediation: An Exploratory Survey* (Albany, N.Y.: Association of Labor Mediation Agencies, 1982); and Deborah Kolb, *The Mediators* (Cambridge: MIT Press, 1982).

5. One study shows a positive effect for mediator aggressiveness and noted that the more intense or difficult the dispute, the more aggressive the mediator tended to be. See Paul F. Gerhart and John E. Drotning, "Dispute Settlement and the Intensity of the Mediator," *Industrial Relations* 19, no. 3 (1980): 352–359.

6. Eva Robbins, *A Guide for Labor Mediators* (Honolulu: Industrial Relations Center, University of Hawaii, 1976).

7. For a good discussion of this dilemma, see William E. Simkin, *Mediation and the Dynamics of Collective Bargaining* (Washington, D.C.: Bureau of National Affairs, 1971), 34–40.

8. Orme Phelps, "Compulsory Arbitration: Some Perspectives," *Industrial and Labor Relations Review* 18, no. 1 (1964): 8.

9. Arnold Zack, "The Quest for Finality in Airline Disputes: The Case for Arb-Med," *Dispute Resolution Journal* (November 2003): 34–38.

10. Quoted in William Brown, "Third Party Process in Employment Disputes," in *The Oxford Handbook of Conflict Management*, ed. William Roche, Paul Teague, and Alexander Colvin (Oxford: Oxford University Press, 2014).