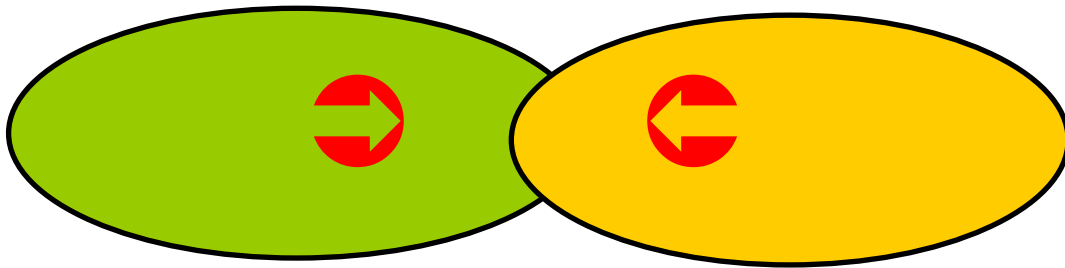


**The New Model of Bargaining:**  
**“Mutual gain” or unilateral loss?**  
**A critical view of win-win bargaining**



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**• *The Labor Center* •**

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# The New Model of Bargaining: “Mutual gain” or unilateral loss? A critical view of win-win bargaining

## **Introduction--Collective Bargaining under siege**

The institution of collective bargaining has recently come under intense criticism. Beginning in the 1990s, conventional collective bargaining has been portrayed as an encumbrance to employers and their unionized employees in a world of increasing competition, from global rivals in the private sector—from privatization initiatives in the public sector. In order to survive, unions and management are asked to put their differences aside and face the real enemy: the competition. In this environment of rapid technological change, new forms of work organization, and new processes of control, traditional forms of collective bargaining are portrayed as dangerously anachronistic to the needs of both labor and management. So goes the argument.

The new models have a number of labels including win-win, interest-based (“IBB”) or mutual gains bargaining or “principled negotiations”.

The traditional model of bargaining, defined as adversarial or otherwise, has not been a successful vehicle for unions for many years. Collective bargaining may have helped slow down the decline in the fortunes of American workers, but it has had limited success in promoting large-scale pro-worker or pro-union agendas. We will argue that traditional bargaining is in need of change. However, understanding the problems with traditional bargaining is crucial to how we develop a new approach to bargaining, and whether unions develop a more or less aggressive strategy for dealing with their employers. There are alternative models to the world of win-win bargaining that can, and we believe, should be explored. Continuous bargaining based on a mobilized rank and file membership provides one such alternative.

## **Traditional bargaining.**

### **Assumptions and characteristics.**

**Adversarial approach.** The traditional model of bargaining has certain characteristics that distinguish it from the new model of bargaining. It accepts an adversarial approach and assumes certain fundamental differences in interests between employers and employees. Both parties accept that the employer has to remain in business for workers to stay employed, but once that assumption is made, all else is subject to negotiations. However, this process is normally driven by leadership, and membership involvement is often restricted to the pre- and post-negotiation situation.

**A limited role for members.** In traditional bargaining, the members are often not closely connected to the bargaining process. Conflict, in fact, is controlled by the union. This, after all, is what the diplomatic use of power implies. Communication with the membership by the negotiating team is limited.

Before the onset of formal bargaining, union leadership typically surveys rank and file members to determine which proposals to present to management. A bargaining committee reviews and organizes the survey responses to generate the “wish list”. Some locals will take the list and have the membership narrow or shorten the list through a proposal vote. Others give the bargaining committee the authority to

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narrow the list. Often little or no effort is made to educate the membership on changes in the industry or bargaining trends, prior to the survey. Generally, the survey responses focus on monetary issues and improvements in benefits.

During bargaining, the union negotiating committee does little to involve the membership. Information regarding bargaining is closed and often secretive. The membership waits to see what the final results of bargaining will be, while the committee struggles at the table. Once formal bargaining is complete or impasse reached, the membership is asked to either accept or reject the package through a ratification vote. In the private sector, a strike vote may be taken at or near this time. If the package is rejected, then union leadership quickly moves to mobilize the membership in either a strike or some other form of concerted action.

**“Distributive” issues.** In traditional bargaining, union proposals tend to focus on wages and benefits (called “distributive issues” in IBB) that is, where bargaining distributes profits or budget resources between the parties, and where power struggles and control of the workplace are quite clear. Contract language addressing the distribution or allocation of power and control in the workplace is also subject to struggle at the table.

**Expertise at the table.** In traditional bargaining, the give and take at the table tends to be between the employer and the union’s international representative or business manager. Members of the local negotiating committee are often observers to the process or, at most, researchers providing detailed information to the experienced negotiators. This model places a premium on experience and recognizes the expertise of the representative. The downside of the model is that it can dis-empower, as much as empower, local union negotiators and the rank and file. Topics for negotiation, once identified, are handed over to the experienced “bona fide” negotiator, the full time union representative. Even where the local union president is the lead negotiator, the model is still dependent upon an acknowledged standard of expertise that will be used to control the negotiations process from the union side of the table.

**Fixed term / limited goals.** The contract is normally for a fixed term. This limits the scope of bargaining during the term to the resolution of interpretive grievances that may arise under the contract. It is a highly formalized process which often separates the union’s collective bargaining goals from its organizing and political goals. This separation can obstruct the connections inherent in the union’s bargaining, organizing and political activities, and thereby weaken the union as a total entity. Without organizing, even good contracts can be subject to gradual erosion, and without a strong political presence, unions can lose at the stroke of the legislative pen what has taken many years to achieve at the negotiating table.

Yet within this model, union leaders attempt to negotiate a “good contract”--a contract that will provide an acceptable economic package plus language that will limit management’s unilateral power to control the workplace. The contract relies on a good working relationship with management to sustain the agreed-on terms for the life of the agreement and keep grievances to a minimum. If employer bad faith frustrates this outcome, a process of contractual disintegration and pressure on the union can lead to an inevitable weakening of the union’s ability to operate as the workers’ representative.

The table on the next page outlines the major characteristics of traditional adversarial bargaining.

***Characteristics of traditional bargaining***

<b>Bargaining Characteristics</b>	<b>“Traditional” Bargaining:</b>
Assumptions guiding the parties	Assumption of differing union and management interests
Member involvement	Low member involvement; members most involved pre- and post-negotiations
View of bargaining issues	Legalistic (what is permissive? what is mandatory?)
Orientation of parties to bargaining	Oriented to rights of the parties
Communications with members	Closed during bargaining
Origin of proposals	Separate union and management proposals
Topic areas of proposals	Union proposals focus on financial / distributive issues
Where union spends most time	More time at the table than meeting with membership
Who involved on management side	Lower level management people included in negotiations
Who involved on union side	Business manager / International Rep as spokespersons; bargaining committee as observers / helpers
Extent of bargaining	Limited to term of the contract
Use of concerted action by members	Concerted action employed after the process breaks down
Relationship of bargaining to other union goals	Bargaining separated from union’s organizing and political goals

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# “Win-win” or “Mutual Gains:” The new model of bargaining

## ***Some basic assumptions of the new model***

- The parties have relatively equal power and an equal need for a good settlement
- The parties are equally committed to a continuing relationship with each other
- “Behind opposed positions lie shared and compatible interests, as well as conflicting ones.”<sup>1</sup>  
Or, more overtly: “interests...seldom, if ever, clash inherently....”<sup>2</sup>
- The most important parties to the success of the negotiations are those at the table.
- Most differences can be resolved through better communications: If you talk about a problem long enough you will find a mutually agreeable solution.
- If you creatively solve problems, the size of the pie will grow. “If you always do what you’ve always done, you will always get what you always got!”<sup>3</sup>
- Disagreements, conflict, and adversarial relations are unhealthy and counter-productive.<sup>4</sup>

## ***Process rules of the new model.***

The new model introduces a new set of process rules into negotiations. Some of these rules are quite complex, so complex that going into the new model almost invariably requires special training for the parties. The fundamental process of the model is comprised of five steps the parties take, mostly acting together.

The five steps....

- The parties, usually jointly, identify issues for negotiation;
- they identify their basic interests connected with the issues;
- they jointly brainstorm options for a potential agreement;
- they agree on “neutral, objective” standards or criteria against which to judge the options;
- they settle on the preferred option which meets the interests of both sides most satisfactorily.

Most of these steps are carried out together as one joint team.

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<sup>1</sup> R. Fisher and W. L. Ury. *Getting to YES: Negotiating Agreement without Giving In*, second edition. Boston: Houghton Mifflin, 1981, 1991, p. 42.

<sup>2</sup> Michael Gaffney, Cornell, NYSSILR, “Mutual Gains Bargaining” Training packet, 1994, p. 27

<sup>3</sup> “Crossing the Bridge to Interest Based Bargaining in Scott County Iowa,” training handout, no author, no date, in possession of the authors.

<sup>4</sup> Michael E. Gaffney of Cornell’s MGB training staff admits that “conflict is healthy” but says it suggests that something “needs fixing, so fix it.” Conflict between labor and management, is not, then a natural part of labor relations, but an aspect to be overcome through MGB. “Mutual Gains Bargaining” Training packet, 1994, p. 14.

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The five steps in detail:

### **Issues**

Joint teams identify issues which need to be settled in the current round of negotiating. Issues in these models are the substantive problems which bring the parties to the negotiating table. They are not “positions” staked out in advance, but rather a general statement of what has to be talked about.

*Examples:* “what to do if new technology is introduced which could eliminate jobs;” “how to handle overtime assignments within an alternative work schedule.”

Some consultants suggest that the parties brainstorm the initial list jointly, then use consensus decision making to consolidate and agree on the final list.<sup>5</sup> Others permit the parties to develop this list separately prior to bringing it to the “team.” Consultants strongly emphasize that the focus be on issues, not on personalities.

### **“Interests”—a key idea in the new model**

The parties then identify separate and mutual interests with regard to the issues identified. The concept of “interests” in the new model of bargaining is one of its most difficult and complex ideas, but also one of the most centrally important to understanding--and critiquing--the model. Interests, say Fisher and Ury, the most well-known advocates of “principled” bargaining, can be “unexpressed, intangible and perhaps inconsistent”<sup>6</sup> But they cannot, say the trainers, be compromised, since they are fundamental definitions of what each side to negotiations “really cares about.”

Positions, on the other hand are merely “particular ways of addressing those interests”<sup>7</sup> Positions are concrete and specific, involving “a stance that excludes the possibility of any other”<sup>8</sup>

*Examples:* An issue might be what to do when downsizing occurs. The Union interest is in job security (a general but fundamental concern). A union position might entail strengthening the seniority clause in a specific way (a particular way of addressing its interest).

More importantly, discussing each party’s interest around an issue allows the search for common interests to begin, out of which some mutually advantageous solutions might be generated.

### **Options**

Next the group prepares a list of options to satisfy their expressed interests. Options are but one possible agreement that does not exclude other options.<sup>9</sup> Every issue has numerous potential options.

To invent creative options, say Fisher/Ury, you need

- to separate the act of inventing options from judging them
- to broaden the options rather than look for a single answer
- to search for mutual gains
- to invent ways of making decisions easy<sup>10</sup>

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<sup>5</sup> Jerome T. Barrett, “P.A.S.T. is the Future: A Model for Interest-Based Collective Bargaining THAT WORKS!”, Third Edition, Barrett and Sons Publishing Company, 1992, p. 36.

<sup>6</sup> Fisher and Ury, p. 44.

<sup>7</sup> Raymond A. Friedman, “Bringing Mutual Gains Bargaining to Labor Negotiations: The Role of Trust, Understanding, and Control,” *Human Resource Management*, Winter 1993, Vol. 32, Number 4, p. 436.

<sup>8</sup> The Wilson Learning Corporation. *Negotiating to Yes*, 1944, p 49.

<sup>9</sup> Wilson Learning Corporation, p. 25.

<sup>10</sup> Fisher and Ury, p. 60.



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*Examples:* Options generated to address what happens during downsizing might include:

- move from departmental to plant-wide seniority
- management personnel take salary cuts first
- create an early out program with incentives
- cut wages dramatically to force people out
- transfer rights to out – of – state facilities

Option generation occurs in a free-flowing brainstorming session, with management and labor representatives attempting to generate as many creative new options as possible. Consultants advise labor and management to sit side-by-side, giving up the old adversarial “across the table” positioning.<sup>11</sup> The emphasis in the process is on quantity not quality of ideas. The implied promise of this process is that the parties can together expand the potential settlement range, developing a wider range of options for consideration. Neither party is restricted to narrow bargaining.

### **Objective standards and criteria**

At step four, the group discusses and identifies “objective” standards to judge the desirability of the options. A standard is a factor used to compare and judge options.<sup>12</sup>

Common standards listed by Fisher and Ury include: market value, equal treatment, the law, precedent and tradition, professional standards, efficiency, fairness, costs, reciprocity, or “what a court would decide”. “Mutual gain” is promoted by Trainer Jerome Barrett as a key standard.

The choice of options should not be dependent on either side’s will,<sup>13</sup> that is their brute power, but rather on rational criteria acceptable to both sides.

### **Achieve settlement or solutions.**

This final step is done in joint sessions using consensus decision making, where together the parties reduce, combine, or eliminate options. One consultant, Jerome Barrett,<sup>14</sup> suggests moving quickly through the list using abbreviations to indicate the parties’ views: (n), (y), (mb) “maybe” or (ic) “if combined”--to accomplish the winnowing process with a minimum of discussion. For example, combining two options would create a new option which “would address six of the eight mutual interests, and all three standards would be met.”<sup>15</sup>

Example: When consensus is reached on an option, the group assigns a subcommittee to develop the needed contract language to implement it. Issues which can’t be resolved are set aside to be considered later (or assigned to traditional bargaining.)

### ***New model training and techniques***

**Training** is a key component of all the new bargaining models—particularly training in communication and small group work techniques, which is required before parties can proceed successfully. Training is universal in all variants, but differs in important ways. Most consultants mandate joint labor-management training only. Separate training, they say, “arms one side against the other.”<sup>16</sup>

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<sup>11</sup> Michael E. Gaffney, Cornell NYSSILR, “Mutual Gains Bargaining” Training packet, 1994, p. 38.

<sup>12</sup> Barrett, pp. 74-76.

<sup>13</sup> Fisher and Ury, p. 81.

<sup>14</sup> Page 39.

<sup>15</sup> Barrett, p. 40.

<sup>16</sup> Barrett, p. 109.

**Brainstorming** is universally used in most steps, especially for coming up with creative options under step three of the process. Fisher and Ury assume prior brainstorming with your own side, but advise the parties to consider brainstorming with the other side, despite the “increased risk that you will say something that prejudices your interests despite rules established....” or the risk that you may inadvertently disclose confidential information or “lead the other side to mistake an option you devise for an offer”<sup>17</sup> you are making. Individual judgment should be suspended until the process of brainstorming is completed.

**Flip-charting.** A facilitator or member of the group records ideas on flip charts and posts them for later reference.

**Consensus decision-making.** Decision-making is to be achieved by consensus, not by formal votes. The group slowly discusses an agenda item, with a focus on sharing of information, avoidance of arguing for one’s own point of view, keeping an open mind, and monitoring of body language (as the speaker makes a statement “he or she watches the group for reaction, and he or she adjusts or modifies their statement to reach that sense of the group.”<sup>18</sup>).

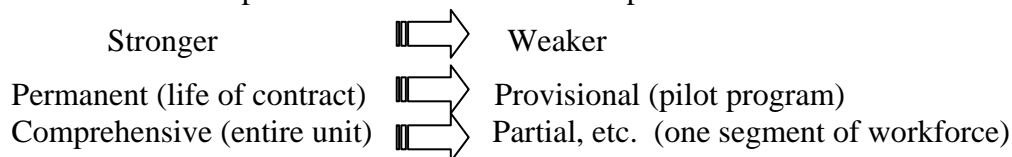
A dissident has an obligation to offer alternatives and then ultimately to recognize that the group’s preference is “the best solution under the circumstances, and while the choice is not everyone’s first choice, everyone was heard in a fair process.”<sup>19</sup> Frequently, all members of the group will be required to support the decision, even one they disagreed with, outside the group, and agree not to tell “outsiders” the discussion which led to the decision.

**Caucusing** is sometimes discouraged, sometimes allowed, depending on the variant of the model used, but “parties should mitigate the negative impact of the caucus on trust by explaining why they need it, and after the caucus, they should explain what they discussed in their caucus.”<sup>20</sup>

**Information sharing** Complete informational disclosure is essential to the process working as intended. Disclosure is admittedly risky, say the consultants. Their advice: share a little and if no negative consequences result, share more.

**Methods for selecting options** The following logical and analytical problem solving tools are advocated for new model bargaining. They all involve creative ways of working on solutions. In fact, most of them have long been used by good negotiators in traditional bargaining.

a) Analyze options in terms of how weak or strong they are. Switch between stronger and weaker to move toward an option which “works” for both parties.



b) *Break options* into smaller and more manageable units; create an option which:

- |  |   |
|--|---|
| --involves fewer parties               | --applies only to a certain geographical area         |
| --covers only selected subject matters | --remains in effect for only a limited period of time |

c) *Dovetail differing interests* in your formulation of options: Use the Jack Sprat and wife approach: “Look for items that are of low cost to you and high benefit to them and vice versa”<sup>21</sup>

<sup>17</sup> Fisher and Ury, p. 63.

<sup>18</sup> Barrett, p. 91.

<sup>19</sup> Barrett, p. 93.

<sup>20</sup> Barrett, p. 37.

<sup>21</sup> Fisher and Ury, p. 76.

One party cares more about:	The other party cares more about:
Economics	Politics
Internals	Externals
Immediate	Long-term

d) *Think of options which might enlarge the “pie”*. Can you create a solution which, for example, gets the employer’s commitment to open up new training opportunities in pursuit of a new market or employment increase?

### Communication skills

Through hardly exclusive to new model bargaining, trainers and consultants universally, from Walton and McKersie to Fisher and Ury stress the importance of building communication skills in the parties so that personal conflicts don’t get in the way of good discussion and smooth progress through the steps of the process. Among the skills stressed:

-- <u>active listening</u> <sup>22</sup> show you understand: that they have strong feelings what they feel strongly about why they feel strongly about it	-- <u>winning yourself a hearing</u> explain your own feelings with back-up information; pause for a response refer back to their points make your points firmly; stay friendly
-- <u>working toward a joint solution</u> seek their ideas; build on their ideas; offer your own ideas; construct solutions from everyone’s ideas	-- <u>separating people from problems</u> Be easy on the former, hard on the latter.

### **When it doesn’t work: Bring on the BATNAs “Best Alternative to a Negotiated Agreement.”**

New model bargaining is supposed to proceed smoothly, with trust, shared information and open communications ending in a mutually beneficial agreement derived from using rational, objective standards to select options. Those standards are supposed to replace the use of power and threats by the parties.

But it may be necessary at times to flex a little muscle, and one way to do that within a new model framework is to develop your BATNA--your “*Best Alternative to a Negotiated Agreement.*” It simply involves deciding what actions you might take (for example, work without a contract, work to rule, use a mediator, give notice of a strike, call a strike) if no agreement is reached and then evaluating them against the agreement which seems possible in negotiations. “You negotiate to produce something better than the results you can obtain without negotiating.”<sup>23</sup>

Developing a powerful and attractive BATNA increases your power in negotiations, but it is also a “reality check” for the negotiators themselves, forcing them to take a clear view of the practical alternatives to agreeing. BATNA focuses attention onto the power-creating capacity of knowing one’s bottom line, and trying to discern the bottom line of the other party. Sound like “traditional” bargaining? It is.

<sup>22</sup> See FMCS video: From No to Yes”.

<sup>23</sup> Fisher and Ury, p. 100.

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## ***The new model of bargaining and strategies for labor resurgency***

The new model is a stark departure from what unions are used to. It must be examined closely and subjected to scrutiny based on union values and goals. Some of the questions asked of it must include:

### ***“Does the new model build the union?”***

Unions are attracted to the new model of bargaining because it promises them better outcomes than they have been achieving. But a labor resurgency strategy points out that one vitally important bargaining outcome, at least as important as a good contract and better ongoing relations with the employer, is a stronger union. A stronger union is one in which members are invested, and one which draws on their ideas, talents and aspirations to shape its structures, processes and bargaining demands. A stronger union has members who understand and practice solidarity.

The standard which judges negotiations by the degree to which they build a stronger union is a very different one from that of the new model advocates. Fisher and Ury, for example, judge negotiations in part by whether they produce a “wise agreement” and define that as one which meets the legitimate interests of each side to the extent possible, resolves conflicting interests fairly, is durable, and takes community interests into account.<sup>24</sup> This is not a bad definition, but it is insufficient for a resurgent labor movement.

### ***“Is the concept of interests versus positions a threat to union solidarity?”***

“Union members,” says Chris Provis, a student of win-win bargaining, “view themselves as having certain collective interests, which are bound up with a common position. Encouraging people to turn away from positions to concentrate on interests may encourage attention to individual interests at the expense of collective interests. To that extent, the work of Fisher, Ury, and Patton may unintentionally serve a strong and long-established vein of anti-union sentiment in United States business and legal culture.”<sup>25</sup> (emphasis added)

The possibility suggested here, that bargaining based on “interests” conceals a bias against unions, highlights a real danger of the new model of bargaining for a labor movement struggling to reconnect with its membership. Demands for very specific concrete contract provisions are often the result of “negotiated” positions hammered out inside local unions or national union bodies. If union negotiators drop those “position” demands at the door of the bargaining room and start from scratch with management defining interests, the membership is likely to feel excluded from the process.

### ***“Does the identification of mutual interests risk losing sight of union goals?”***

The new model process usually has the parties first identify their own “true” interests in an issue, then together figure out their mutual or joint interests in the issue. The attempt to lead the parties toward identifying and pursuing mutual interests may tend to push the union into accepting management’s goals, de-emphasizing its own, in the process coming dangerously close to redefining the nature of the union itself. How would a local union react to a management proposal to achieve greater competitiveness by accepting parts and materials from a non-union supplier rather than a current organized supplier?

Mutual interests identified as “the good of the whole”--“a superordinate interest such as the survival of the enterprise”<sup>26</sup>-translate into union buy-in to the competitive model which puts wages and union standards back into competition.<sup>27</sup>

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<sup>24</sup> Fisher and Ury, p. 4.

<sup>25</sup> Chris Provis, “Interests vs. Positions: A Critique of the Distinction,” *Negotiation Journal*, Vol. 12, No. 2, April 1996, p. 315.

<sup>26</sup> Barrett, p. 61.

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The effort to get workers and the union negotiating team to adopt an “enterprise union” model is fairly overt in the literature. In fact, new model advocates see nothing wrong with it: for them, such a stance represents an “advance” in union maturity under capitalism: “...in traditional bargaining, it would not be unusual for the union to view problems with the employer’s product or service market as management’s problems. Once the market is identified as a mutual interest, the union can no longer view the problem in that narrow way.”<sup>28</sup>

New model bargaining assumes that the survival of the union and the enterprise are co-dependent, and it attempts to align union interests with those of the employer. The model does allow unions to soften hard anti-worker decisions, provided the enterprise’s underlying goals and interests are supported. But it refuses to recognize class distinctions between workers and bosses, but instead promotes the collaboration of union leaders with bosses. In an era of globalization, where labor costs have been re-inserted into international competition, is this in the best long-term interests of the labor movement?

### ***“Are rank and file members ‘in the way’ of new model negotiations?”***

We know that one of the key points at which normally apathetic union members get active is at contract bargaining and ratification time. Many efforts to mobilize members start with preparations for bargaining, lead on through concerted activities during negotiations, concluding, perhaps with economic pressure through the concerted action of a strike.

But new model consultants and trainers understand that rank and file involvement in the processes they advocate can only gum up the complex procedures upon which their carefully trained union and management teams are embarking. So they advise careful “handling” of union members. Cornell training warns both parties of too much open communication with constituents.

After bargaining concludes, new model bargaining does allow for membership ratification of the agreement. Ideally, (though not necessarily) management and the union present the package to the membership on a joint basis. This approach carefully controls what information is presented to the membership. Because dissenting members can be identified by management, this covert intimidation results in a less open debate than with traditional bargaining. If the membership fails to ratify the agreement, the bargaining approach usually reverts to a traditional bargaining strike/concerted action strategy. But now management, having participated in the failed effort to present the contract to the members, is very aware of the weak points in the union’s internal solidarity.

### ***“Where do bargaining issues come from? Does the model replace member input with joint brainstorming?”***

Resurgent unionism seeks to involve members more often, more intimately, and more systematically in union activities. The development of issues, and organizing around issues is a key activity in which member involvement is of primary importance.

One natural point at which issues develop into workplace change is through collective bargaining in the process of traditional bargaining described above. Yet the new model envisions a process of issue identification which occurs in the closed confines of the joint problem-solving arena instead of the union hall. It is clear that members’ input is counter-productive to this new process. Instead the parties “work

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<sup>27</sup> See Kim Moody’s discussion of the dangers of the buy-in to competitiveness in “The Competitiveness Game: They Win, You Lose,” in Mike Parker, Jane Slaughter, et al, “Mutual Interests and Partnership,” in *Working Smart: A Union Guide to Participation Programs and Reengineering*. A Labor Notes Book, 1994, pp. 9 – 17.

<sup>28</sup> Barrett, p. 130.

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as teams to identify ‘issues’ and, based thereon, areas of mutual ‘interest.’” Based on this, the labor-management group jointly prepares lists of options designed to satisfy fundamental interests.<sup>29</sup>

Some new models allow the union to survey its members to determine what issues concern them most. Such surveys differ from traditional surveys in that they are designed to generate only a very broad and general list of “concerns” felt by the membership. The surveys specifically avoid giving members the opportunity to list specific demands. Other new model approaches limit the level of initial member involvement even more by requiring the union negotiating committee to completely control the list of issues brought to the table without any initial member involvement. During new model bargaining, contact and involvement with the general membership is generally limited in some way.

***“Who does the bargaining? Does the union lose experienced union negotiators at the table?”***

“...in order for mutual gains bargaining to be fully effective, there must be [...] ideally, efforts to rearrange the very structure of bargaining and the nature of the personnel who do the bargaining.”(emphasis added)<sup>30</sup> “MGB efforts will be more fruitful [...] when managers and direct union representatives are allowed to negotiate rather than high-level staff.”<sup>31</sup>

Who are the “direct union representatives?” They can range from members of the negotiating team who would normally support the work of the chief spokesperson, to rank and file members. Most of the models insist that the parties not use a chief spokesperson, and the new model’s use of techniques which encourage full participation by all members of the negotiating team further undermines the expert power and role of traditional union negotiators. Use of rank and file subcommittees, sitting mixed in with management, typical of most of the models, has the same effect.

Why, in a new ball game which even its advocates worry is weighed against the union, would the union choose not to have its most experienced and expert negotiators at the table? Our concern is that just when the union needs its most experienced negotiators the most, to help it through the new system of bargaining, the rules of that system effectively sideline them.

***“Are new model ‘objective’ standards a false promise?”***

The idea of letting rational, objective standards decide for you has a tremendous appeal. If unions are the weaker party, and if fair standards are going to replace power, then this process should help unions. And indeed, some advocates say that if your alternatives are bad and your power nil; if the other side is simply much more powerful, you benefit by negotiating on the merits--take the moral high ground and hope for the best.<sup>32</sup> We find several problems with this scenario.

***“How ‘objective’ are the objective standards?”***

The problem with relying on standards is the fact that there are very few really “objective” standards. Let’s look at another typical list of standards--described by this consultant as “sources of legitimacy:”<sup>33</sup>

- market prices
- industry practices

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<sup>29</sup> Patrick W. Carlton, “Interest-Based Collective Bargaining at Youngstown State University: A Fresh Organizational Approach,” *Journal of Collective Negotiations*, Vol. 24 (4), 1995, p. 337.

<sup>30</sup> Friedman, p. 436.

<sup>31</sup> Friedman, p. 453.

<sup>32</sup> Fisher and Ury, p. 106.

<sup>33</sup> CMI’s Conflict Resolution & Collaborative Negotiation Training, Participant manual, Tab 4, “Common Methods of Negotiation: Legitimacy.”

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- expert opinion
  - laws, rules, regulations
  - precedent
  - standard operation procedures
  - community standards, traditions

Many of the examples of “neutral” or objective standards are “laws, rules and regulations”, such as government standards based on scientific research. Sound good? What about OSHA standards? As unionists, we know how they are set--through politics, pressure from employers and compromise--and we know how inadequate they are to protect workers’ health: they are set too low, and they are based on questionable measurement. And since the standards are already the law, the employer is giving away nothing by agreeing to them. Unions ordinarily try to improve on OSHA standards through collective bargaining, if they can, rather than use the standards as the ultimate criteria themselves.

The standard of “the law,” or “what a court would decide” brings into play the legal system and its standards of fairness, which most worker advocates would deny equally protects workers and employers.

Another standard often suggested is “the market.” Why would unions accept as “objective” a standard which invokes the specter of generally lowering all labor standards to those of the international playing field? Especially since one assumption underlying the move to the new model of bargaining is that under the traditional model, unions priced themselves out of labor markets by raising wages to uncompetitive levels, thus undermining the ability of American corporations to compete internationally.

Using community standards, precedent, industry practice and expert opinion as objective standards raises similar concerns. As an economy and society, the United States is perhaps the most responsive to the values and needs of corporations of any in the world. Internationally, its labor laws are among the least progressive and protective. Its academic institutions, common sources of “expert opinion,” are increasing “leased” by business interests.<sup>34</sup> Its standard industry practices include union busting, union “avoidance” and moving jobs to low wage countries. Its traditions and community standards have historically denigrated working class histories and culture. When one considers these unhappy realities, then lists such as these begin to lose their attractiveness.

### ***“Is it in the union’s interest to ‘remove power from negotiations’?”***

But of greater interest in this step of new model bargaining is the supposed function of the standards to reduce the importance of power and the use of power in negotiations. Giving up the use of power in negotiations seems to run against common sense and years of bargaining experience. Why would a party which has the ability to impose its will on the other voluntarily choose not to do so and let some outside criteria (or arbitrator) determine the result? This is one dimension of the new bargaining model which makes it attractive to unions, many of whom see their political, economic and workplace power draining away. Isn’t it to their advantage to press for a way of deciding contractual disputes on the basis of basic fairness (or any other “objective” criteria)?

This presumed advantage bears closer examination. First, what power do unions have? Is it a form of power they are willing to surrender to rely instead on jointly determined “standards”? Secondly, are unions so much weaker than management that they would be well advised to accept and even promote the use of “standards” to avoid the employer’s far greater power? Thirdly, are these standards “safe” for

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<sup>34</sup> Cf. Lawrence C. Soley, *Leasing the Ivory Tower: The Corporate Takeover of Academia* (South End Press, Boston, 1995), a study of corporate influence in American universities.

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unions and their members? These are all questions unionists should consider in careful detail, bearing in mind the points this paper makes elsewhere about union power and especially about the “demobilization” effect of the new bargaining model.<sup>35</sup>

**“Are the communications and tool training aimed at reducing adversarial behavior silencing union dissent?”**

**Communications skills** taught in new model bargaining emphasize listening to the other party at the table. Often, it seems, advocates of the model assume the only real differences between the parties are problems in communication, and once those roadblocks are down, other differences will melt away.

Our concern with the focus on communication techniques is that, for trade unionists, the main consideration in communication classes is too often, learning to “listen,” with an emphasis on “active listening” or skills which help develop the ability to see things from management’s point of view.<sup>36</sup> Unionists who have difficulty seeing things like management are dismissed as bad listeners, as excessively verbal and confrontational, and unable to “just sit down and listen to reason.” Like children, unionists don’t know how to listen, so they are encouraged to “really” listen-- to repeat back to management what management has just said, to make sure they got it right. When we do talk, we are taught to use the “yes” technique of communications: “Say ‘Yes’ and then suggest alternative solutions....”<sup>37</sup>

Many of the other communication skills or tools which the consultants teach are aimed at making unionists (and management) more able to think “outside the boundaries” of ordinary industrial relations conventions--but this process can also mean thinking outside history--outside union values and norms built up over decades of union struggle and solidarity.

Obviously some of these techniques can be quite useful in a different context—our union meetings, for example, especially committee meetings where listening to and understanding where our union brothers and sisters are coming from is vital to moving the union ahead. And as unionists, we clearly need to be able to think of new ways of responding to management initiatives, and to be able to develop our own brand new “outside the box” strategies and priorities. We are here warning about manipulation of these useful tools to move union negotiators to places they may not want to go.

**Brainstorming** is used to generate options which can meet joint or mutual interests. The process encourages wild ideas for the most creative options possible--“the wilder the better.” In this free wheeling process “some of the ideas will be poor, if not absurd.”<sup>38</sup> But they can be built on, modified, or discarded in later discussion, so no harm in listing them, right?

Wrong! Our concern is that when union members are being wildly creative, they may well be hurting the union: disagreeing in front of management, showing internal divisions on key issues, and revealing cost-saving ideas to management which would, if implemented, seriously injure the bargaining unit.

**Flip-charting** is a convenient way to involve many participants in group thinking. The “scribe” or note-taker in this process becomes a very powerful person, in fact sharing the role of group facilitation as he or she interacts with participants in the interest of getting the idea on paper. In the supposed interest of brevity or clarity, participants’ actual words and ideas can be and often are distorted to fit a preordained pattern. Thus “management doesn’t inform us” becomes “better communications” which removes worker

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<sup>35</sup> See the discussion of interests and power in Mike Parker, Jane Slaughter, et al, “Mutual Interests and Partnership,” in *Working Smart: A Union Guide to Participation Programs and Reengineering*. A Labor Notes Book, 1994.

<sup>36</sup> See, for example, section on “Listening Skills,” from M. Gaffney, Cornell, NYSSILR, “Mutual Gains Bargaining” Training packet, 1994, p. 24.

<sup>37</sup> M. Gaffney, Cornell, NYSSILR, “Mutual Gains Bargaining” Training packet, 1994, p. 55.

<sup>38</sup> Barrett, p. 38.



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criticism of management and signals group approval of the imposition of a new communications system management may already have planned.

**Consensus decision-making** is an essential part of nearly all the new models. Union democracy or voting is a decision-making process “not compatible with Win-Win bargaining,” says Jerome Barrett.<sup>39</sup> Instead, consensus is described as the only appropriate way to make decisions because voting leaves the defeated minority without the psychological buy-in which the processes of consensus entail. Consensus decision-making may appear to give a strong individual--a union president, for example--a veto right over any group decision. But in fact, the processes of consensus, while appropriate for colleagues united in the same enterprise, such as a union executive board, is in our view totally inappropriate for adversaries attempting to forge an agreement under which each side can prosper.

Many unionists who have participated in consensus decision-making tell of the intense pressures from the rest of the group to fall into line with the preferred decision. But our major concern with the process is that it involves individual rather than “party” commitment from those in the negotiating process. Union members are present not to represent themselves in bargaining, but the union membership as a whole. Consensus decision-making tends to divide the union team, whose unity may in the first place be far more questionable than management’s, and make it weaker.

**Joint training** is universal, owing to the fear that separate training for the parties “arms one side against the other”<sup>40</sup> and violates the principles of open communication and the development of trust. Our concern with joint training derives from much of what we have been talking about above: the new model of bargaining is difficult to learn, and more difficult for union than management participants, it is unfamiliar territory, and it contains some obvious pitfalls against which unionists need to be warned.

But most important, union negotiators need to develop an overall strategy to deal with the process and techniques of this mode. When unions do try to examine critically the process from a union perspective, they are accused of undermining it. So unions have too often given the training of union teams to consultants who do it jointly and who sweep the union along on the bandwagon of mutuality.

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<sup>39</sup> Barrett, p. 88.

<sup>40</sup> Barrett, p. 109.

### ***The two models compared***

Characteristics	“Traditional” Bargaining:	New Model Bargaining
Assumptions guiding the parties	Assumes differing union and management interests	Assumes over-riding common union-management interests
Member involvement	Low member involvement; members most involved pre- and post-negotiations	Membership involved pre- and post-negotiations: discouraged during the process
View of bargaining issues Orientation of parties to bargaining	Legalistic (what is permissive? what is mandatory?) Oriented to rights of the parties	Procedural view of bargaining (focus on following prescribed steps of method) Oriented to business/ agency competitiveness or efficiency
Communications with members	Closed during bargaining	Closed communications
Origin of proposals	Separate union and management proposals	Joint union-management proposals
Topic areas of proposals	Union proposals focus on financial / distributive issues	Joint proposals focus on management needs, with attempt to fit union concerns into employer agenda
Where union spends most time	More time at the table than meeting with membership	Union time spent almost exclusively with management
Who involved on management side	Lower level management people included in negotiations	Higher level management involved
Who involved on union side	Business manager / International Rep as spokespersons; bargaining committee as observers / helpers	Bargaining committee; no chief spokesperson; subcommittees of rank and file from departments
Extent of bargaining	Limited to term of the contract	Formal bargaining limited to term of contract; ongoing bargaining beyond term limited to non-binding, non-contractual issues not ratified by members
Use of concerted action by members	Concerted action employed after the process breaks down	No use of concerted action
Relationship of bargaining to other union goals	Bargaining separated from union’s organizing and political goals	Union’s organizing and political goals addressed only if they coincide with management goals (eg. Joint lobbying)

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## Union strategies for strength in a New Model setting

### ***A. Why do unions need strategies?***

Proponents of new model bargaining generally discourage union leaders from developing an independent strategy for furthering union-only interests at the new model bargaining table. Proponents suggest that such a tactical approach undermines the purity of the process and characterize these union leaders as “game players”, or as being “uncommitted to the process”.

Still for most union leaders, the question of whether to engage in new model bargaining is from the beginning largely a political question with significant tactical implications. Union leaders faced with the question must ask themselves:

- 1) will saying no to new model bargaining will give management the excuse it desires to justify hard bargaining?
- 2) will the local union’s membership will react positively or negatively to either accepting (or rejecting) the company’s proposition to use new model bargaining?
- 3) will the local union’s National or International Organization will support new model bargaining, or more likely mandate its use? and
- 4) new model bargaining will result in a better contract and ultimately a stronger or weaker union.

It is unlikely that union leaders adopt new model bargaining because they honestly believe the nature of profit-driven corporations or budget conscious and power-hungry agency heads has changed in any meaningful manner. Instead, union leaders agree to new bargaining approaches for practical reasons. Sometimes simple frustration with traditional bargaining, particularly with employers who have been operating so as to weaken the process, motivates union leaders to accept a new form of bargaining.

Employers engaging in and advocating new model bargaining approaches do so as part of a specific strategy. Typically, they introduce new model bargaining as part of larger employee involvement or team concept programs. The goal of these initiatives, simply put, is to systematically exploit worker knowledge of the job to increase productivity, competitiveness and profit or budget resources. As such, employers promote new model bargaining for their own strategic interests. They select new model consultants with the same eye on the end product - a more profitable corporation or a more cost efficient public agency.

Since managers introduce new model bargaining for strategic reasons, union leaders would be foolish not to take an equally strategic approach to the decision. Union leaders contemplating whether to engage in new model bargaining should first develop a plan of action to build union strength within the framework of new model bargaining. The question is whether unions can manipulate new model bargaining processes so as to build union power and improve the lives of workers. Does new model bargaining offer unions a new opportunity for advancing the independent interests of union workers? Or is it simply impossible to build a stronger union through new model bargaining?

### ***B. Risks of failing to strategize***

#### ***Risk #1: Membership Perception***

New model bargaining unquestionably poses significant risks to local unions. With its focus on employer interests, union leaders run the serious risk of losing credibility with their own members. Rank-and-file members may feel that union leadership involved in new model bargaining represents management’s interests as opposed to theirs.

Generally, union members desire real improvements in wages, benefits and working conditions - as opposed to the kinder, gentler concessionary results often associated with new model bargaining. Initial

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union demands - typically generated through membership surveys - can end up so distorted by new model bargaining that it is difficult for union members to clearly see which of their specific demands were addressed at the table.

**Example:**

Suppose a union pre-bargaining survey shows that members wish to eliminate the employer's use of non-union contractors performing certain bargaining unit work, the perception being that such contractors undermine union job security and undercut union work rules, wages and benefits. Through a new bargaining model the parties reach an innovative agreement whereby union workers are allowed to bid for the work now performed by the contractors on a project basis with modified work rules. Sounds great - the company maintains its competitive position and the union gets the work. Everybody wins!

But how will the union rank-and-file members view this solution to the problem? It's unlikely that bringing the union work force down to the level of the non-union contractor will be perceived positively by the membership. Compromising the very union values they saw undermined by the non-union contractors would hardly be viewed as a victory.

Proponents of new model bargaining might point out that under so-called traditional bargaining, the company would not have agreed to eliminate the use of the non-union contractors under any circumstances. Proponents might argue that this result, albeit flawed, is better than losing the work completely to non-union contractors. While this may or may not be true, it begs the question of what the labor movement should stand for.

Proponents of new model bargaining also fail to recognize that options away from the bargaining table exist for the union on almost any issue. Suppose, for example, the union leadership in the example above chose to reject the company's offer on the contracted work and instead used the defeat at the table to mobilize its membership to support an organizing campaign targeting the non-union contractor employees. In this scenario, union members would see and understand that the employer, not their union, was undermining their job security with the non-union contractors. With new model bargaining, unions face the very real risk that union members will become cynical about union power at the table, view their union as a branch of management and will become less likely to trust their union leadership and less willing to participate in union mobilization efforts.

**Risk #2.: *Disclosing information which might later harm the union and its membership.***

Unions face the risk of disclosing information that may ultimately harm the union or its membership. Suppose, for example, a brainstorming session results in a particularly open discussion about how members manipulate company vacation scheduling rules by swapping days and revising the work schedule. Some time after bargaining, the company decides to crack down on this practice, resulting in discipline for several union employees. How would the membership react if it discovered that management learned of the practice from union negotiators?

Ideas generated by union negotiators during brainstorming sessions may end up being imposed by management should negotiations break down. Suppose a union negotiating committee member throws out the idea of basing job bids on skill test scores rather than seniority. Later the company offers this suggestion as one of its proposals. Ultimately, negotiations fail to yield an agreement. By law, the company may impose its last best offer at impasse. Now the idea originally offered by a union negotiator is imposed on the bargaining unit. Brainstorming sessions offer management the opportunity to freely tap the knowledge of union negotiators, representing a real risk to the union.

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### **Risk #3: *Being caught flat-footed, with a demobilized membership***

Unions face the risk of being caught “flat footed” should new model bargaining fail. Because new model bargaining discourages concerted action and active member involvement, unions run the risk of being ill-prepared for a fight should bargaining go to impasse with no agreement. Failing to understand that new model bargaining does not guarantee a good contract puts unions in a much weaker position should bargaining fail to result in a ratified contract.

### **Risk #4: *Internal union division***

New model bargaining can be very controversial. Many members will instinctively resist the approach. If union leadership agrees to engage in new model bargaining without membership support, significant internal division may occur. New model bargaining consultants argue against having the union membership vote on whether to use new model bargaining techniques - so it is seldom done. This can lead to negative feelings towards union leadership and create a more divisive internal union environment - particularly if new model bargaining fails.

### **Risk #5: *Depletion of scarce union resources:***

New model bargaining typically takes much longer and requires more resources than traditional bargaining. What might have taken three weeks using traditional bargaining, may take months under new model bargaining approaches. This can deplete limited union resources, if not adequately addressed. Also for union leaders, spending days involved in new model bargaining means less time available to handle the other affairs of the union. Grievance processing, non-negotiations committee activity, safety activities, and community and political activities all may suffer due to the time and energy dedicated to new model bargaining. Unions must consider whether new model bargaining offers the best use of their limited time and resources.

## ***C. Developing an independent union strategy in new model bargaining***

Developing an independent union strategy within new model bargaining is a great challenge given its focus on the strategic needs of the enterprise. Just as with “traditional bargaining”, a strong union is far more likely to fare better under new model bargaining than a weak union. As such, unions faced with new bargaining models should focus significant attention and resources to building the local union through greater membership involvement and worker solidarity.

### ***1. Promote Union Solidarity and Member Mobilization***

Perhaps the most important strategy for local unions is to mobilize union membership and promote solidarity during the entire course of new model bargaining. To succeed, local unions must take care to establish independent internal structures that promote and facilitate member mobilization. Some form of a one-on-one program is typically required.

Union volunteers should be recruited and trained in conducting one-on-one campaigns. A union solidarity committee should be established and given the responsibility of continually informing the membership of the status of negotiations, involving them in the process through surveys and questionnaires, developing slogans and union publications, challenging management at all levels through disciplined and strategic concerted action, and ensuring that union negotiators stay on track with direct information on the thoughts and concerns of the membership. Union communications regarding the negotiation process should be kept completely open to the membership. Union leadership should expend significant time, energy and resources involving union membership.

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## **2. Negotiate Written Ground Rules**

While most new model bargaining consultants discourage negotiating formal written ground rules, few will give up the opportunity to sell their services if a union insists upon rules. (See appendix for ground rules negotiated by an Iowa local union.) Employers also will concede to ground rules when they promote new model bargaining as their own initiative. Many human resource managers' careers ride on their ability to successfully manage their union-management relations. Such managers will often concede a great deal in order to show progress. As such, unions engaging in new model bargaining should demand that certain ground rules are agreed upon and adhered to.

Unions should:

### ***a. Insist on the right to caucus.***

Union caucuses are essential during new model bargaining. If unionists believe that their own interests are separate and distinct from those of the enterprise and its owners and managers, then discipline must be maintained during bargaining. The caucus then becomes the tool for ensuring that union negotiators remain united and that union-generated ideas are appropriately screened. Caucuses give union negotiators time to air differences and to explain positions in private. Caucuses provide time to analyze employer-provided information and to discuss management proposals. Caucuses may also be used to orchestrate and script union responses during brainstorming sessions. (discussed below)

### ***b. Insist that management agree that it will not unilaterally impose any idea or solution generated during brainstorming.***

If brainstorming is truly meant to be an open and free discussion, then neither party should fear having their ideas come back to haunt them should negotiations fail. Of course this agreement must be carefully drafted to ensure its enforcement. But if properly written and agreed upon, unions may then purposefully bring up pro-business and/or anti-worker concepts and proposals during brainstorming sessions. If later negotiations fail, the union can claim that the company is prohibited from imposing those concepts on the union. This strategy of course is risky, but such language would offer some legal protection in the case of a strike opening the door to an unfair labor practice strike - as opposed to a economic strike.

### ***c. Insist that management be prohibited from directly communicating with the union's membership regarding bargaining, unless mutually agreed upon.***

It is important that unions protect their control over the flow of information provided to their members during bargaining. If a union attempts to mobilize its membership during new model bargaining, management will quickly realize that it needs to get its own "spin" out if it is to succeed. Restricting management rights in this regard gives the union the upper hand during negotiations and helps to ensure that union members receive accurate information from a union perspective.

### ***d. Insist that the union be allowed to openly communicate with its members.***

The union should freely communicate with its members during negotiations. No information should be withheld from the membership. While it is not necessary to negotiate this per se, it may be important for the union to state its position clearly at the onset of bargaining. It is unlikely that company negotiators would object to this early on, but might later when they discover how the information is being presented. By stating it up front, unions are less likely to be accused of playing games with management. If the union fails to make this point clear at the onset, they run the risk of giving management an excuse to revert to hard bargaining.

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***e. Insist that the company share information including proprietary information.***

The union should insist that the company agree to provide the information it requests. Including this language in written and enforceable ground rules gives the union a stronger argument for an unfair labor practice charge should negotiations fail and the company refuses to provide requested information. Most of the new models specifically mandate much more open sharing of information than traditional bargaining.

***f. Insist that the company pay for the costs of negotiations.***

Since new model bargaining can be costly in terms of staff time, lost wages and expenses, union negotiators should insist that the company pay for these added costs. If a company is serious about improving relations, then it should not object to financing the process. This should then allow the union to divert money budgeted for traditional bargaining towards the added expenses associated with mobilizing its membership (i.e., additional newsletters, flyers, conference calls, other promotional expenses, and one-on-one training).

***g. Insist on union-only training.***

No matter which new model bargaining consultant is retained by management, unions should insist on their own independent pre-bargaining educational program. Again, the company should pay for this. Preferably this training would involve the entire membership, but at the very least should include the union negotiating committee. The union-only program should focus on union bargaining strategies, mobilization tactics and political economy—that is, a frank discussion of the specific economic and political contexts of this particular employer and bargaining agenda. Unions should be careful to use labor educators who are clearly independent of management and who do not engage in new model bargaining consultation.

***h. Insist on periodic union-only meetings with bargaining unit employees on company time.***

Because new model bargaining is conceptually so different from traditionally bargaining, unions should argue that it is necessary to meet with the membership on a regular basis to dissipate rumors, obtain ideas for brainstorming and promote the new bargaining process. Unions should argue that it is necessary to meet alone with its membership, so that its membership will speak freely and to demonstrate to the membership that the company trusts the union. These meetings should be used to build union solidarity and to mobilize the membership around key issues.

***i. Insist that new model consultants be chosen by the union, that their program be limited and that the consultants exit the process at the earliest possible stage of bargaining.***

New model bargaining consultants are generally paid by management and should be viewed as management consultants. Unions should demand that the union be given the authority to select which if any new model consultants are used. Unions should research the consultant's approach and insist on specific limits to the consultant's authority and involvement. If there are aspects to the consultant's approach that the union finds objectionable, the union should demand that those objectionable portions be omitted from the consultant's training program. The union should also ensure that the consultant exits the process at an early stage. Such consultants should not be used to facilitate bargaining sessions, and should only, if used at all, be used to provide the initial joint training program.

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### **3. Script and Orchestrate Brainstorming Sessions**

Management depends on union/worker knowledge for solving its problems. Brainstorming sessions offer management a tool for extracting that information without union objection. Unions can successfully orchestrate these sessions by carefully scripting the ideas and concepts offered during brainstorming. This limits the negative effects of brainstorming and allows the union to control the nature and extent of the discussion. In some cases, union strategies will evoke individual managers' emotions during brainstorming sessions, leading these individuals to desired behaviors. Advance scripting, planned during a union caucus, also ensures that key union points are communicated to management. Union negotiators should discuss what they intend to bring up during a brainstorming session during a union caucus. Advance planning of this nature gives union negotiators a chance to play out expected management responses prior to offering the information during a brainstorming session. Such practices give union negotiators a feeling of common purpose and help maintain discipline and unity during the process.

## **An alternative model: The organizing model approach to bargaining**

### ***The Underlying Assumptions:***

The organizing model of bargaining differs both from the so-called "traditional" bargaining model and new model bargaining in several distinct ways. First, at its root the organizing model of bargaining assumes differing class interests between workers and the executive class of owners or agency heads. The organizing model attempts to draw in a broader sector of workers including the unorganized worker, community allies and policy makers into the struggle for greater control over the direction of the enterprise both in the workplace and society. The organizing model of bargaining challenges the power and control of corporate owners and agency heads by advancing the broad interests of all workers. The model is dynamic, flexible and aggressive.

This broader class perspective differs from traditional bargaining which focuses on the differing interests of union employees and management. Traditional bargaining concedes power over the general direction of the enterprise to management. It instead attempts to narrowly modify management's authority. Traditional bargaining places much of its attention on the distribution of profit. Traditional bargaining makes little or no attempt to address the broader interests of workers in general, instead focusing almost exclusively on the narrow concerns of the enterprise's bargaining unit employees. The organizing model of bargaining also differs substantially from new model bargaining's focus on the common union and enterprise interests.



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## ***Characteristics of the Organizing Model of Bargaining:***

### ***1. High membership involvement, concerted action and open communications.***

Traditional bargaining, as we have seen, involves the rank and file at the initial phases of bargaining and at the conclusion of bargaining. And, as we have seen above, new model bargaining substantially limits the direct involvement of rank-and-file members. In fact, member involvement is often specifically discouraged by new model consultants.

The organizing model of bargaining, on the other hand, depends heavily on a high level of member involvement during all phases of bargaining. Unions establish some form of permanent one-on-one structure to facilitate on-going member involvement in the bargaining process, political activity and organizing. Union volunteers are recruited, educated and assigned to direct the one-on-one campaigns within a particular work location or area. These volunteers obtain daily information reports on the status of bargaining at the table and carry out tactical assignments given by the union solidarity committee or other oversight committee. This structure builds union discipline and promotes solidarity. Union staff work more like grassroots organizers than technical experts. Union leadership is decentralized, depending more on volunteers to guide the negotiation process. Unions use surveys, work place meetings, rallies, flyers, leaflets, newsletters, petitions, and other informational tools on a frequent basis. Slogans generated by members play a particularly important role in focusing membership attention on the central union issues. Information flows to the members at the work site. Concerted action is carefully designed and organized and typically escalates in intensity during the course of bargaining. Information regarding bargaining is open and free flowing. Nothing is held in confidence by union negotiators. Heavy emphasis is placed on union education which is based on labor history and class oriented. Members vote on all issues affecting them and voting is strategic and frequent. Organizing model bargaining does not limit negotiations to the bargaining table, but rather encourages members to engage their direct supervision (away from the table) in the debate over union proposals. Unions attempt to rally their members to promote union slogans and proposals at all levels of the institution. Ideally, every union member is assigned a task with instructions on how to carry it out.

### ***2. Bargaining is continuous.***

The organizing model of bargaining views bargaining as an ongoing and continuous process. The union doesn't wait for the contract to expire to make demands and to promote greater union power in the workplace. Negotiations are not limited to the bargaining table. Instead unions bring issues and make demands at company sponsored forums such as teams meetings, joint committees, department meetings, focus groups, grievance meetings, company events and wherever members interact with management. Unions view every engagement with management as an opportunity to build union power and to confront management.

Organizing model bargaining allows midterm modifications to the contract, provided the issues are driven by the membership, are voted on and are consistent with core union values. Management desiring midterm modifications is forced to recognize and deal with the union as a democratic institution. No midterm agreements can be made without member support and participation. As such, management must essentially bargain with the entire membership through the union's disciplined one-on-one structure. Union leaders are strengthened in their relationship to management because they have access to more accurate information regarding their members' desires and because of greater unity and support by their members. Slogans and demands are repeated at every opportunity and attempts are made to tire management.

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Organizing model bargaining does allow unions to address management issues related to productivity and competitiveness. However, the model challenges the underlying assumptions driving such issues and forces management (if it must have change) to relinquish power in the workplace to the union and its members. Rather than giving away work rule changes and worker job knowledge via teams, and other employee involvement programs, the organizing model of bargaining forces management to address union concerns in conjunction with its own demands.

### ***3. Bargaining extends beyond the workplace and integrates bargaining with the union's political, social and organizing goals.***

The organizing model of bargaining attempts to draw in the community, shareholders, customers and organizational allies. For example, a union representing telephone workers might draft a proposal requiring the corporation to hire more employees within a given area to promote a higher level of customer service. The union could build its case using tactics involving groups not directly associated with the company, such as: surveying customers and inviting them to support the union's position with the company, contacting shareholders or even conducting a shareholder proposal related to the issue, filing petitions with state regulatory authorities describing cases of poor service caused by low employment, reaching out to sympathetic political leaders, and/or holding a press conference highlighting the lower service quality caused by layoffs.

Proposals can also be integrated with the union's political and social goals. Instead of proposing another floating holiday, a union might instead propose time off for voting in governmental elections. Union leaders could then invite various civic and political leaders to support the union's proposal. The union could also tie the proposal to the union's voter registration, education and get out the vote campaigns. With a little creativity, nearly any bargaining proposal can be drafted in a way that promotes the union's political and social goals.

Neutrality and accretion clauses, as well as other proposals giving the union greater ability to organize non-union workers, have a high priority in the organizing model of bargaining. Even simple proposals such as giving union stewards the right to speak at new employee orientation meetings enhance the union's presence in the workplace and make it easier to recruit new members.

### ***4. Bargaining proposals focus on broader union values, such as expanding union power in and beyond the work place.***

While the organizing model of bargaining does not ignore traditional union proposals such as higher wages and improved benefits, it attempts to integrate such proposals into a larger program designed to expand union power and promote union values. For example in addition to proposing improved health benefits, a union might also propose a union health care oversight committee to function on company time. The committee might hear and investigate complaints regarding the health care insurance and providers, provide union-oriented health education programs, identify health hazards in the workplace and so on. The idea is to capture power within the workplace for the union.

Bargaining proposals also attempt to encroach on management rights and expand union power in the workplace. For example, a union proposal might give bargaining unit employees greater control over employee training. Suppose a union committee or special bargaining unit job classification is created to design, implement and monitor new employee training. The proposal might allow such training to include a segment dealing with union history and procedures. Proposals promoting seniority, fair treatment, and a workplace free of harassment and discrimination are common with the organizing model of bargaining.

Characteristics	“Traditional” Bargaining:	“Win-Win” or New Model Bargaining	Organizing Model of Bargaining
Assumptions guiding the parties	Assumption of differing union and management interests	Assumes over-riding common union-management interests	Assumes differing interests between workers and owners or managers
Member involvement	Low member involvement; members most involved pre- and post-negotiations	Membership involved pre- and post-negotiations: discouraged during the process	High membership involvement; members involved throughout process
View of bargaining issues	Legalistic (what is permissive? what is mandatory?)	Procedural view of bargaining (focus on following prescribed steps of method)	Political / power view of bargaining issues
Orientation of parties to bargaining	Oriented to rights of the parties	Oriented to business competitiveness	Oriented to increasing union power at all levels of workplace, corporation, society
Communications with members	Closed during bargaining	Closed communications	Open, frequent, communications with members throughout bargaining process
Origin of proposals	Separate union and management proposals	Joint union-management proposals	Separate union and management proposals
Topic areas of proposals	Union proposals focus on financial / distributive issues	Joint proposals focus on business needs, with attempt to fit union concerns into corporate agenda	Union proposals focus on broader union values, e.g., expanding union power in and beyond the workplace
Where union spends most time	More time at the table than meeting with membership	Union time spent almost exclusively with management	Union time allocated more to meeting with / working with members
Who involved on management side	Lower level management people included in negotiations	Higher level management involved	Union confronts all levels of management: shareholders, customers, first line supervisors
Who involved on union side	Business manager / International Rep as spokespersons; bargaining committee as observers / helpers	Bargaining committee; no chief spokesperson; subcommittees of rank and file from departments	All levels of union involved, with important roles for stewards, workplace mobilizers and rank and file members
Extent of bargaining	Limited to term of the contract	Formal bargaining limited to term of contract; ongoing bargaining beyond term limited to non-binding, non-contractual issues not ratified by members	Continual union demands, bargaining never stops, “continuous” bargaining oriented around union values, worker control of technology, etc.
Use of concerted action by members	Concerted action employed after the process breaks down	No or limited use of concerted action	Concerted action employed continually (before, after and during bargaining)
Relationship of bargaining to other union goals	Bargaining separated from union’s organizing and political goals	Union’s organizing and political goals addressed only if coincide with corporate goals	Bargaining integrated with organizing and political goals

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## **Conclusion**

Traditional bargaining is changing, and, as we argue above, it needs to change. The question is whether the new model of bargaining, which unites unions and management around a common interest based on economic survival and prosperity, and which effectively excludes rank and file members from its process, is a good model for workers and unions. We believe it is not, and that unions must develop an aggressive strategy for dealing with their employers which involves and mobilizes members, calls on community and political resources and allies, and even looks beyond our own borders for ideas and assistance. There are alternative models to the world of win-win bargaining that should be explored. Continuous bargaining based on a mobilized rank and file membership provides one such alternative.

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### *Appendix. 1995 Ground Rules for IES Utilities / IBEW Local 204 Negotiations*

Where: Terrace Lodge, Newton IA

When:

March 29 – 31, 1995

April 3 – 7, 1995

No negotiations the week of April 10, 1995

April 17 – 21, 1995

April 24 – 28, 1995 (At Cedar Rapids, place to be determined)

If needed, additional dates may be scheduled as mutually agreed.

The parties agree to adopt the principles associated with the Cornell University Mutual Gains Bargaining in order to improve negotiation results.

Communications: Joint mutually agreed upon distributions may be made throughout negotiations, however, each party maintains the right to communicate with their respective constituency. Neither party shall directly communicate with the other party's constituency unless mutually agreed upon.

Caucuses are permitted at request of either party.

Official proposals from spokesperson only and will be so stated.

Any ideas generated in a brainstorming session will not be unilaterally imposed.

Facilitator may be brought in by agreement between the parties.

To the extent possible the parties will share information which is relevant to issues raised through the negotiations. However, information identified as proprietary or confidential, shall be held in strict confidence. Any data produced by or for negotiations shall remain under joint control and access and is to be considered proprietary by the non-owner of the information, and shall not be shared with third parties without the express written approval of the owner party.

Issues and/or research that cannot be resolved at the table, may be passed to a sub-committee which consists of equal representation chosen by the respective parties. The sub-committee is responsible for a joint recommendation to negotiators. Disposition of recommendation rests with negotiating committees.

With mutual agreement, subject matter experts may be brought into negotiations.

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## Proposals

- A. Proposals may be submitted by the parties prior to the beginning of negotiations.
- B. Additional proposals may be brought up by either party during negotiations up to and including April 7, 1995. After that date, additional proposals may be included by mutual agreement.
- C. Any proposal to change past practice must be negotiated.
- D. Any proposal raised does not constitute a waiver of existing rights.

Following ratification, joint explanation meetings will be conducted. It is intended to have all areas covered within two months of ratification.

Once the contract is ratified, both parties will jointly petition NLRB for appropriate recognition. Dated this 29<sup>th</sup> day of March 1995

Ken D. Sagar    Paula K. Wilson  
Business Manager    Administrator, Labor Relations  
IBEW Local 204    IES Industries, Inc.

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