



CURRENT ISSUES SERIES

Contextual Negotiations

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ISBN: 0-88886-538-4

© 2000, Industrial Relations Centre

Printed and bound in Canada

Industrial Relations
Centre Queen's
University Kingston,
Ontario Canada K7L 3N6

Publications' Orders: 613 533-6709

Canadian Cataloguing in Publication Data

Weiss, David S. (David Solomon), 1953
Contextual negotiations

(Current issues series)

Includes bibliographical references.

ISBN 0-88886-538-4

1. Collective bargaining. 2. Negotiation in business. 3. Collective bargaining – Telecommunication – Canada – Case studies. 4. Communications, Energy and Paperworkers Union of Canada – Case studies. 5. Bell Canada – Case studies. I. Bedard, Steven R. II. Title. III. Series: Current issue series (Kingston, Ont.).

HD6971.5.W452 2001

331.89

C00-933318-5

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Introduction

Most negotiators realize that there is no one *right* answer to an approach to union and management relations. However, there does appear to be one *wrong* answer—that is, to be locked into one approach to negotiations regardless of the context, the history, and the issues.

This essay explores three approaches to negotiations: the ‘competitive,’ ‘collaborative,’ and ‘contextual’ approaches. The intent of this essay is to achieve three objectives. These are:

- Understand that the negotiation approach changes according to the context.
- Explore the Bell Canada and the Communications, Energy and Paper Workers’ Union of Canada (CEP) negotiations and how their approach varied as the context changed.
- Consider how to bring union and management contextual negotiations to life.

The Negotiation Approach Changes According to the Context

Perhaps Sun Tzu in 500 BC said it best:

The smartest strategy in war is one that allows you to achieve your objectives without having to fight.

Wherever there is an opportunity to find a peaceful resolution between labour and management, that opportunity should be fostered. However, that has not always been the case.

What is evident is that the quality of negotiations will vary depending upon the context and the objectives of each of the negotiating parties. For example, when a party is striving towards ‘status quo’ negotiations, the principle is often that ‘the more you negotiate, the more you give away.’ As a result, in that context, the party that wishes to achieve status quo results often attempts to stall and avoid negotiating over a long period of time. The quality of negotiations is low and only when they must negotiate do they begin to engage in meaningful discussions.

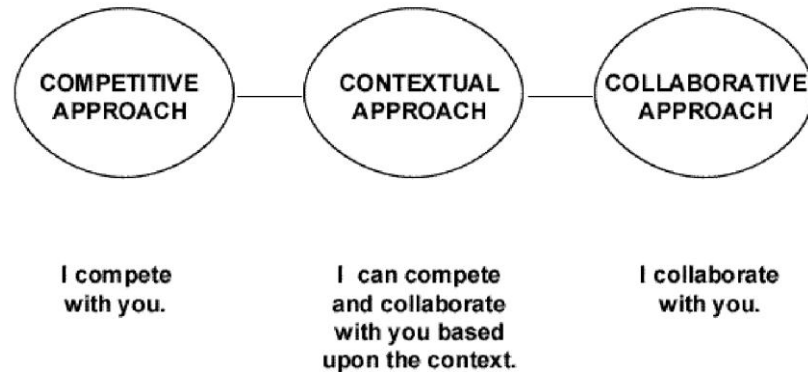
In other contexts, there are business reasons that shape the approach to negotiations. For example, in one situation management decided to downsize their organization. In this context, even though the labour relations’ approach was mostly collaborative, they shifted to a more competitive approach to negotiations. The new context fostered a different style of negotiations for management and subsequently for the union. The proposition is that the union and management professionals vary their approach to negotiations as the context changes. Figure 1 depicts the three approaches for labour and management negotiations.

Another variable to consider is how the negotiators view their role. Some Industrial Relations professionals view their role from a legal perspective. These negotiators tend to use a more competitive and legalistic approach when negotiating with unions. On the other hand, others may view Industrial Relations as a role that is meant to achieve organizational change and effectiveness. They look at their role as an opportunity for ongoing collaborative conversations to contribute to organizational change. They are more likely to use a collaborative approach.

In most situations the context varies, which causes the competitive approach and the collaborative approach to migrate towards a *contextual* approach that combines elements of both competition and collaboration.

The quality of negotiations will vary depending upon the context and the objectives of each of the negotiating parties.

Figure 1: Union and Management Professionals Vary Their Approach to Negotiations According to the Context



The Competitive Approach

Those negotiators who take a competitive approach often believe that adversarial relationships are how unions and management need to relate on an on-going basis. Some of these companies are overtly resistant to unions. The unions may take a public position of an aggressive approach to management.

In one case, a shared crisis forced a company and a union to collaborate to respond to a significant change in customer demands. They did collaborate for a period of time. They even changed their negotiation representatives so that they could use a collaborative approach to collective bargaining. However, when the context changed, the company and union reverted to their traditional competitive Industrial Relations rituals. The company re-employed competitive negotiators to respond to the change in the context, and the credibility of collaboration was lost.

Culture driven CEOs, who want to build a positive work environment, may try to distance themselves from a competitive approach. If the context demands that they negotiate competitively, they may outsource competitive IR to external suppliers in a similar way that unions use business agents to negotiate labour contracts. With this tactic, it is less likely that the employees will experience the impact of the competitive labour relations' climate in the day-to-day work environment.

The Collaborative Approach

The collaborative approach is characterized by on-going dialogue and negotiations between the company and the union. The collective agreement can be for a long term. On-going working conditions are often negotiated during the term of the contract and the economic package is negotiated at specific times. An example of a long-term negotiated agreement is described in the book *Franchir le Muir des Conflits* (Weiss 1999); the case studies in the appendices describe two examples of attempts to achieve collaborative results.

In this approach, the company and union engage in on-going interest-based negotiating that fosters a positive collaborative context. It requires mature union and management leaders to participate in collaborative discussions. At times, in collaborative negotiations, there can be intense disagreements. However, because of the maturity of the negotiators, they are able to discuss the issues and reach an agreement based upon common interests.

In one example, the collective bargaining process was reduced to two weeks with a focus on the economic package alone. During the term of the agreement, the working con-

In collaborative negotiations, because of the maturity of the negotiators, they are able to discuss the issues and reach an agreement based upon common interests.

dition issues were mostly resolved. They were able to use a collaborative approach for the economic issues because they had multiple variables to work with to discover an overall economic package that met most of the interests of the parties.

Another company and union promoted collaboration by encouraging task forces to pilot working condition changes during the term of a contract. By allowing a pilot test during the term of the agreement, both parties were able to assess whether a change in the collective agreement was appropriate at the time of negotiations. If it did work as a pilot, they then wrote the language and incorporated it into the agreement.

Notwithstanding, there are collaborative negotiators who believe they should collaborate regardless of the context, and they sometimes reach unsatisfactory agreements. The principle of contextual negotiations is that you collaborate when it is appropriate for the context. The context determines what approach should be taken in negotiations, not your preferred style of negotiating.

Contextual Negotiations

The contextual approach uses collaboration when it is in the interests of the parties and where there are business imperatives driving that approach. Interest-based negotiating is part of the repertoire of choices, rather than the only way to proceed. There may still be competitive negotiations and, at other times, there will be collaborative negotiations. The contextual approach is not a matter of belief in union and management collaboration; rather practicality and pragmatics drive the approach.

The essence of contextual negotiations is that the reality of the context dictates the approach. It is incumbent upon the negotiators to be flexible with the approaches that they use in order to fit their approach to the context. In contrast, those who only negotiate competitively or collaboratively may have a mismatch between their approach and the context. When that mismatch occurs, unsatisfactory negotiated results may occur.

However, as indicated by the opening Sun Tzu quote, if there is a choice between war and peace, peace is the preferred solution. If the context is appropriate either a competitive or collaborative approach, the appropriate contextual response is to choose collaboration; collaboration enhances the quality of the negotiating relationships and enhances the possibility of a more positive working environment.

A Brief Study on Contextual Negotiations

To test the theory of contextual negotiations, the principal author posed two questions to approximately sixty participants in a labour and management training program held at the Industrial Relations Centre of Queen's University. After the participants learned about the competitive, contextual and collaborative approaches, they were asked, 'What is the current approach in your company, and what approach do you believe your company will have one year from today?'

Figure 2 indicates that the number of companies that have a competitive, contextual and collaborative approach currently are likely to have the same distribution one year from that day. From this figure alone, one could draw the conclusion that there is very little variability in approaches over time that is taken by negotiating parties.

However, as indicated in Figure 3, when each individual's change scores are studied, many believe that they will make a significant change within the next year. Apparently, a little less than half believe that they will either become more collaborative or they will become more competitive. The other half believe that they will stay the same. Nevertheless, the distribution overall, after accounting for the changes in negotiation

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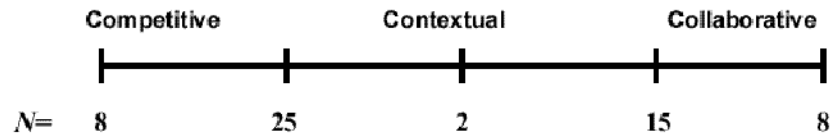
approaches, will result in a similar distribution one year from that day. Similar results appeared for another group of approximately 60 people six months later.

The principal author then presented to seventeen Industrial Relations executives of the Conference Board of Canada. The exact same questions were asked and the same pattern emerged. Competitive, contextual and collaborative negotiations on that day were distributed in almost the exact manner as they believed they would be distributed one year from that day. However, about half of the executive negotiators believed there will be significant change. In other words, there is likely to be significant change, but the distribution tends to remain the same.

Figure 2: Contextual Choices in the Current Labour Management Environment



1. *What is the current approach in your company?*



2. *What do you believe will be the approach in your company one year from today?*

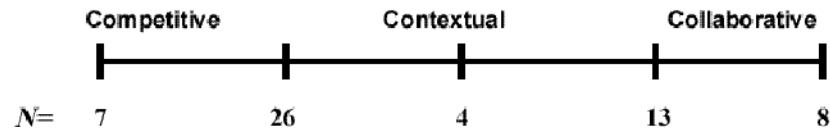


Figure 3: Changes in Negotiation Approach within a One Year Period

	Currently more competitive	Currently more collaborative	Totals
No change expected	18	13	31
Will become more collaborative	10	1	11
Will become more competitive	6	10	16

The Bell Canada and CEP Negotiation Approaches in Different Contexts

Bell Canada and CEP have been cited as an example of interest-based negotiations in Canada. In the book *Beyond The Walls Of Conflict: Mutual Gains Negotiating for Unions and Management* (Weiss 1996), the Bell Canada and CEP preamble to the collective agreement was used to illustrate an example of an environment of interest-based negotiations and collaboration (as an aside, it was deleted from the contract in a subsequent round of bargaining). In fact, CEP and Bell Canada representatives have co-presented extensively at many conferences on how to operate in an interest-based collaborative manner.

Nevertheless, in the past year, there was a strike and other difficulties emerged. As a result, the success of the Bell Canada and CEP experience was questioned. Therefore, it is worthwhile to explore what has occurred in that environment. Is it that interest-based negotiations are ineffective and it regresses to a competitive approach? Or rather, as suggested in this essay, the context dictates a different approach at different times. When interest-based negotiating is appropriate for the context, it is utilized. At other times, during economic changes and the introduction of competition in the marketplace, a more competitive approach may emerge as the alternative.

Background on Bell Canada

Bell Canada has been highly unionized since 1944. Its labour relations' environment was relatively uneventful up until 1975. Since then, there has been deregulation, rapid technological change, and the emergence of the global economy and unrelenting competition.

Currently Bell Canada has two unions. Figure 4 presents the number of unionized employees within Bell Canada.

Figure 4: Unions at Bell Canada

	Unit	# of Unionized Employees in 2000
CTEA	Clerical	13,500
	Sales	1,300
CEP	Craft	7,500
	Operators	2,400
TOTAL		24,700

With the rapidly changing environment, the negotiating approach used at Bell Canada has varied according to the specific context. Figure 5 describes the changes in negotiation approach between Bell Canada and the CEP over the past twenty years.

The analysis of the Bell Canada and CEP story indicates that there were many contextual changes that created an environment that required different negotiation approaches. In the early years, both the union and management were more competitive in their approach. In fact, the early Bell Canada and CEP negotiations culminated in a seventeen-week strike in 1988, which reflected a strong competitive approach.

During economic changes and the introduction of competition in the marketplace, a more competitive approach may emerge as the alternative.

Figure 5: The Bell Canada and CEP Negotiation Approach Varies According the Context

Competitive	Contextual	Collaborative
<ul style="list-style-type: none"> • 1981 First Joint Bargaining • 1987/88 17 week strike • 1996/97 "Local" pressures • 1999 Bargaining <ul style="list-style-type: none"> - Operator outsourcing - Craft Hours of Work 	<ul style="list-style-type: none"> • 1984/85 Bargaining • 1990 Bargaining Joint Committee • 1995 Core vs. Non-Core debate • 1996/98 Voluntary Separation Plans • 1999 Bargaining Craft Training & Development activities 	<ul style="list-style-type: none"> • 1994 IBN & Workplace Reorganization • 1996 Agreed to: <ul style="list-style-type: none"> - Nexacor - Progistix - Expertech - Entourage • 2000 Craft Training & Development Committees

With the significant changes in the business competitive arena, the 1990 negotiations produced a joint committee to explore the possibility of collaborative negotiations. By 1994, the CEP had, as part of its charter, explicitly stated its desire for workplace reorganization. Bell Canada embraced this approach with the CEP to try to introduce a more collaborative approach to the workplace. Some very exciting developments occurred during the next two years including:

- Training for the negotiating teams of both the company and the union on interest-based negotiating approaches.
- Training of front line supervisors and local union representatives in joint problem solving and on how to facilitate interest-based negotiating in their day to day work.
- A business competitive strategy session for the top seventy-five people of Bell Canada, and its two unions (the CEP and the CTEA), to understand the dramatic competitive challenges within the telecommunications industry. Global experts were brought in to explain the new dynamics in the telecommunications industry from a global perspective, a competitive perspective, a regulatory perspective, etc. The implications for work force dynamics were also explored.

As the competitive environment continued to evolve, Bell Canada introduced significant organizational changes. As many other companies did, Bell Canada focussed on its core capabilities and outsourced other parts of the company, which were considered non-core. This strategy created separate subsidiary organizations of their distribution services, real estate, construction, etc. Although initially, the union response was competitive to these organizational changes, eventually they used a collaborative approach to minimize disruption for transferred employees and, in some cases, to discover innovative solutions.

For example, one of the most innovative solutions was the decision by the CEP to encourage a labour sponsored venture capital fund, the Quebec Solidarity Fund, to establish a company (now known as Entourage) to perform the inside wiring business outsourced by Bell. Bell Canada agreed to be a guaranteed customer for a period of time. As part of the start-up of Entourage, Bell provided voluntary incentive plans to its technicians to resign to accept employment with Entourage. Although wages were lower in Entourage than they had been at Bell, this bold solution saved union jobs and provided continued employment to hundreds of employees affected by the decision to outsource the business.

Over the last five years, a wide variety of approaches were used. There were some issues in 1999 with operator outsourcing and craft hours of work that created a context for competitive negotiations. The 1999 bargaining of craft training and development activities used both competitive and collaborative approaches. Finally, in 2000, the craft training and development committees were introduced, that operate using a more collaborative approach.

The conclusion drawn from the Bell Canada and CEP twenty years of experience is that one approach is not used consistently even in an environment where management is committed to an interest-based approach and the union explicitly states in its charter that they desire workplace reorganization. Even in those situations, the context determines whether negotiations will be competitive or collaborative.

How to Bring Contextual Negotiations to Life

Perhaps the first step in bringing contextual negotiations to life is to acknowledge publicly that the relationship between the union and management will vary depending upon the context. At times, even when the union and management collaborate, there will be other situations where they will compete.

For example, in situations where the union and management are prepared to engage in joint interest-based negotiating training, the parties should understand that the interest-based approach works most effectively on the working conditions issues. It is common, even when both parties prefer an interest-based approach, that the economic package is negotiated in a more competitive manner. Mixing collaborative and competitive approaches according to the context and according to the issues is commonplace in contextual negotiations.

Contextual negotiations require both management and union leadership to be mature with each other regardless of the context. In all situations they need to ensure that they have continuous discussions and dialogue regardless of the context.

Even if negotiations are competitive, there may be a time when the negotiators will need to collaborate. It will be important to manage the expectations of the internal stakeholders so that some level of trust and understanding is sustained to allow collaborative negotiations to occur when the context changes.

On the other hand, if the parties tend to negotiate collaboratively, there is a likelihood that they will face a context when they will need to negotiate competitively. Therefore, it

*It is wise to avoid fanfare
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is wise to avoid fanfare and extensive publicity regarding the collaboration. Anticipate that the collaboration will likely change to a more competitive approach at times because the context will necessitate that change. The fanfare and publicity only creates false expectations of permanence of collaboration. Also, avoid giving the interest-based negotiating process a name. By calling it ‘interest-based negotiating’ or ‘mutual gains bargaining’ people will assume it is a program rather than a new way of working that will shift according to the context.

In closing, a story is told about a leader who asks if anyone can identify the phrase that makes all rich people sad and all poor people happy. After considerable deliberation, one person declares the answer. What makes all rich people sad and all poor people happy is the phrase ‘and this too shall pass.’ The negotiation approach needs to change according to the context. The collaborative will eventually become more competitive and the competitive will eventually become more collaborative as the context of the negotiation environment changes.

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