



Overview: Chp. 14 - Bargaining

- ✦ Bargaining, negotiations, the resolution of conflict – cutting across ER areas
 - ❖ From collective to individual bargaining
 - ❖ From confrontation to problem-solving
- ✦ Conflict of interests & role of power
- ✦ Theories of bargaining & negotiations
- ✦ NZ bargaining & negotiations
 - ❖ The impact of 'good faith'
 - ❖ Conflict resolution – institutional processes

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In employment relations, conflicts of interests are normally regarded as inherent – though see the unitarist approach in chp. 2 – and this makes the management of conflict critical for both employers & employees.

Traditionally, conflict resolution has been a core ER issue – social order & constraining fallout from conflict – but until recently the focus has been on collective forms of conflict. Now, individualised forms of conflict have become core research topics in ER.

The chapter provides an overview of a variety of ways of understanding conflict, of approaching the bargaining and negotiation process, and how the balance power can have a crucial influence on strategies & tactics. The chapter also presents popular bargaining theories – including interest-based bargaining, integrative bargaining & different conflict resolution strategies.

Conflict resolution has been a core part of the legislative framework since the IC&A Act 1894 and the ERA continues this tradition with a default conflict resolution process and Employment Institutions to deal with and decide upon conflicts. While the ERA provides a comprehensive conflict resolution framework, it is premised on that conflict resolution is best conducted initially in the workplace.



Key characteristics

- ✦ What is bargaining & negotiations?
 - ❖ Often used to describe the same process
 - ❖ However, there are key differences
 - See, for example, Flanders (1969), Carrell & Heavrin (2008), Lewicki et al. (2003)
- ✦ See definition on p. 386, focuses upon:
 - ❖ Differing interests of the parties
 - ❖ Differing power & power relationships
 - ❖ Negotiators' skills & processes adopted

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While bargaining & negotiations are often used to describe the same process, there are differences between the two processes, according to key writers on the subject.

Flanders (1969: 17): collective bargaining is a power relationship between trade unions & employers/employer representatives; the process of negotiation is the diplomatic use of power.

Carrell & Heavrin (2008: 29) regard negotiation as the overall or 'total' process with stages and phases of bargaining occurring during negotiation processes. Collective bargaining is "a process that an employer and labour union utilized to negotiate and administer terms of employment."

Lewicki et al. (2003) argue that: bargaining is akin to competitive haggling over price while negotiating is a more formal process.

The book's definition: "bargaining and negotiation is a complex series of interactions influenced by the differing interests of the parties and these interactions are again influenced by the differing power relationships, along with the negotiators' skills and the processes they have adopted." (p. 386).



Conflicting interests

- ✦ Emphasis on conflicting & mutual interests are key ER concerns
 - ▣ State, employers, unions, employees
 - Conflicting & overlapping interests are fluid
- ✦ Conflicts of economic interests
- ✦ Responses to conflict situation
- ✦ Organised versus unorganised conflict
- ✦ Influencing the 'psychological contract'

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Conflicts of economic interest can distinguish between: labour inputs, conversion process & distribution of profits. In all 3 areas, there are ample grounds for disagreement: whether over the level of wages, the work effort required or the distribution of rewards (see pp. 388-390).

The chapter makes an important distinction between approach & avoidance behaviours (see Fig 14.1). While the approach behaviour – for example, demanding better wages or employment conditions – is often more newsworthy as it tends to involve overt conflict, the avoidance approach can be very harmful as it hurts productivity & is often more difficult to tackle for management. Avoidance behaviour has also been associated with the growing interest in the psychological contract concept (see NZ Journal of Employment Relations, 34(2), 2009).

The psychological contract is not a legal contract, instead it is based on employer & employee expectations about the employment relationship. It can be rather diffuse but if one of the parties believe that the psychological contract has been broken/violated then there can be significant changes in role behaviour & in employee commitment (see Fig 14.2). Research & writings on the psychological contract have burgeoned in the last 2 decades.



Bargaining/negotiations - power

- ✦ Power & perceptions of power are often crucial in bargaining & negotiations
 - ❖ Shape bargain strategies & tactics
- ✦ Various power perceptions exist
 - ❖ “ability to secure another’s agreement”
 - ❖ French & Raven’s sources of power
 - ❖ Lukes’ power dimensions (see Table 14.2)
 - ❖ Bacharach & Lawler’s power paradoxes

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The perceptions of power balances are important for bargaining & negotiation approaches since they define: the conflicting and mutual interests, the strategies and tactic employed, and whether outcomes are considered fair or appropriate.

The definition on p. 395 indicates that the end goal is normally assumed to be some kind of agreement but it also necessary to evaluate the implications of not reaching such a agreement.

As French & Raven’s sources of power – coercive, reward, legitimate, referential & expert – indicate there are many options & combinations of power sources & Table 14.1 illustrates how these sources can be used.

Likewise, Lukes’ model of power in Table 14.2 illustrates how the various bargaining levels can lead to the application of a variety of approaches, issues and reactions. The types of issues bargained over – contractual, operational, strategic – can also be associated with employee participation (see chp. 17).

Bacharach & Lawler’s theory of power dependence was aimed specifically at explaining labour-management bargaining & their 4 paradoxes (see p. 399) show that bargaining relationship is more complex & less one-dimensional than often assumed in descriptions of interest conflicts.



Interest based bargaining

✦ Fisher & Ury's 'principled negotiations'

- ✦ Are based on these assumptions:
 - Most negotiations are not purely win/lose
 - Life is normally not about 'zero-sum games'
 - Competitive positional bargaining often have negative consequences for employment relationships
- ✦ 4 Basic principles are promoted (next slide)
- ✦ Can lead to 'integrative bargaining'

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Fisher & Ury's 'principle negotiations' and their book *Getting to YES* have constituted one of the most popular approaches to negotiations. They have done a lot to move away from a purely competitive bargaining understanding and their 'positive sum' approach has encouraged negotiators to explore innovative avenues for reaching mutual gains.

“According to Fisher and Ury, this mutual problem-solving approach strengthens the ongoing relationship and provides a process for the building of trust, understanding and respect over time.” (p. 400).

As most employment relationships are long-term, ongoing relationships, it can be detrimental to pursue competitive bargaining as a 'win' may have a lasting negative effect on the other side's psychological contract. See, for example, the discussion of the 1951 lockout/strike in chapter 3; this lockout/strike had a lasting effect on those involved and on the wider union movement.



Interest based bargaining 2

- ✦ Fisher & Ury's 4 basic principles
 - ✦ Separate people from the problems & focus on collaborative problem-solving
 - ✦ Focus on interests, not on positions
 - ✦ Try to invent options for 'mutual gain'
 - ✦ Use objective criteria to measure fairness
- ✦ Positive: encourage creative solutions
- ✦ Negative: bypasses power & short-termism

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The first principle tries to avoid traditional confrontational language, personal attacks and instead is trying to view the differences as a common problem which has to be solved. "Literally, they advise parties to sit side by side at the table with the contract, problem or issues in front of them." (p. 400).

The second principle tries to deal with the underlying interests, rather than manifestations or surface positions (that is, 'exploration of needs').

Inventing options for 'mutual gains' alludes to that bargaining is often not a zero-sum game & it may be possible to 'expand the pie'. Again, this involves working together on a feasible solution that can work for both sides (moving beyond the 'best' solution by one of the parties).

Using objective criteria allow a comparison which can transgress the two sides' ideological positions & may involve a third party's evaluation.

As shown on p. 402, there have been lots of criticism and support for the *Getting to Yes* approach. A main issue is the generality of the recommendations and that they appear to bypass power issues & the ability to shape the bargaining agenda by the most powerful party.



Beyond interest based bargaining

- ✦ Integrative bargaining – ‘mutual gains’
 - ▣ This builds on work by Fisher et al., but it also draws on recent bargaining theories
 - ▣ Enhance the 4 basic principles
- ✦ ‘Behavioural theory of bargaining’
 - ▣ Distinguishes between 4 activity systems
 - Distributive, integrative, attitudinal, intra-organisational bargaining

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There is no doubt that the ‘mutual gains’ approach has had a lot of influence on negotiators & their strategies & tactics. It has been further developed by Fisher & Ury as well as by other researchers.

Lewicki et al (2003) have argued in favour of a 4-step process which builds on the 4 basic principles of Fisher & Ury:

- Identify and define the problem
- Understand the problem fully – identify interests and needs
- Invent options – generate alternative solutions by redefining the problem(s)
- Evaluate, and create a selection of alternatives

Walton & McKersie (1965) developed a ‘behavioural theory’ of bargaining, consisting of 4 systems of activities:

- *Distributive bargaining* is competitive bargaining often used to resolve conflicts arising over interests
- *Integrative bargaining* is cooperative bargaining when the parties have common interests
- *Attitudinal bargaining* aims to build a social contract between the two parties.
- *Intra-organisational bargaining* takes place within the organisation or department.



ERA: bargaining & 'good faith'

- ✦ 'Good faith' applies to all parties
- ✦ Under s32 of the ERA, it requires:
 - ✦ Agree on a process, to meet, to consider & respond to proposals, accept other side's representatives, provide relevant info
- ✦ When is bargaining unfair?
 - ✦ Hasn't been conducted in 'good faith'
 - ✦ Lack of ability to understand, misinformed, using undue influence, insufficient info

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The ERA, s32 requires the two parties to:

- Try to agree on an effective and efficient process for conducting their negotiations through a Code of Good Faith.
- Meet for the purposes of bargaining.
- Consider and respond to each other's proposals.
- Accept each other's representatives or advocates.
- Provide to the other party, throughout the bargaining process, relevant information.

While the ERA specifies the nature of unfair bargaining for employers and employees, it is often the employee who is the complainant (partly caused by the information advantage of the employer).

The key 4 conditions associated with unfair bargaining which are stipulated on p. 411. These conditions are based on the some kind of misinformation, inability to understand (either for personal reasons such as sickness, disability, age or because a reliance of inadequate or wrong advice), use of undue influence, or, in case of a new employee, information was not supplied at all.



Strikes & lockouts

- ✦ When are strikes & lockouts lawful?
 - ✦ Relates to bargaining & existing collective agreement has expired
 - Strikes & lockouts are collective actions
 - ✦ Bargaining started at least 40 days previously (incl. prior to CEA expiry)
 - ✦ Serious health & safety concerns
- ✦ Industrial stoppages have declined

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There is an overview of the ERA regulations about strikes & lockout in chapter 5 (see pp. 116-7), please consult these regulations.

- As shown in chp. 5, whether a strike or a lockout is lawful or unlawful is just one of the many questions which surround strikes & lockouts.
- As strikes & lockouts are associated with collective bargaining, the reader should also consult that section in chp. 5 (pp 111-3).

As shown in Fig. 14.3, there has been a significant decline in the number of work stoppages. The chapter suggests several reasons for such a decline (which was totally opposite to what many opponents of the ERA predicted):

- Employment law and labour market policies have made it difficult to strike
- There has been a decline in private sector collective bargaining
- Strike action is seen increasingly as an inefficient and outdated strategy

While the two first points are mainly related to NZ, the third point can be aligned with other OECD countries as most of these countries have also recorded a decline in the number of work stoppages.



When bargaining fails

- ✦ Conflicts are complex & relate to power, different interests & idiosyncrasies
- ✦ But two conflict types are often found:
 - ▣ Unorganised, individualised conflict types
 - ▣ Organised, collective conflict types
- ✦ Individualised conflicts have become more prevalent & researched
 - ▣ Psychological contracts, turnover, etc

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While most work stoppages are reported in the media to be about pay rises, there are also many other conflict reasons. In fact, most workplace disputes often have a long history where dissatisfaction has been brewing for some time. This means that it is important to consider that there may be many reasons for a particular conflict and there can be a number of less overt reasons.

There has also been a tendency to focus on collective conflicts as these often have wider ramifications (though NZ media news are now full of decisions on personal grievance cases).

In ER research, there is now more focus on individual conflicts; partly because of a decline in collective bargaining coverage but also because individual conflicts can cause significant costs and loss of productivity. For example, the tight labour market during 2002-2008, made voluntary staff turnover a major management consideration (see chp. 9, pp. 246-8). This has prompted managers to consider what the standard reasons are for employees staying with the same organisation and these reasons can then be incorporated in retention policies.



ERA: conflict resolution

- ✦ Pre-1990 legislation focused on collective conflicts (strikes, lockouts)
- ✦ Now more focus on organisation-internal resolution & individual conflicts
 - ▣ See Table 14.3 - conflict resolution forms
 - Can dispute be resolved within organisation?
- ✦ See Fig 14.4 for default ERA process
 - ▣ Emphasis on mediation under ERA

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Table 14.3 illustrates that there are a variety of internal or external conflict resolution strategies. As indicated in the Table, these strategies have their own strengths and weaknesses.

External mechanisms are more researched than internal mechanisms; partly because there are normally statistics and firm outcomes available and partly because external mechanisms tend to signify an escalation of conflict. However, there appears to be a tendency to develop more internal conflict resolution mechanisms; partly to avoid an escalation of conflict and partly because it makes sense in terms of costs and reputation.

Overall, there has been a tendency to try to resolve conflict at its lowest possible level & this has been encapsulated in the ERA which encourage “parties to resolve employment relationship difficulties themselves as close to the workplace as possible...” (p. 415) and there is a preference for mediation.

The ECA 1991 brought together a single jurisdiction and single legal system with individual employment contracts being covered. This has been continued under the ERA, including some alignment between personal grievance types & ‘discrimination’ in the Human Rights Act. Thus, the emphasis on ‘individual employment relationship problems’ has been embedded in ER in NZ.



ERA: conflict resolution 2

- ✦ Institutions provides (hopefully) easy, low-cost access & speedy resolution
 - ❑ Mediation Service
 - ❑ Employment Relations Authority
 - ❑ Employment Court
- ✦ Dismissals still dominate (see chp. 6)
 - ❑ Employee & employer perceptions of different resolutions methods are crucial

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In chp. 5, dispute resolution and the role of the Employment Institutions are overviewed (pp.117-121).

Since the ECA 1991, there has been an aspiration that conflict resolution should be easy to access, be low cost, be speedy and preferably informal, and provide just resolutions. This aspiration was originally associated with the new Employment Tribunal under the ECA (see Deeks, Parker & Ryan 1994: 98) & it has been further emphasised with the preference for mediation and a more pro-active Employment Relations Authority (see chp. 5, p. 119-120).

The ERA appears to have delivered on 'speedy, informal and practical justice' since the long delays of cases in the 1990s have been avoided post 2000. There have also been fewer legal precedent changes. That said, there are doubts whether the types of cases have changed much (see chp. 6, pp 154-159), whether the aspiration of having a more pro-active, conflict resolving approach has been achieved, and whether the Employment Institutions' informality has increased a lot. It seems clear that reinstatement has not become the primary remedy in most cases.

While Dept. of Labour research indicates that most 'clients' are happy with the process & outcomes of the Employment Institutions, there probably needs to be more research of conflict resolution outside the Institutions.