

wfiJOURNAL  
2011 Union Edition



**Workplace Fairness Institute**  
Conflict Management Solutions

## WELCOME MESSAGE

In this edition we explore the role that union's play in workplace conflict management. We are honoured to introduce to you the thinking of respected academics and practitioners who will explore a number of questions that have been plaguing the labour relations community for some time.

We begin by addressing some of the broad questions relating to unions and workplace conflict management.

First, Zenab Pathan, a human resources practitioner, asks the age old question – “Are unions conflict instigators or conflict mitigators?” By exploring this question, Ms. Pathan introduces the reader to the wide breath of union functionality in the workplace and in our society.

Academic and practitioner Bruce Curran seeks to address another nagging question for labour relations professionals – “How fair is the union grievance procedure?” Using the Donais Fairness Theory as a model, Mr. Curran considers how “Just, Efficient, Engaging and Resource Sufficient” your grievance procedures are.

Lindsay Foley, formerly of the Federal Mediation and Conciliation Service of Canada, considers the readiness of unions and employers to engage in Interest-Based Negotiations (IBN). Looking at various case examples, Ms. Foley suggests that while IBN is catching on, it still has a long way to go before it becomes the dominant form of collective bargaining negotiations.

I have written an article which considers the role of unions in promoting workplace health. Through the introduction of the WFI Workplace Health Theory, we will look at the positive role unions can play in promoting workplace conflict health.

Labour relations professional, Yakov Sluchenkov considers the value of mediation in unionized work environments. While he laments a general trend away from mediation, he contends that mediation should and could play a vital role in managing workplace conflict in unionized work environments.



We move from these general questions to consider the mechanics of negotiations. Philosophy professor, Donal O'Reardon, explores the relationship between critical thinking and collective bargaining. Professor O'Reardon considers the relationship between normal bargaining tactics and reactions to logical fallacies. He contends that parties who engage in critical thinking will be better prepared for success.

And finally, our resident book reviewer, Rose Belcastro has a look at Marrick F. Masters and Robert R. Albright's *The Complete Guide to Conflict Resolution in the Workplace*.

We hope this issue leaves you with enjoyment, enlightenment and many thoughts to ponder as you apply them to your practices.

Sincerely,

**Blaine Donais**

B.A., LL.B., LL.M., RPDR, C.Med., WFA  
WFI President and Founder

Official publication of the



Editor-in-Chief: Blaine Donais

Contributors: Rosetta Belcastro, Bruce Curran, Blaine Donais, Lindsay Foley, Donal O'Reardon, Zenab Pathan, Yakov Sluchenkov and Bruce I.L. Ally, Sheryl Beckford, David Chalmers, Sabrina Crucini, Blaine Donais, Alexia Dyer, Cedric P. Lamarche.

Managing Editor/Lay-out: Rosalie Bellefontaine

Editorial Board: Marjorie Munroe, David T. Lopez, Blaine Donais.

Website Lay-out: Christopher McIntyre

Web Design: Irene Duma, Strange Duck

Web Host: Digital 7, Douglas Church

Subscribe/unsubscribe: [wfijournal\[at\]workplacefairness.ca](mailto:wfijournal[at]workplacefairness.ca)

Please do not reprint without permission. Citations must credit the author and refer to the correct issue and page number of the wfiJOURNAL.

c. 2011 Blaine Donais

Workplace Fairness Institute

335 Delaware Avenue, Toronto, Ontario, Canada. M6H 2T7

Tel: 416-534-6780

Fax: 416-534-9785

[www.workplacefairness.ca](http://www.workplacefairness.ca)

## TABLE OF CONTENTS

<b>WELCOME MESSAGE .....</b>	<b>2</b>
<b>UNIONS: CONFLICT INSTIGATORS OR CONFLICT MITIGATORS? ..</b>	<b>5</b>
AUTHOR: ZENAB PATHAN	
<b>UNION ATTITUDES TOWARD GRIEVANCE PROCEDURES: EMPIRICAL SUPPORT FOR DONAIS FAIRNESS THEORY .....</b>	<b>23</b>
AUTHOR: BRUCE CURRAN	
<b>ARE LABOUR UNIONS AND MANAGERS READY FOR INTEREST- BASED NEGOTIATION? .....</b>	<b>39</b>
AUTHOR: LINDSAY FOLEY	
<b>THE UNION'S ROLE IN WORKPLACE HEALTH: THE SIX LEVELS OF WORKPLACE HEALTH THEORY .....</b>	<b>57</b>
AUTHOR: BLAINE DONAIS	
<b>MEDIATION IN A UNIONIZED ENVIRONMENT: DECADES OF STRUGGLE.....</b>	<b>71</b>
AUTHOR: YAKOV SLUCHENKOV	
<b>CRITICAL THINKING AND COLLECTIVE BARGAINING: .....</b>	<b>85</b>
AUTHOR: DONAL O'REARDON	
<b>ROSETTA BELCASTRO'S BOOK REVIEW .....</b>	<b>91</b>
REVIEWER: ROSETTA BELCASTRO	

# ENGAGING UNIONIZED EMPLOYEES

EMPLOYEE MORALE  
AND PRODUCTIVITY

*BLAINE DONAIS*

HOW TO BUILD A  
MORE PRODUCTIVE  
WORKING  
RELATIONSHIP



## UNIONS: CONFLICT INSTIGATORS OR CONFLICT MITIGATORS?

**Conflict in the workplace arises** when employees, through an assessment of the organization's procedures, systems and outcomes, determine their treatment to be unjust or unfair. Unions mitigate conflict through the acquisition of monopoly power.

---

**Author: Zenab Pathan** ( *B.A.Hons in Employment Relations, MIRHR Candidate*). *Zenab Pathan has over a decade's experience in HR at the U of Toronto and Ryerson U. including organizational design, job evaluation, recruitment, training & development, performance management, sick leave and accommodation, attendance management, grievances, investigations and employee conflicts for unionized and non-unionized employees.*

---

**In 1983, when questioned "What does labour want?", Samuel Gompers, the first president of the American Federation of Labour, responded "more".** Yet as Gunderson and Taras point out, the motivation behind joining unions is no longer simply about gaining increased wages and benefits, the typical bread-and-butter issues. Instead, workers are increasingly in pursuit of fairness and equity through membership in unions (Gunderson & Taras, p.25)

"Fairness", Blaine Donais suggests, has become a commodity as individuals today are increasingly in pursuit of "fairer, healthier and less stressful workplaces" (Donais, p.1). Stratton further comments that "fairness and equity are dominant values of American life, and employees expect them to be present in the office and factory". Furthermore, the expectation for organizational justice, fairness and equity is amplified as employees become increasingly conscious of their rights (Stratton, p.170).

Individuals make judgements about fairness by means of a process which involves judgment of *balance*. This entails comparing given actions against other similar actions. In the context of a workplace for example, one may compare his/her salary against that of his/her counterpart performing a similar job. Judgements about fairness are further made by assessing *correctness*, which entails an evaluation of the decision, action or

procedure (Sheppard, Lewicki, Minton, pp. 10-11). Where there is “actual or perceived inconsistency, inaccuracy, ambiguity, procedural sloppiness, or immorality”, one would expect an absence of *correctness*. For example, in the assessment of one’s salary, one is also likely to evaluate the procedure through which the salary has been determined (Sheppard, Lewicki, Minton, pp.10-11).

Issues related to justice can occur at three levels: i) distribution of outcomes; ii) dispensing procedures and; iii) design of organizational systems. Thus individuals will evaluate: i) how the outcomes have been distributed; ii) what procedures have been used to distribute these outcomes or to listen to concerns about the distribution process and; iii) what organizational systems are in place to ensure that various groups are treated fairly (Sheppard, Lewicki, Minton, p.104). It is important to note that what may *actually* be just by some objective or independent standard is secondary and much less relevant than what is *perceived* to be just (Sheppard, Lewicki, Minton, p.9).

Perceived organizational justice influences employee behaviour in many ways including their level of satisfaction, commitment and trust in management. For example, in a study of 217 employee reactions to pay-raise decisions, the procedural fairness with which the decisions were made was found to influence pay satisfaction, trust in supervision and organizational commitment (Sheppard, Lewicki, Minton, pp102-103). Furthermore, where procedures of resource allocation and conflict resolution were deemed to be fair, employees expressed satisfaction with the outcomes of said procedures and were further committed to the firm and to their supervisors. Similarly, in a sample of hospital workers, overall distributive fairness allowed there to be increased job satisfaction and enhanced attitudes towards one’s boss. Additionally, perceived procedural justice and opportunities for voice related to employees’ loyalty to the organization and satisfaction with supervision. Perceived justice led to perceived legitimacy thus leading to compliance with the system (Sheppard, Lewicki, Minton, pp.102-103). Thus a great deal of goodwill and efficiency can be gained by organizations that focus on establishing fair systems and procedures.

Upon perceptions of unfairness being formed, individuals are likely to follow the process of “naming”, “blaming” and “acting” (Sheppard, Lewicki, Minton, pp 74-75). The equity theory stipulates that upon experiencing perceived unfairness, one will: i) live with it; ii) change his/her behaviour to remove the injustice; iii) rationalize the injustice or; iv) leave the scene (Sheppard, Lewicki, Minton, pp. 74-75). Upon formation of perceived organizational injustice, employees are likely to engage in a process of “expressing dissatisfaction, disagreement, or unmet expectations with any

organizational interchange". This, as Donais defines it, is workplace conflict and it can stem from four possible sources: i) interpersonal; ii) organizational; iii) trends/change and; iv) external factors (Donais, pp. 5-6).

In accordance with the above definition, a process which has often yielded conflict is employee performance appraisals. Kay Stratton suggests that conflict in the workplace frequently occurs due to the failure of performance appraisal systems to produce results that are valid and reliable evaluations of employee performance. Thus workers and managers have often tended to encounter disagreement over the accuracy of performance standards and the criteria. As a result, the evaluation process becomes a source of conflict in the workplace. Furthermore, because compensation and career advancement opportunities are tied to the performance appraisals, the conflict between managers and employees is often heightened. (Stratton, p.167).

Stratton proposes the institution of an appeal mechanism, which would allow employees to raise objections regarding the outcome of their performance evaluations (p.168). But it would achieve more than just this. The appeal system would trigger employers to institute proactive measures such as the development of objective criteria and the provision of training to managers in order to avoid rater errors (Stratton, p. 171). Thus although the primary objective of the appeal mechanism may be reactive in that it would allow workers to respond to perceived unfairness, it would serve to create many proactive measures, in many cases, preventing the need for the appeal mechanism. The role of unions in workplace conflict can also be thought of in this way. Just as the appeal mechanism would serve to mitigate conflict that would result from a performance appraisal process, the existence of unions in workplaces allow, in many ways, for conflict to be prevented, resolved early in its developmental stage, and managed more effectively via well defined processes.

While unions provide formal dispute resolution mechanisms such as the grievance procedure and arbitration, Lewin finds that many industrial relations scholars agree that "most employment-related grievances are never put in writing" and are instead resolved informally via discussions between workers and management. While it is difficult to determine the extent to which disputes are resolved informally, it has been estimated that in unionized firms, there are approximately ten unwritten grievances for every one written or formally filed grievance (Lewin, p.325).

The purpose of this paper is to examine the informal ways in which unions have an impact on the prevention and early resolution of complaints thus avoiding the escalation of conflict to formal procedures. First, the fairness

system and its options are reviewed in the context of unionized environments. Second, a review of the ways in which unions impact a number of critical processes and management decisions is undertaken. Third, a closer review of the partnership between labour and management is studied. Finally, while the findings in this paper suggest that unions have a positive impact in mitigating conflict in the workplace, consideration is also given to the criticism suggesting that unions stimulate conflict and create a division between workers and management.

### **FAIRNESS SYSTEMS IN UNIONIZED WORKPLACES**

In the efforts to deal with workplace matters, Donais presents five fairness system options available to parties: i) interest-based options; ii) rights-based options; iii) power-based options; iv) communication-based options and; v) health-based options. In the interest-based option, the parties move beyond positions to explore and uncover each other's interests. With the rights-based option, as one would expect, the participants strive to "create or enforce a right for one or both sides of the dispute" (Donais, p.27). The power-based option is utilized when parties resort to exercising their power to resolve conflicts. In the communication-based option, the objective is to achieve an improved flow of information between participants, as a means of managing conflict (Donais, p.27). Finally, the health-based options include benefits and resources in many forms such as access to the EAP, paid sick leave and LTD. Such benefits would allow employees to avoid issues of health that may otherwise impede on their ability to meet the expectations of their jobs thereby creating problems between the parties.

In the absence of a union in a workplace, often the power-based option prevails. In such a context, management decisions that may or may not be deemed by employees to be fair are still implemented. A fundamental shift in the unequal distribution of power occurs with the entrance of unions into the workplace. Donais states that "while a non-union work environment allows significant use of power-based options by the employer, the unionized workplace regulates the use of this power through labour legislation, the provisions of the collective agreement and access to the grievance arbitration procedure" (Donais, p.157). Through collective bargaining, unions are able to regulate the use of the power-based option by employers. As Donais comments, "from workplace regulation, to managerial decision-making, to the exit options of dismissal and resignation, the collective bargaining system represents a complete paradigm shift from the non-union work environment" (Donais, p.196).

A second critical development in the workplace that results from the entrance of unions is the application of the communication-based option,

through which unions enable the flow of information. Donais refers to the “sophisticated workplace communications” that allow for workplace conflict to be mitigated in a number of ways (Donais, p.55). Unions deploy a wide range of communication tools in the active exchange of information with their members.

The first impact of the communication-based option is the provision of voice to workers. As Donais states, employees find a new “avenue to confidentially respond to their workplace” including opportunities to comment on their work environments and whistle-blowing (Donais, p.55). Workers are able to gain quick and confidential advice on workplace matters that could otherwise develop into conflict. (Donais, p.55). The counsel employees receive from their union has conflict management value because they are able to make better sense of workplace matters.

A second way in which unions are able to have an effect on workplace conflict is through the provision of training, information and education to their members. This is a more proactive approach through which unions seek to provide information to members through newsletters, websites, e-mails, meetings and training sessions. Consequently, unions are quick to inform members about workplace changes.

Through the two way communication with its members, labour unions also tend to provide a sense of community in the workplace (Budd, p.54). This allows members to come together and bond over common issues of concern and it is possible that in being able to do so, they are able to release the tension and frustration associated with their perceived workplace injustice. If the concerns are legitimate, it is possible that they can be advanced through more formal means. However it is also possible that if the concerns are invalid, the union or other members are able to convince the worker of this, thus in both cases, the result is a resolution of conflict.

Since the communication-based options entail the flow of information, a third way in which unions mitigate conflict is by increasing the exchange of information with employers. Donais suggests that as unions consult with their members regarding workplace matters of importance to them, the communication-based option “acts as an early warning system for the employer”, because it allows the employer to receive information early in the process (Donais, p.55). Perhaps this can be at least partially attributed to the findings that union firms are more likely to use collective negotiation, employee surveys and meetings, grievance and equal employment procedures, consultative and safety committees, task forces, and health & safety representatives as voice options for workers. Quality circles, employee surveys, and supervisor-employee meetings were found to

occur at a significantly higher rate in active union workplaces compared to non-union firms. Furthermore, the more active the union, the greater the number of voice mechanisms made available to employees (Verma, pp.294-295).

While communication-based options are utilized quite extensively, it is important to acknowledge that unions also engage in rights-based options and power-based options to the degree afforded to them through legal means and their relative power in the workplace. These options create a more adversarial relationship but they, too, play a role in addressing workplace conflict. Unionized firms are more likely to institute proactive measures that allow for conflict to be prevented and resolved in the early stages so that the use of more formal means of conflict resolution is minimized. Donais suggest that in many cases, the collective agreement contains interest-based and rights-based fairness options and the nature of the collective bargaining relationship can lead the parties to develop fairness options outside the collective agreement (Donais, p.183). The union grievance procedure can be both an interest-based and a rights-based option (Donais, p.186). Thus the extent to which each of the four fairness options are used in a unionized workplace will vary.

#### **IMPACT OF UNIONS ON MANAGEMENT DECISIONS**

David Lewin explains the “quit-reducing, tenure-increasing” effects of unions on workers as the result of the “golden handcuffs” that tie workers to their firms more strongly because of the “totality of gains” obtained by unions for their members. Lewin argues that the voice mechanism is only partially responsible for the decline in exits and that unions also affect other important aspects of employment such as fringe benefits, work assignments, jurisdictions, working conditions, etc., all of which improve the experience of workers (Lewin, p.319). The implication of the “totality of gains” perspective is that employees are able to experience the positive impact of unions on a wide range of workplace matters affecting them.

Anil Verma builds on the ‘lower quit rates’ effect of unions to say that there are three further affects of unions: i) seniority based rewards; ii) better job production and; iii) increased employer-employee communications. Unions, he states, affect a wide spectrum of management practices from hours of work and wage incentives to subcontracting, promotions, disciplinary processes, etc (Verma, p.267).

For unions, the concern in relation to management decision is often that too much managerial flexibility can result in: i) insecurity for employees; ii) absence of autonomy for workers and iii) the abuse of discretion by managers (Gunderson & Taras, p.307). Thus a fundamental goal of unions is to achieve fair treatment of employees by management (Verma, pp.

276-277). This demand for fairness perpetuates into involvement by unions in many day to day decisions made by management affecting workers.

Unions thus strive to seek increased formalization of workplace procedures and systems in order to reduce ambiguous and arbitrary management decisions and practices. For example, the seniority rule is a highly formalized rule, which provides clarity for management and employees over how important decisions such as promotions and layoffs are to be made. Thus, unions actively question and sometimes, alter management decisions, with the aim to achieve fairness and equity. Not only are processes more formalized, but the processes such as performance appraisals, which are typically viewed by unions to be subjective, are allowed to influence other important management decisions such as salary, promotions and layoffs to a far lesser extent (Verma, p. 288).

Collective agreements regulate the process of hiring and job assignments in a number of ways including: i) stipulating minimum qualification requirements; ii) establishing union-management apprentice programs; iii) requiring that vacancies be filled from within the organization when possible and iv) restricting supervisors and other non-bargaining unit personnel from performing tasks normally done by union members (Gunderson & Taras, p.308). Thus, unionized firms have been found to use fewer external methods of recruitment and the presence of a union increases the likelihood that a firm will first make the vacancies available to internal staff. In a study of the auto parts industry, unionized plants were found to be twice as likely to post jobs internally, as compared with their non-union counterparts (Verma, pp.283-284). Furthermore, management decisions are actively monitored and in some cases asked to be justified. For example, article 12:04 b(ii) of the United Steelworkers' collective agreement representing staff-appointed employees at the U of T states "where an external applicant is selected, the University will provide the Union with a written rationale for its decision that the applicant selected is demonstrably the most qualified" (USW Staff-Appointed Collective Agreement, p.12).

Unions also monitor and attempt to restrict cases of contracting out and the use of alternative staffing arrangements. Unions often oppose alternative employment arrangements and through collective bargaining, insist on limiting use of flexible staffing arrangements. As such, increase in percentage of union representation decreases the likelihood of the use of flexible staffing alternatives (Verma, p.285).


# A PLACE FOR MEDIATION

**Bruce I.L. Ally**

**B.A., M.A., Ph.D., LL.M., WFA**

**416-967-9432 x 26**

**[www.aplaceformediation.ca](http://www.aplaceformediation.ca)**



A Place For Mediation is located in the heart of downtown Toronto and is Ontario's largest mediation firm. Our areas of specialization include employment, workplace, condo, estate and personal injury cases. We also offer customized training packages, speakers, partnering and supervision of other practices.

Opportunities for training and development are further enhanced by unions. For example, when unions are involved in training issues, employees are significantly more likely to indicate equity in the training opportunities made available to them (Verma, p.287).

Job evaluation is another contentious issue because it impacts important aspects of employment such as pay, status and career development opportunities. Here, we find that unionized firms are more likely to employ more objective evaluation criteria such as the benchmark method, in the evaluation of jobs (Verma, p.287).

Unions bring tighter controls and checks and balances in the workplace. For example, Donais comments that “many unionized workplaces are highly stratified” and that job descriptions tend to be precise such that employees are not required to perform work beyond the scope of their job descriptions (Donais, p.188). Checks and balances such as the onus on the employer to justify a hiring decision, not only allow unions to monitor workplace decisions, but also compel employers to take proactive measures such as providing management with training to ensure compliance with the collective agreement, particularly if the decision is likely to be reviewed by the union.

Unions are also less likely to have variable pay plans (such as profit sharing, employee stock ownership plans, knowledge pay, merit pay, etc.) and individual incentive plans (Verma, pp. 288-289). Compensation within unionized environments tends to be guided with much more clarity and objective criteria. For example, the United Steelworkers’ collective agreement representing workers at the U of T, provides clear language on salaries and increases which are driven by two factors: i) seniority and ii) predetermined across the board increases. Furthermore, the collective agreement itemizes specific salary implications in cases of movement into other positions (USW Staff-Appointed Collective Agreement, p.35).

Unions further create a climate of safety such that unionized workplaces are much more likely to have labour inspections than non-union workplaces, even when health & safety legislation is applied equally to both union and non-union workplaces. (Verma, p.293).

The formalized procedures and systems ensure greater consistency in management practices because decisions have to be made using the same criteria, irrespective of how large or complex an organization may be. The unions’ active presence, monitoring and sometimes the onus being placed on management to report decisions and accompanying rationales, all significantly contribute to ensuring that the formalized procedures, once in place, are adhered to.

Donais further states that for the manager, the collective agreement is a source of guidance that helps ensure consistency. The manager also has “an ally in the management of conflict: the union representative” (Donais, p.199). The manager is able to gain feedback from the union representative on how members may respond to a decision. Additionally the manager may receive support from the union representative in the resolution a conflict situation (Donais, p.198). Thus, in a unionized workplace, the employer is given a critical “conflict management partner” (Donais, p.199).

### **LABOUR-MANAGEMENT PARTNERSHIP**

When it comes to collaboration with management, some union activists find it to be unnecessary insofar as the goals are to achieve improved wages, fringe benefits and formalized voice mechanisms such as the grievance procedures. Such goals have been best achieved through the collective bargaining process. Collective bargaining however, has been deemed to be less effective in resolving issues related to productivity and the quality of work-life, and in this respect, there has been greater interest from both parties in joint participation and programs (Schuster, p.10). In fact, some union leaders have found joint labour management programs to provide workers with the “chance to be treated with dignity and have a voice on the job”, thus being able to “shape management practices and policies while they are being formed rather than after the fact” (Schuster, p.11).

Collective agreements can also stipulate the creation of joint labour management committees to deal with workplace issues such as redeployment, contracting out and relocation. Such committees would engage in joint problem-solving and management of conflict to the extent possible, when dealing with workplace interests like the redeployment of employees (Donais, p.181). Budd elaborates that in labour-management partnerships, workers and union leaders have opportunities to participate in organizational decision making beyond the daily work-related decisions and beyond the usual collective agreement subjects. For example, in 1993, President Clinton mandated labour-management partnerships for federal government agencies that provided employees and their union representatives the status of full partners with management representatives to identify problems and craft solutions to better serve each agency’s customers and missions (Budd, p.366). Thus union-management committees hold great potential for managing workplace conflict at all levels of the workplace (Donais, p.182).

Joint committees serve as a “bridge between collective bargaining and joint problem solving” (Cohen-Rosenthal & Burton, p.76). Labour

management committees are composed of representatives of management and representatives of the union who meet to deal with mutually agreed-upon topics. The types of committees can range from general committees whose purpose is to maintain open communication between the union and management, to more specific committees that deal with defined topics such as health and safety or training. Thus labour-management committees can act as appendages to the existing structures and can be used for communication and problem-solving within organizations. Such committees leave intact the separate perspectives, interests and capabilities of both management and organized labour (Cohen-Rosenthal & Burton, p.76).

Through increased participation and cooperation with management, labour unions have the ability to gain greater access to information and a “pre-notification” of changes in work arrangements and technology. Additional input from unions can also help management avoid errors or decisions that would hurt the union membership (Cohen-Rosenthal & Burton, p. 29). As well, with increased union-labour participation, the number of grievances decline, sometimes quite dramatically because members find that their concerns are resolved more quickly and more fully (Cohen-Rosenthal & Burton, p.29). It is also to the advantage of both labour unions and employers to find ways to resolve disputes in their early stages of development so that reliance on the more formal means of conflict resolution can be minimized. For example, article 308 of the USW Local 1998 collective agreement representing staff-appointed employees at the U of T, stipulates that in cases of bullying and personal harassment, a grievance cannot be filed until the process outlined in the Civility Guidelines (University guidelines on employee conduct) has been exhausted. If the matter is not resolved through this process, a grievance could be filed and heard directly at the final step (step 3) of the grievance procedure (USW staff-appointed collective agreement, p.5). Similarly in cases of sexual harassment, article 3:04 of the same collective agreement provides employees with the option to either file a grievance under the collective agreement or a complaint under the University’s Policy on Sexual Harassment. Thus, there can be a collective interest of the parties to have conflict resolved through more informal but structured, procedures (USW staff-appointed collective agreement, p.4).

Recognizing the many benefits of joint labour management committees, Cohen-Rosenthal and Burton acknowledge that the effectiveness of labour management committees will depend greatly on the calibre and level of people involved, the resources and training available to committees, and the commitment the organization has to the topic being addressed. And while there will be cases of failed and abandoned committees, well-run

committees will have the ability to “spark innovation and inject energy into their organization” (Cohen-Rosenthal & Burton, p.78)

### **CRITICISM OF UNIONS’ IMPACT ON WORKPLACE CONFLICT**

While the existence of unions in workplaces serve, in many ways, for conflict to be prevented and to be more effectively resolved when it does occur, it is important to note that unions have also been criticized for their deliberate efforts to stimulate conflict in order to justify their existence by way of building an “us against them” momentum among members. Lewin states that “unions have an incentive to manufacture conflict in order to justify their existence to their members” (p.326).

There are two important considerations in relation to the suggestion that unions deliberately generate conflict among its membership. First, is the idea on which the “unitarist perspective” is based, which states that “unions have little or nothing to contribute to the employment relationship except, perhaps heightened conflict” (Lewin, p.326). From this perspective it is possible to restructure employment relationship conflict from one in which there is inherent conflict of interest to one in which there is, more or less, a unity of interest. Conflict need not be resolved through the adversarial struggle brought by unions, but through cooperative problem solving and other innovative HRM policies and practices, including alternative grievance-like procedures. Second, is the assertion that unions are self-serving in their deliberate efforts to generate conflict.

The unitarist approach promotes an environment in which there is an absence of a union and an adoption of interest-based options. However, the absence of unions is likely to be accompanied by greater power imbalance which Lewin refers to when he states: “while voice may be a useful construct in any theoretical framework of employment conflict resolution, power is a necessary construct in such a framework” (p.326). He further comments that in the analysis of union-management relations, there tends to be an overemphasis on exit-voice theory; whereas the employment relationship conflict and the resolution of such conflict is strongly shaped by the relative power of the parties (Lewin, p.326). The interest-based options would also require relatively more time and commitment from management to engage in problem solving and building consensus. In the absence of unions however, there would be very little incentive for management to make such investments when they could very easily take the power-based route and implement decisions quickly. Even if such efforts were to be made, as proposed by the unitarist approach, there would remain a great deal of management discretion over decisions. Thus the level of standardization and consistency that unions are able to

achieve in the workplace through collective bargaining would likely be absent.

If we take “generating conflict” to mean increased resistance, militancy and a position of hard bargaining, then it is true that such behaviours can be displayed by unions at heightened levels, at certain periods such as during times of collective bargaining. Yet it would be naive to conclude that unions embrace such an approach exclusively for the purpose of justifying their existence to their members because, as Schiavone argues, through an approach of “militancy, union democracy and rank-and-file intensive tactics”, unions are able to achieve better collective agreements than would otherwise be possible (Schiavone, pp.175-191). Such tactics, Schiavone claims, were responsible for the 1997 contract negotiations between the UPS and the Teamsters resulting in a better agreement in which it achieved a majority of its demands (Schiavone, pp.175-191).

Certain conditions proved to be favourable for the Teamsters: for example, the public support on the issue of part-time workers, President Clinton’s decision not to call an emergency and order the strikers back to work, low unemployment rate (4.9%), and that the UPS management did not bring in scabs during the strike. However, the level of success it achieved in the 1997 negotiations would not have been possible in the absence of its well planned efforts.

From one perspective, some of the actions of the Union could have been deemed to be generating unnecessary conflict. The Union mobilized support on a large scale that involved:

- i) the UPS pilots and mechanics refusing to cross Teamster picket lines;
- ii) the AFL-CIO President John Sweeney pledging to raise whatever money was necessary to sustain the modest Teamster strike benefits;
- iii) European UPS unions agreeing for a major meeting and protest that would have included more job actions;
- iv) UPS workers travelling their regular delivery routes to visit customers and explain why it became necessary to interrupt service;
- v) having rank-and-file Teamsters be spokespeople in news conferences and
- vi) generating support from community groups such as Jobs with Justice, who organized protests against companies that urged President Clinton to order the Teamsters back to work (Schiavone, pp.175-191).

Yet such efforts were in fact tactical and were not exhaustive. The Union took a well planned, systematic approach to the 1997 negotiations. And these efforts also included a bottom-up approach in which the rank-and file were united and given critical importance. The rank-and-file were surveyed

on their bargaining demands and the Union followed through their wishes. The rank-and-file workers were included on the UPS bargaining committee and they were kept well informed on the negotiations. As well, the Union was able to achieve unity between part-time and full-time workers and convince the rank-and-file workers that they and the union were the same (Schiavone, pp.175-191).

Schiavone states that the negotiations prior to 1997 were demonstrative of the union's inability to achieve anything more than substandard contracts in the absence of a long preparation, a campaign involving militancy and rank-and-file intensive tactics (Schiavone, pp.175-191). The long preparation he refers to can be extended to appreciate the consistent and enduring efforts necessary to eventually make significant gains in collective bargaining. For example, the issue of part-time workers was significant for the Union and was raised in the 1993 negotiations but did not come to be successfully addressed until the 1997 negotiations. Thus although the 1990 and 1993 negotiations resulted in relatively substandard contracts, the accumulated momentum from those periods of negotiations perhaps contributed to the Union's subsequent success in 1997.

One can also argue that the conflict that is generated serves many purposes that simultaneously fulfill the interests of several parties. For the unions, it is more than just about demonstrating their reasons for existence. Even after being certified with their monopoly power, the unions are in a fairly constant struggle to receive recognition from employers and to achieve significant gains for their members and as the UPS example demonstrates, in the absence of such tactics, the employees can hope to receive only substandard deals from employers. But beyond the enriched agreements, there are also opportunities for the members to achieve unity and to participate in a process that is ultimately about them. And when it comes to conflict, employers also stand to benefit from the unions' efforts.

This is because unions survey members and bring to the surface the issues that are already there and which, if unaddressed, could take more serious and costly forms for unions and employers. It is also important to consider that the basis on which unions may generate conflict among members would not go unchallenged by the employers. In fact, this would likely result in increased information sharing and communication from the employer which could help alleviate fears and allow employees to make more informed judgments and decisions.

## **CONCLUSION**

Section 45 of the *Ontario Labour Relations Act*, 1995, provides unions with the status of "exclusive bargaining agent of the employees in the

bargaining unit...”. This provision significantly alters the power imbalance in organizations as employers are legally obligated to recognize unions and bargain with them in good faith. Donais suggests that this prevents employers from making individual deals with employees (p.155). Indeed, through the attainment of this power, unions are able to drive critical changes within organizations that allow for the achievement of procedures, systems and outcomes that are likely to be deemed by the employees to be fairer.

While unions provide formal avenues for conflict resolution, they are able to minimize the perceived injustice among their employees that then prevents conflict from developing or escalating to higher and more formal levels. Unions are able to mitigate conflict in the following ways: i) engaging in the flow of information through the communication-based approach with members and management; ii) having management decisions be shaped by more formalized procedures and systems that are then closely scrutinized and iii) engaging in partnership with management through joint committees where more complicated issues are reviewed and resolved. Gunderson and Taras state that “unions have been effective in increasing the workers’ perceptions of fairness in the workplace” (Gunderson and Taras , p.26). Such measures are likely the means through which unions have achieved this. Furthermore, returning to Stratton’s example of performance appraisals, she suggests that where knowledge of a procedure to voice concerns exists, there may be satisfaction thus leading to higher morale and productivity (Stratton, p.171). Similarly, employees are likely to feel a sense of assurance about the presence of a force that can more successfully face the employer in the active pursuit of its members’ interests.

#### **REFERENCES**

Budd, John (2010). Labour Relations: striking a balance – 3<sup>rd</sup> ed. New York, NY: McGraw-Hill/Irwin.

Cohen-Rosenthal, Edward & Burton, Cynthia E. (1993). Mutual Gains: a guide to union-management cooperation. Ithaca, NY: Cornell University.

Donais, Blaine, (2006), Workplaces That Work: a guide to conflict management in union and non-union work environments. Aurora, Ontario: Cartwright Group Ltd.

Gunderson, Morley & Taras, Daphne, (GT) (2009). Canadian Labour and Employment Relations – 6<sup>th</sup> ed. Toronto, Ontario: Pearson Canada Inc.

Lewin, David (2007). Unionism and Employment Conflict Resolution: Rethinking Collective Voice and Its Consequences. *What do Unions Do, A Twenty Year Perspective*, 313-339. New Brunswick, NJ: Transaction Publishers

Schiavone, Michael (2007). Rank-and File Militancy and Power: Revisiting the Teamster Struggle with the United Parcel Service Ten Years Later. *Work USA*, 10 (2), 175-191.

Schuster, Michael H. (1984). Union Management Cooperation: Structure-Process-Imact. Kalamazoo, Michigan: W.E. Upjohn Institute.

Sheppard, Blair H., Lewicki, Roy J., & Minton, John W (SLM). (1992). Organizational Justice: the search for fairness in the workplace. New York, NY: Lexington Books

Stratton, Kay (1988). Performance Appraisal and the Need for an Organizational Grievance Procedure: A Review of the Literature and Recommendations for Future Research. *Employee Responsibilities and Rights Journal*, 1(3), 167-179.

Verma, Anil (2007), What do Unions Do to the Workplace? Union Effects on Management and HRM Policies, *What do Unions Do, A Twenty Year Perspective*, 275-309. New Brunswick, NJ: Transaction Publishers

Ontario Labour Relations Act, 1995, URL:  
[www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_95l01\\_e.htm#BK52](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_95l01_e.htm#BK52)

USW Staff-Appointed Collective Agreement at the U of T, URL:  
[www.hrandedequity.utoronto.ca/Assets/lr/ca/USW+Staff+Appointed+CA+2008-2012.pdf](http://www.hrandedequity.utoronto.ca/Assets/lr/ca/USW+Staff+Appointed+CA+2008-2012.pdf)



**WHITTEN & LUBLIN** LLP  
Employment Lawyers

---

## STRENGTH, ASSURANCE, SUCCESS

Whitten & Lublin LLP is a boutique employment law firm providing expert legal counsel to both employers and employees on all aspects of employment law in the non-unionized environment.

Visit us on the web: [www.canadaemploymentlawyer.com](http://www.canadaemploymentlawyer.com)  
Read our blog: [www.blog.toronto-employmentlawyer.com](http://www.blog.toronto-employmentlawyer.com)  
Follow our tweets: [www.twitter.com/danlublin](http://www.twitter.com/danlublin)  
Join our LinkedIn Group: [www.linkedin.com](http://www.linkedin.com)



**Workplace Legal Representation**



141 Adelaide St. West, Ste 420, Toronto, ON M5H 3L5 T: 416-640-2667 F: 416-644-5198

## **UNION ATTITUDES TOWARD GRIEVANCE PROCEDURES: EMPIRICAL SUPPORT FOR DONAIS FAIRNESS THEORY**

Bruce Curran addresses a nagging question for labour relations professionals: “How fair is the union grievance procedure?” Using the Donais Fairness Theory as a model, Mr. Curran considers how “Just, Efficient, Engaging and Resource Sufficient” your grievance procedures are.

---

### **Author: Bruce Curran**

*Bruce Curran [LL.B., M.I.R., LL.M.] is a PhD student at the UofT Centre for Industrial Relations and Human Resources, focusing on dispute resolution and conflict management. Prior to starting his PhD, Bruce earned a law degree from the University of Western Ontario, a Master of Industrial Relations (UofT) and a Master of Laws from Osgoode Hall Law School. Bruce has also worked as a lawyer at Lerner, a law firm, and Towers Perrin, a Human Resources Consulting Firm, focusing on employment law.*



**A number of academics and practitioners in the relatively young field of system design theory have** created theories regarding the components of a workplace conflict management system that are advisable to make that system work effectively. One such theory is the Donais Fairness Theory (“DFT”). The DFT posits that, in order to be effective, a conflict management system (or “Workplace Fairness System”, as it is called within the DFT) should have four components: justice, efficiency, engagement, and resources (Donais 2006). Very few empirical studies have been done on these theories. This paucity of empirical research is understandable, given the nascent nature of system design theory.

This paper will review the three key empirical studies in the literature that have examined the attitudes of union members and union officials regarding grievance procedures at unionized organizations. I will use these studies to assess the extent to which certain aspects of the DFT are supported by the evidence. It is important to note that the focus of this paper is on workplace grievance procedures, which is only one “process” in the full range of conflict management possibilities (the DFT calls these possibilities “options”) within a workplace fairness system. A grievance procedure is a very specific process for resolving allegations that the collective agreement has been violated. In other words, it is a specific process for resolving a particular kind of dispute. An analysis of the evidence regarding other components and/or processes within a workplace fairness system (e.g., conflicts not related to the collective agreement; conflicts in non-unionized settings) is beyond the scope of this paper.

### **DONAIS FAIRNESS THEORY**

According to Blaine Donais, the author of the DFT, a Workplace Fairness System should ensure that all stakeholders are treated with “equality of concern and respect in the management of workplace conflict” (Donais, 2006, p. 59). “Equality” does not mean “exactly the same”. Instead, it means that, on balance, individuals and groups will be accorded the same level of respect regardless of their position. “Concern” indicates that one person’s views on a particular conflict should be given as much consideration as another’s. “Respect” denotes that all individuals should be afforded the same level of dignity in the way conflict is resolved regardless of their position in the organization. (Donais, 2009).

According to the DFT, a workplace fairness system must have four components in order to function effectively and fairly: justice, efficiency, engagement, and resources, which will now be explained in turn. These components are called “quotients” within the DFT.

The Justice Quotient deals with the concept of procedural justice. It asks, “How ‘just’ is the fairness system to its participants”? The Efficiency Quotient relates to how smoothly the fairness system operates. The Engagement Quotient is meant to refer to the level of participant involvement in and buy-in to the workplace fairness system. The Resource Quotient assesses the company’s level of commitment to the fairness system through investments in resources needed for the development, implementation, and ongoing maintenance of the system. In the past, systems design theory has concentrated primarily upon the first two quotients (Justice and Efficiency) in the assessment of conflict management systems. The DFT represents a departure from past models

by adding Engagement and Resources as factors that need to be evaluated (Donais 2006).

Under the DFT, each of the Quotients in turn has a number of sub-components, called “focuses”. For example, the Justice Quotient has an Independence Focus (e.g., How independent is the system from manipulation and undue influence?), a Procedural Fairness Focus (e.g., How well does the system respect due process?), and a number of other focuses. A list of the four Quotients and their Focuses under the DFT model can be found in the Appendix.

The DFT Quotients and Focuses have been combined into a model outlining the conditions that ought to be present in order for a workplace fairness system to work effectively and fairly. Moreover, the DFT goes a step further, and turns the Quotients and their corresponding Focuses into an assessment tool for organizations to use, called the Testing Instrument for Fairness Systems (TIFFS). For the sake of simplicity, I will not evaluate the instrument itself, but will simply examine the Quotients and Focuses of the DFT model that have been the subject of empirical studies.

It is worthwhile to make a couple of observations about the DFT at this point. First, it assesses the functioning of the system on a global basis, rather than attempting to assess the system from the perspective of any one individual. In this way, it can be classified as an objective theory, rather than a subjective theory.

A second point, related to the first point, is that the DFT intentionally does not incorporate the concept of distributive justice (which includes the construct of outcome justice). This exclusion is understandable, particularly given the fact that one is examining a workplace fairness system from a global perspective. An individual’s view of the fairness of a particular conflict *outcome* is biased heavily on whether the outcome served one’s own interests (Sheppard, Lewicki, & Minton, 1992, pp. 24 and 30). Additionally, there are certain criteria of distributive justice (e.g., equity, equality, and need) that are frequently in conflict, and no clear prescription exists for deciding how and when to choose among these criteria (Sheppard *et al.*, 1992, p. 204).

## **STUDIES OF UNION ATTITUDES**

In this paper, I will examine three key studies that have measured union attitudes about the grievance procedure. In the first study, the attitudes of *unionized employees* were measured; in the second study, the satisfaction of *union stewards* was assessed; and in the third study, the satisfaction of *leaders of union locals* was quantified. There are very few other studies

that have examined union attitudes toward the grievance procedure, and no studies that I could locate from management's perspective.

These studies are significant because they examined attitude towards the grievance procedure. Other studies which have investigated whether a given grievance procedure is functioning effectively have generally only examined objective statistics, such as grievance filing rates, settlement step (e.g., stage at which settlement was reached), grievance resolution rates, arbitration rates, and grievance costs. Bemmels & Lau (2001) point out that one, when studying a grievance system, should also look at subjective measures like attitude towards or satisfaction with the grievance system, as some of the more objective measures do not have an immediately obvious optimal level. For example, a low average for the length of time it takes for grievance resolution might indicate a healthy grievance procedure that is processing grievances efficiently. However, a short processing time might be a sign of an unhealthy grievance procedure if meritorious grievances are being withdrawn or quickly settled in the employer's favour.

In this section, I will only provide a bit of background on each of the three studies, but will talk about the results of the studies later in the paper. The first study was conducted by Gordon and Bowlby in 1988. The timing of the study is significant, as it occurred in an era before interest-based options were in formal use. These options became popular with the advent of "Getting to Yes" and the interest-based negotiations it popularized (Donais, 2009).

Gordon & Bowlby surveyed members across 7 unions who had recently had grievances resolved, and received 324 useable responses. Union members were asked about their attitudes towards the grievance system. Specifically, they were asked whether the grievance procedure promoted distributive justice and procedural justice, and about their overall evaluation of the grievance procedure. Additional information was also collected, including the type of grievance recently resolved (e.g., disciplinary, staffing, etc.) and the broader outcomes of the resolution (e.g., has the resolution caused you to get along better with your immediate supervisor?). The authors were explicit about the fact that the research was exploratory (i.e., they did not have any pre-formulated hypotheses when they began the study, because of the absence of similar studies that had gone before).

The second study was authored by Bemmels (1995). He conducted a survey of shop stewards in Canada in 1991, and had 831 usable respondents. All major industry groups except construction were represented in the sample. The shop stewards were asked about their

satisfaction with different characteristics of the grievance procedure (examples of these characteristics include settlement rate and whether grievances were screened by a grievance committee).

Bemmels (1995) studied shop stewards because they play a key role in grievance procedures. They are the primary union official involved in grievances, at least at the first steps of grievance procedures. Stewards are generally responsible for a variety of activities and decisions in the first steps of the grievance procedure, such as: receiving complaints from employees; deciding if there is a legitimate grievance; monitoring the workplace for contract violations by management; attempting to resolve disputes with the first level(s) of management and the affected employees; writing up the grievance if appropriate; collecting the relevant information to resolve the grievance or build the union's case; and representing the employee(s) and union at higher level grievance meetings (Bemmels, 1995).

Bemmels also involved in a similar study of local union leaders (Bemmels & Lau, 2001). In that study (the third that will be examined in this paper), a survey was given to local union leaders to ask the impact of various aspects of the applicable grievance procedure on their satisfaction. These aspects included many of the same items as the survey involving the shop stewards (e.g., settlement rate and the number of grievances resolved in favour of the union) but some items were different (e.g., only the study of local leaders measured concern over duty of fair representation claims).

In this third study, surveys were sent to most local leaders in B.C., and yielded 243 useable respondents. Bemmels believed that it was advisable to do a study of union local leaders, as these individuals view the operation of the procedure over a large number of cases, rather than just their own grievances as do grievors. Local leaders are in a position to view systemic problems and concerns with the overall functioning of the grievance procedure.

## **JUSTICE**

Each of the three studies assessed the impact of factors related to outcome justice on attitudes toward the grievance procedure. In the study involving union member attitudes, Gordon and Bowlby (1988) found that the nature of the grievance settlement (e.g., whether the settlement was favourable to the grievor or the employer) influenced grievor attitudes toward the grievance procedure. A similar result was observed by Bemmels (1995) in his study of shop stewards. He found that steward satisfaction with the grievance procedure was directly influenced by the number of grievance resolutions that were viewed as "wins" for the union and its members. Interestingly, Bemmels & Lau (2001) did not find the

same relationship for union leaders. In other words, these leaders' satisfaction did not increase in relation to the proportion of grievances they perceived to be resolved in favour of their unions.

As previously discussed, the creator of the DFT made a conscious decision not to incorporate outcome justice as part of the model. The fact that the Gordon and Bowlby (1988) and the Bemmels (1995) studies found an impact of grievance outcomes on stakeholder attitudes towards the procedure raises a question as to whether the DFT should attempt to include an Outcome Focus under the Justice Quotient.

It is submitted that the results of these two studies do not provide a compelling argument for an Outcome Focus. The DFT assesses Workplace Fairness Systems from a global perspective. The survey respondents of these two studies (grievors and the Stewards who represent them in specific grievances) are very much invested in their own grievances, and may be unable to accurately assess the "fairness" of the outcome from an objective perspective. A number of studies have found that "plaintiffs" have an "egocentric bias" for decisions favouring themselves (Greenberg, 1983).

Moreover, the results of the Bemmels and Lau (2001) study provide additional support for the argument that an Outcome Justice Focus is unnecessary in the DFT. They found that local union leaders' satisfaction with the grievance procedure was unaffected by outcome. This would suggest that individuals like local union leaders who tend to deal with the bigger picture of the grievance procedure view it more objectively, and any perceptions of unfairness due to negative outcome are tempered so long as there is procedural fairness (Sheppard et al., 1992, p. 30).

In addition to findings on the impact of grievance outcome, Gordon & Bowlby (1988) also had findings on the impact of type of grievance resolved. All things being equal, grievors that had staffing grievances (e.g. those involving promotions, layoffs, job-bidding, transfers or reassignments) resolved had more positive attitudes towards the grievance procedure than did those who had discipline grievances resolved.

This finding supports the Applicability Focus under the Justice Quotient of the DFT. The Applicability Focus deals with how far the system goes to cover various types of employer actions. A corollary of the Applicability Focus would be that a grievance procedure needs to effectively deal with the various types of grievances it purports to cover. Where it deals with some better than others, this will impact grievors' attitudes.

In summary, there is nothing in the literature to call into question the soundness of the Justice Quotient of the DFT. In particular, although there are findings suggesting that grievance results do impact grievor and steward attitudes towards the grievance procedure, it does not appear advisable to add an Outcome Focus into the DFT. Generally, the various focuses appear to be justified based on theory, but have not received empirical testing. Empirical testing on all of the Justice Focuses is justified.

### **EFFICIENCY**

Although one would think, at first blush, that union officials would be less concerned with the “efficiency” component of the grievance procedure (because they would be relatively more concerned with “justice”), evidence suggests that the efficiency does influence officials’ satisfaction. Based on the results of the two studies involving union officials (Bemmels 1995; Bemmels & Lau 2001), both local union leaders and shop stewards appear to be more satisfied with the grievance procedure where grievances are, on average, resolved quickly (Unfortunately, Gordon & Bowlby (1988) did not survey union members regarding the efficiency of the grievance procedure, so a discussion about grievors’ views on the matter of efficiency is not possible here). This is evidence for the “Timeliness” subcomponent of the DFT model, which recommends the timely resolution of disputes and conflicts.

The study authors provide an explanation of why union representatives are more satisfied with a grievance procedure that processes grievances relatively quickly. They believe that union representatives derive a feeling of accomplishment from seeing outstanding grievances resolved. According to Bemmels & Lau (2001), the satisfaction derived by shop stewards and local union leaders is an argument in favour of the increased use of expedited grievance procedures.

There are a number of other reasons, not cited by the study authors, as to why union representatives are more satisfied with a timelier grievance procedure. They probably adhere to the adage, “Justice delayed is justice denied”. For example, they believe that a grievor is not going to feel particularly vindicated by being reinstated to his old job 5 years after he was wrongfully terminated. Additionally, union representatives know that delays are costly to the union, in that they usually result in more expensive litigation. Lastly, union representatives care deeply about their members (Donais, 2010). They want the grievors to receive closure on a grievance, and then move on psychologically from the grievance as soon as possible. A number of problems can arise if a grievor becomes too emotionally

invested in a grievance as a result of it dragging on too long, and this can impact her/his job performance and relationships with coworkers.

In addition to “Timeliness”, another focus of the Efficiency Quotient is “Flexibility”. The DFT recommends that, in order to promote the efficiency of a Workplace Fairness System, *managers* be given flexibility to craft good solutions to conflict (but within certain limits so this power is not abused) (Donais, 2006). Presumably, union representatives were not expressly mentioned because they generally have much more flexibility than managers in this regard. The findings of studies on local union leaders and shop stewards highlight the advisability for these groups to also be given flexibility by the union. These findings will now be described.

The Bemmels & Lau (2001) study indicates that local union leaders have a higher degree of satisfaction when they have a greater degree of discretion in grievance processing decisions. This has implications for the structure of grievance decision making within unions, as it suggests that more decentralization will lead to greater local leader’s satisfaction with the procedures. However, this may need to be balanced with union need for oversight, including the need to ensure that the union leader is not unduly compromising meritorious member claims for the sake of expediency. Nevertheless, the risk of discretion leading to compromised meritorious claims is largely mitigated by the protection afforded to grievors by the Duty of Fair Representation (DFR).

Speaking of DFR, Bemmels and Lau (2001) made another interesting finding related to flexibility. Any concerns that local leaders have about Duty of Fair Representation (DFR) complaints (which might act as a fetter on any discretion they have to resolve grievances) does not seem to impact their satisfaction with grievance procedure. This could indicate that these union officials see DFR complaints as a legitimate aspect of the grievance procedure, and therefore not something that impacts their satisfaction with the process in general.

Another reason the spectre of DFR complaints might taint local leaders impression of the grievance procedure is that it may act as useful leverage during grievance negotiations with management. In other words, the union can claim that they won’t compromise a member’s claim because of the fear of a DFR claim. This might relate to the Support Focus under the Justice Quotient. The Support Focus deals with how well the system supports the participants. The spectre of a DFR claim might actually help the union to better represent (i.e., support) the member during settlement negotiations.

Bemmels (1995) also made some discoveries regarding shop stewards and flexibility. Grievance procedures that allow some grievances to be

presented orally lead to higher satisfaction among stewards. One likely rationale for this is that oral presentation of grievances allows stewards the flexibility to resolve some minor problems and oversights by supervisors very quickly and with no paperwork, which should reduce the stewards' workloads. Another reason why shop stewards might like oral presentation of grievance is that it gives the grievor the right to be heard (which might relate to the Procedural Fairness Focus under the Justice Quotient).

In the same study, there was another finding that likely relates to decreased workload. There was a positive relationship between screening (usually by a grievance committee) and steward satisfaction. The explanation posited by the study author is that the screening will weed out a number of grievances and keep the shop steward's workload to a more manageable level (Bemmels 1995). However, there may be a potential downside to the screening process in that it decreases steward discretion. Apparently, the reduced workload benefit of the screening outweighs any decrease in satisfaction the shop steward might encounter due to her/his loss in discretion.

Another subcomponent of "efficiency" in the DFT model is a focus on interests. In order to make the conflict management system more effective, the parties are encouraged to focus on interests, rather than rights or power. One of the common goals of grievance procedures is to resolve grievances and potential grievances at the "lowest possible level". There is likely a relationship between the "interests" subcomponent of the DFT model and this common goal of grievance procedures. It seems logical that an attempt to resolve grievances at lower levels will enable the parties to focus on interests. The parties to an original conflict are usually in the best position to know what their interests are, and what the best solution will be to satisfy those interests. The more levels that the grievance gets raised to, the more likely the decision makers will be detached from the interests underlying the original problem or conflict. Additionally, there is probably a tendency among high-level decision-makers to be more rights and/or power oriented, and most grievance procedures are structured in such a way as to encourage this orientation.

The research of Bemmels & Lau (2001) supports the interest sub-component, and the advisability of resolving grievances at the lowest possible level. Local union leaders are more satisfied with the grievance procedure when more grievances are resolved at lower levels. A likely explanation is that the act of resolving grievances at lower levels will filter out some of the more minor disputes, and will free up local union leaders to concentrate on the most important and contentious grievances. Similar

questions (i.e., the impact on satisfaction of grievances resolved at lower levels) were not asked of shop stewards in Bemmels (1995) study.

Even though these types of questions were not explored in the shop steward study, they were explored in Gordon & Bowlby's (1988) research. Their results are a bit puzzling. They suggest that the level at which a grievance was settled was relatively unimportant to a grievor's attitude about the grievance procedure. However, the authors speculate that it is probably true that, all things being equal, grievors would like to see grievances resolved sooner at less formal stages. The authors go on to suggest that this result of their study may be related to the limitations that are imposed on union/management in resolving grievances at lower levels (i.e., a front-line supervisor may not have the power to agree to a solution that all parties agree would be the most appropriate in the circumstances). In the end, the authors called for more research into this particular finding.

Another possible explanation for this curious result is that the study was conducted in 1988, before interest-based options in Workplace Fairness Systems became prevalent. As previously mentioned, a focus on interest-based conflict resolution only began in the mid to late 1980s (Donais, 2009, p. 21). This may mean that interest-based grievance settlement discussions were not being fully or effectively utilized in the grievances that were the subject of the study. Therefore, grievor attitudes to lower level settlement discussions may have been less positive at the time of the study than they would be had the study been conducted today.

There is empirical evidence that interest-based options are now quite prevalent in Canada. Surprisingly, it suggests that interest-based options are more prevalent in unionized than non-unionized environments in Canada today. In a study of Workplace Fairness Systems in Canada, Donais found that unionized workplaces are 16% more likely to use interest-based options than non-union workplaces (see Donais, 2009, p. 115). This disproves the general view that unionized workplaces manage conflict less efficiently and in a more rights-based manner than non-unionized workforces in Canada.

The research of Bemmels & Lau (2001) has some interesting implications in regards to the Cost Focus of the Efficiency Quotient, which deals with how cost-effective the workplace fairness system is. The results of their study suggest that concern with time and costs of the grievance procedure do not impact satisfaction of local union leaders. The likely explanation for this is that local union leaders view the grievance procedure as so important that they don't let time and costs concerns override their general views of the procedure. Additionally, union costs of the grievance may be

borne by or shared with the national union organization the local is affiliated with.

In summary, the evidence supports a number of focuses of the Efficiency Quotient of the DFT model, particularly the timeliness and flexibility factors. Interestingly, the evidence suggests that local union leaders are not particularly concerned with the “costs” of grievance procedures. However, it is still appropriate to retain “costs” as a focus. Other stakeholders (e.g., upper management) are sure to be concerned with costs, and local union leaders would also be concerned with costs if they started spiralling out of control. In terms of the Interest Focus, the Gordon & Bowlby study (1988) would seem to raise questions about the necessity of resolving grievances at the lowest level from grievors’ stand-point, but the results may have been due to problems with another sub-component (flexibility) and the fact that the lower level resolution talks had not yet experienced the full benefits of interest-based thinking.

### **ENGAGEMENT**

Only the study dealing with local union leaders examined the level of engagement in the grievance procedure (Bemmels & Lau 2001). One of the focuses of the Engagement Quotient is “Participant Buy-In”, which indicates that, in order to be effective, Workplace Fairness Systems must achieve buy-in from its participants. The results of this study support the Participant Buy-In Focus. They indicated that, the more likely that local union leaders were to view the grievance procedure as dealing with important matters, the more likely they were to be satisfied with the system. This suggests that some of the ways to make the grievance procedure better in the eyes of local union leaders is to reduce the number of trivial and/or frivolous grievances they have to deal with. This may be able to be achieved through the use of screening by a grievance committee, or by giving shop stewards/supervisors more discretion to resolve grievances that are not important.

This factor (view of the importance of grievances) would also be an interesting thing to explore with shop stewards, given the fact they have more of a “front line” role and are even more likely to deal with trivial and/or unmeritorious grievances than local union leaders. It would likely not be necessary to explore this factor with grievors, though, as the vast majority of them are likely to view their matters as important.

Although participant’s views of the importance of grievances are important, the Participant Buy-In Focus goes much broader than this. It deals with the level of scepticism about the system, and whether the participants are inclined to use the system (Donais, 2006). Further empirical study should be done on these broader issues.

## RESOURCES

The Resource Quotient deals with whether the Workplace Fairness System has adequate resources in order to function effectively. One of the focuses under the Resource Quotient is the Human Focus. This examines how well the system is supported by professionals, support staff and external consultants. It is reasonable to assume that having enough union officials for grievance procedures is part of this focus.

The two studies on union representatives (e.g. Bemmels, 1995 and Bemmels & Lau, 2001) both suggest that these individuals are more satisfied with the grievance procedure when they have a reasonable workload. Specifically, the findings indicate that both shop stewards and local leaders like the grievance procedure better when they have fewer union members to represent, there is a lower filing rate, and the resolution rate is high. One way of interpreting the findings is to conclude that stewards and local leaders would be happiest if no grievances were filed at all. I would submit that the more reasonable way of viewing these findings is that these officials are more satisfied when they have a reasonable work-load in processing the grievances. The best solution is not to somehow make it more difficult for grievors to file grievances, but rather to ensure that local leaders and shop stewards have the resources to do their job properly. It might make sense to have more union staff available to assist with the processing of the grievances. For example, unions might increase the number of shop stewards. Grievance processing is a very time consuming endeavour, and stewards have a lengthy list of responsibilities related to grievance processing (Bemmels 1995).

Bemmels (1995) also makes another finding that could be related to the Human Focus. His findings suggest that Union Stewards like a grievance procedure better that has time limits for filing grievances. The likely explanation for this is that it introduces an additional means of controlling their workload. If a grievor wants to raise an unmeritorious issue that is out of time, the shop steward can avoid dealing with it by relying on the time limit as a justification for not proceeding. If a grievor wants to raise an important issue that is arguably out of time, the union representatives can still try to find a way around the time limit, and push the matter forward.

Unfortunately, Gordon & Bowlby (1988) did not study the impact of resources on grievor attitudes. This is definitely a subject for future study.

In summary, the Human Focus was very much supported by the empirical evidence from union officials. They appear to be much more satisfied with the grievance procedure when they have reasonable workloads. The DFT appears to be an improvement over previous models by including the

Resource Quotient, as previous models have ignored the necessity for a Workplace Fairness System to be adequately resourced in order to function effectively.

## **CONCLUSION**

This paper was relatively limited in scope. It only reviewed three studies that examined certain characteristics of grievance procedures, to determine how these characteristics impact on the attitudes of various union members toward those procedures. The results of these studies validated the quotients and a number of specific focuses of the DFT. The DFT was a useful lens through which to view their findings. However, further examination of the empirical evidence is necessary in the future, to validate the DFT model. When further empirical testing is done, it will also be necessary to include the views of management stakeholders as well (previous studies have focused exclusively on union attitudes).

In no instance were any of the DFT quotients or focuses successfully impugned by the empirical evidence. There were two cases where the evidence, at first instance, seemed to challenge the DFT. One was the failure to account for outcome justice. After more careful analysis, it would appear that the DFT, which is used for objective, high-level analysis of the procedural fairness of workplace fairness systems, is on solid ground for not accounting for outcome justice. This is because of the subjective nature of outcome justice.

The second case was the apparent unimportance to grievors of having their cases resolved at lower levels. This seems to call into the question the Interest Focus (and, quite frankly, long accepted thinking in labour relations). It would appear that the applicability of the results of that study to the present day could be challenged due to the lack of interest-based focus of the late 1980s. However, additional research in this area, to see whether this puzzling finding is replicated, is highly advisable.

This paper has a number of limitations. It used studies that were not specifically designed to test the DFT. I was often forced to extrapolate the implications of these studies for the DFT, as their findings were not directly applicable. Additionally, this paper analyzed studies of the subjective opinions of individuals (all three papers were based on survey results) to evaluate what is an objective model. Lastly, it focused only on the grievance procedure. This was by necessity, as the empirical studies to date have been restricted to the grievance procedure. However, the grievance procedure is only one option (albeit a very prevalent one) in a whole range of conflict management options that form an entire Workplace Fairness System.

## REFERENCES

- Bemmels, B. & Lau, D. C. (2001). Local Union Leaders' Satisfaction with Grievance Procedures. Journal of Labour Research, 22(3), 653-667.
- Bemmels, B. (1995). Shop Stewards' Satisfaction with Grievance Procedures. Industrial Relations, 34(4), 578-592.
- Donais, B. (2006). Workplaces That Work. Aurora, ON: Canada Law Book.
- Donais, B. (2009). White Paper Concerning Workplace Conflict Management in Canada. Toronto, ON: WFI Press.
- Donais, B. (2010). Engaging Unionized Employees: Employee Morale and Productivity. Aurora, ON: Canada Law Book.
- Gordon, M.E. & Bowlby, R. L. (1988). Propositions About Grievance Settlements: Finally, Consultation with Grievors. Personnel Psychology, 41(1), 107-137.
- Greenberg, J. (1983). Overcoming egocentric bias in perceived fairness through self-awareness. Social Psychology Quarterly, 46, 152-156.
- Sheppard, B.H., Lewicki, R.J., and Minton, J.W. (1992). Organizational Justice: The Search for Fairness in the Workplace. New York, NY: Lexington Books.

**APPENDIX**, next page.

## APPENDIX

### The Donais Fairness Theory Model, Components and Subcomponents

TESTING INSTRUMENT FOR FAIRNESS SYSTEMS (TIFFS) QUOTIENTS AND FOCUSES	
1. Justice	2. Efficiency
<p><i>Access Focus:</i> How accessible is this system to all the workplace participants?</p> <p><i>Applicability Focus:</i> How far does the system go to cover employer actions?</p> <p><i>Independence Focus:</i> How independent is the system from manipulation?</p> <p><i>Protection Focus:</i> How well does this system protect its participants?</p> <p><i>Support Focus:</i> How well does this system support its participants?</p> <p><i>Procedural Fairness Focus:</i> How well does this system accommodate due process?</p> <p><i>Enforcement Focus:</i> How well does the system enforce agreements and decisions?</p> <p><i>Legal Focus:</i> How well does the fairness system protect the legal rights of the participants?</p>	<p><i>Interest Focus:</i> Is there enough emphasis placed upon meeting the workplace participants' interests?</p> <p><i>Alternatives Focus:</i> How well does the fairness system provide for alternative measures?</p> <p><i>Self-Help Focus:</i> How well does the fairness system encourage individuals to resolve their own conflicts?</p> <p><i>Cost Focus:</i> How cost effective is the fairness system?</p> <p><i>Flexibility Focus:</i> How flexible is the fairness system in allowing managers to craft good solutions?</p> <p><i>Education Focus:</i> How well does the system educate participants?</p> <p><i>Timeliness Focus:</i> How quickly are matters resolved?</p>
3. Engagement	4. Resource
<p><i>Participant Buy-in Focus:</i> How well does this system achieve participant buy-in?</p> <p><i>Involvement Focus:</i> Has there been appropriate stakeholder consultation throughout development, implementation and monitoring of the process?</p>	<p><i>Human Focus:</i> How well is the system supported by professionals, support staff and external consultants?</p> <p><i>Facilities Focus:</i> Does the system have adequate facilities and services?</p> <p><i>Financial Focus:</i> Does the system have adequate financial resources?</p> <p><i>Continuous Improvement Focus:</i> How well does the system improve itself through self-evaluation and system change?</p>

# O'Reardon Consulting

O'Reardon Consulting providing corporate training, educational consulting and alternative dispute resolution services to public and private sector clients in a variety of industries.

With over two decades of corporate and educational workplace experience, O'Reardon Consulting offers a fresh perspective, a creative approach and actionable results.



[www.oreardonconsulting.com](http://www.oreardonconsulting.com)

## ARE LABOUR UNIONS AND MANAGERS READY FOR INTEREST-BASED NEGOTIATION?

Lindsay Foley's exhaustive paper on the role, history and effectiveness of interest based negotiation presents empirical evidence and several case studies (Kaiser Permanente and Chevron Salt Lake City negotiations) and is essential reading for practitioners.



---

**Author: Lindsay Foley**

*Lindsay Foley [B.A. (Hons.), MIRHR, WFA] is an Industrial Relations Officer at the Canada Industrial Relations Board who works with employers, unions and employees on industrial relations issues in the federal sector. She has a masters degree in Industrial Relations and Human Resource Management from the University of Toronto, and a BA (Hons) in Sociology and Labour Studies from Brock University.*

**Negotiations occur in everyday life and can take the form of mundane issues such, as life partners deciding who will do the laundry, to more complex negotiations, such as international politics.** This paper is concerned with negotiations within an industrial relations framework with respect to the negotiations that take place between unions and management on the terms and conditions of employment. More specifically it will examine the application of interest-based negotiation to the collective bargaining process. This paper poses the question “are labour unions and managers ready for interest-based negotiation?”

This paper is divided into four sections. The first section will discuss interest-based negotiation, hereafter referred to as IBN. The principles and processes of IBN will be discussed, as well its benefits and draw-backs. The second section will focus on three North American studies in order to shed light on the “real life” experiences that unions and managers have had with IBN. The third section will describe three American case studies where IBN was used and deemed to be a success: The 1992 Chevron Salt Lake City negotiations, the 1992 Wisconsin State Government

negotiations, the 2000 Kaiser Permanente negotiations (here after KP case). The final section of the paper will provide some concluding remarks and answer the question “are labour unions and managers ready for interest-based negotiation?”

### **WHAT IS INTEREST-BASED NEGOTIATION?**

In order to fully understand IBN, it is critical that the basic principles of negotiation are explored, because the implementation of IBN does not take away from the primary action which is negotiation. Roger Fisher (1983) defines negotiation as “two or more parties communicating, each for the purpose of influencing the other’s decision” (p.150). He also defines negotiation power as “an ability to influence the decision of the other assuming that they know the truth” (Fisher, 1983:p.150). Walton, Cutcher-Gershefeld and McKersie (1994) state that there are three processes that occur in negotiations: “bargaining, attitude shaping, and inter-organizational influencing” (p. 44). Walton et al. (1994), state that bargaining can take the form of either distributive or integrative and sometimes a combination of the two (p.45).

According to Walton et al. (1994) distributive bargaining is often found in traditional negotiations, and is associated with “strong assertions, selective responses, and limited disclosure” whereas integrative bargaining is closely associated with IBN, where, behaviour generally includes “questions, joint responses, and open disclosure” (p. 45). Regardless of whether negotiations are distributive or integrative “attitude shaping and inter-organizational influencing” occur (Walton et al, 1994: 45). The shaping of intergroup attitudes is the process where the union and employer “influence their respective attitudes about their colleagues” and the inter-organizational influencing is the process where the lead negotiators manage their committees (Walton et al., 1994:55).

The distinction between bargaining processes is relevant because the bargaining process will drive the perceptions of each party (Walton et al., 1994:48). For instance, in distributive bargaining the parties will likely exert “negative attitudes” through negative verbal and non-verbal cues (Walton et al., 1994:48). For example, the lead negotiators will use “forcing” in order to maintain the “split between union and employer” which will have the effect of creating “solidarity and cohesion amongst committee members” (Walton et al., 1994:48; Friedman, 1994:269). However, with integrative bargaining the parties will attempt to “foster inter-group” attitudes and inter-organizational attitudes by establishing common ground and working together to build trust both internally and externally (Walton et al. 1994:48).

The distinction between the act of negotiation and negotiation power is necessary because the negotiation process is perception driven, and according to Fisher (1993) there are six categories of negotiation power that one must achieve in order to have successful negotiations. He suggests that the six negotiating powers are to be cultivated in order to have a “cumulative effect” (Fisher, 1994:152). The six categories include: “skill and knowledge, good relationship, good alternative to negotiating, an elegant solution, legitimacy and commitment” (Fisher, 1994:152-153). Fisher (1994:152) and Walton et al. (1994:264) agree that often there is a propensity by parties to exert “force” in order to demonstrate “negotiation power”. Moreover, Fisher (1983) suggests that this is not ‘real power’ because there are risks attached to “threats” (p.152). Likewise, Ian Newall (2006) asserts that negotiations require four key skills: “seeking information, testing and understanding, summarizing and giving feelings” (p.2).

In general when a person thinks about labour negotiations, he or she is likely to have an image of traditional bargaining which is significantly different from IBN (Shapiro, 2000). As described above, traditional bargaining is distributive in nature and takes the form of positional bargaining (Katz & Pattarini, 2008; Walton et al., 1994). Traditional bargaining usually involves two sides; labour and management where each side will have a lead negotiator, who will do the majority of the talking (Katz & Pattarini, 2008; Walton et al., 1994). The objective of each lead negotiator is to “convince the other party of their superior power” (Walton et al., 1994:44).

Some of the drawbacks of traditional bargaining include “reinforcing distrust”, and most scholars would suggest that the process is not “effective for addressing complex issues” (Fonstad, McKersie & Eaton, 2004:9). Moreover, traditional bargaining cultivates a “winner and loser” sentiment and is often characterized by “antagonistic and secretive” behaviours (Walton et al, 1994: 264; Friedman, 1994:266). The use of traditional bargaining has negative implications for labour-management relationships, and proponents of IBN argue that shifting away from traditional bargaining will improve the labour-management relationship in the long run (Fonstad et al., 2004).

IBN is one of many terms used to describe a negotiation process where the focus is on “creating a partnership aimed at mutual solutions to mutual challenges” (Katz & Pattarini, 2008:90). Some of the other terms that define this process and are used interchangeably include “win-win, mutual gains bargaining, interest-based bargaining, integrative bargaining, and consensus bargaining” (Cutcher-Gershefeld, Kochan & Wells, 2001:7; Friedman, 1994; Susskind & Landry, 1991; Beil & Lischer, 1998; Paquet,

Gaetan & Bergeron, 2000). Most scholars would agree that the IBN process consists of pre-negotiation work, four core steps and post negotiation work.

In order for the IBN process to be effective there is a significant amount of pre-negotiation work that must be completed. This includes “establishing a buy in from the respective organizations”, the “selection of participants”, “training”, and “committee formation”. These preconditions to IBN also play an important role in establishing and fostering trust amongst the parties (Katz & Pattarini, 2008). Because trust is an essential component of the process, Freidman (1993) suggests that the pre-negotiation stage should unfold slowly. A slow speed to pre-negotiations with an emphasis on practicing IBN will allow parties to develop relationships, and build trust (Susskind & Landry, 1991).

Katz and Pattarini (2008) state that a precondition to the use of IBN is that “participation by the parties is voluntary”, and that the parties are “open to the concepts of IBN”, and more specifically, the parties must “be willing to enter into a partnership” (p. 90). However, achieving a buy in can be difficult. For instance, in the North American research described below, there has been little interest from unions and management to use IBN; where there has been interest, it is generally preferred by management (Cutcher-Gershefeld et al., 2007; Cutcher-Gershefeld, Kochan, Ferguson, & Barret, 2007; Paquet et al. 2000). Friedman’s (1993) study of three anonymous American organizations supports the assertion that participants must be willing to participate and his research supports the finding that management prefers IBN. He found that prior to the implementation of IBN; managers were in favour of the process, whereas the unions were not (Friedman, 1993:438). He attributes the resistance to a lack of trust (Friedman, 1993:438).

Friedman (1993) states that the IBN process may not offer a completely level playing field since there is an inherent inequality that exists amongst the participants; an inequality in “education, status and wealth”(p.19). He states that “those who are better educated, hold higher positions in an organization, and are wealthier find it easier to trust” because they have “better control over their lives”( Friedman, 1993:19; Ferris, Senner & Butterfield, 1973). While this holds true in Friedman’s 1993 study, it does not hold true in the KP case nor does it hold true in the Salt Lake City Oil Refinery case, where in the former the employer resisted the IBN concept, and in the latter the union initiated IBN.

Participant selection and training are mutually supportive in the pre-negotiation phase, it is suggested that individuals who are supportive of the IBN process would be an effective choice (Katz & Pattarini, 2008).

Susskind and Landry (1991) suggest that it may be fruitful for the organizations to hold an open training session for all employees and managers; they assert that this will assist potential participants in making informed decisions to participate. Susskind and Landry (1991) also see the primary training phase as an opportunity to improve acceptance of IBN, especially when it comes time for ratification.

In addition to an initial open training session, once the participants are selected, they should undergo further joint training. Susskind and Landry (1991) suggest that a joint training session for the members of the bargaining committee should be "at minimum two days" and should have "full participation of the committees". Friedman (1993) suggests that IBN training should have sufficient time allotted for simulations in order for the participants to become comfortable with the process. The "simulations should be diverse and should include role reversal", because it is theorized this will prepare the participants for the entire process (Susskind & Landry, 1991:p.7-9; Friedman, 1993).

Susskind and Landry (1991) suggest that post-negotiation work is important with IBN. For example, if the parties are new to the process, the implementation of the contract may be challenging. An external mediator/facilitator would be a good fit for this role, especially one who has had experience with the parties since the mediator has likely developed a relationship with those involved (Susskind & Landry, 1991). The American and Canadian Federal Mediation and Conciliation Services (FMCS) offices offer services to this effect, for example the Canadian FMCS offers "committee effectiveness training and joint labour-management training".

According to Katz and Pattarini (2008) the IBN process includes "identifying and prioritizing interests, developing options that might meet those interests, agreeing on fair standards for evaluation options, and exploring alternatives and proposals to a negotiated settlement" (p. 88). Susskind and Landry (1991) emphasize the importance of the use of facilitators/mediators; they argue that the role mediator/ facilitators play is integral. According to Susskind and Landry (1991), the mediator/facilitator will take on many roles in the IBN process: trainer, coach and administrator. Susskind and Landry (1991) emphasize that the role of the mediator/facilitator should be to "guide the negotiations" and not to "mediate".

The IBN process consists of four core stages (Katz & Pattarini, 2008:92). The first stage is referred to as "defining the issue", which is according to Katz and Pattarini where the "how to questions are asked" (p.92). The second stage is where the parties interests are identified, and this is achieved by "reflective listening and chunking questions" (Katz & Pattarini,

2008:92-93). According to Katz and Pattarini (2008) ,when the parties identify interests, this will create an environment of “trust” and will help “build a relationship amongst the parties”, because both parties will feel that their “interests are being heard and acknowledged” (p.93). The next stage is referred to as “generating options” where participants brainstorm ideas for addressing the interests (Katz & Pattarini, 2008:92-93). Friedman (1993) explains that the parties may revert back to traditional bargaining at this stage; he indicates that in general unions have fewer resources than employers, and this will leave the union in the position of “accepting the employer’s information as true” (p.272).

In the final stage the parties will evaluate the options/solutions to their interests that they jointly created (Katz & Pattarini, 2008). Katz and Pattarini (2008) point out that there is a danger that the parties may revert back to traditional bargaining. They state that it is best that the parties negotiate the selection criteria ahead of time and suggest that a good evaluation tool could resemble these criteria: “affordable, acceptable, and addresses needs” (Katz & Pattarini, 2008: 93).

### **INTEREST-BASED NEGOTIATIONS: THE NORTH AMERICAN EXPERIENCE**

In the United States and Canada, IBN is gaining momentum as a choice of negotiation strategy in labour relations. In fact, the US and Canadian federal governments promote IBN, through the services of the US and Canadian Federal Mediation and Conciliation Services (FMCS) free of charge. FMCS, due to the nature of the organization, has significant experience with labour-management partnerships. Coincidentally, the principles of IBN fit well with the mandate found in the preamble of Part I of the Canada Labour Code:

“the promotion of the common well-being through the encouragement of free collective bargaining and the constructive settlement of disputes”.....

“the Parliament of Canada desires to continue and extend support to labour and management in their cooperative efforts to develop good relations and constructive collective bargaining practices, and deems the development of good industrial relations to be in the best interests of Canada in ensuring just share of the fruits of progress to all”;

(1972, c.18. preamble).

The US and Canadian FMCS operations are separate and distinct; however, both organizations are mandated by their respective governments to assist with conflict resolution in labour-management

negotiations. As well, each organization provides training in various programs geared towards cooperative labour relations. Research was conducted on the outcomes of the use of IBN in the United States and in Canada. The data collected by the researchers in all three studies was provided by the United States and Canadian FMCS. The research provides a glimpse into the IBN experiences in Canada and the United States.

In 2000, a study on the use of IBN in Canada compared firms that used IBN with those who used traditional bargaining (Paquet, Gaetand & Bergeron, 2000). The study compared data from 38 firms, half of which used IBN and the other half used traditional bargaining (Paquet et al., 2000). The study compared the collective bargaining agreements from IBN and traditional bargaining using eight categories "monetary, fringe benefits, grievance settlement, union recognition, seniority, working hours, work organization and labour relations" (Paquet et al. 2008). They "selected 19 companies who used IBN from a list provided by Labour Quebec and the HRSDC, and compared the progress of the collective agreements to the organizations former collective agreements" (Paquet et al., 2000: 284). According to Paquet et al. (2000) those firms and unions that utilized IBN had received training from a government agency.

Paquet et al, (2000) found that when parties used IBN there were more union concessions when compared to parties who used the traditional method (p.289). Similarly, where traditional bargaining was utilized, the unions accomplished more gains than those who participated in interest-based negotiations (Paquet et al., 2000: 289). However, when mutual gains were measured, those parties that used IBN achieved more mutual gains than those who had used traditional negotiation methods (Paquet et al., 2000: 289).

Paquet et al. (2000: 290) found that monetary settlements amongst those parties using IBN resulted in more concessions on behalf of the union when compared to traditional bargaining. They found that there were slightly more mutual gain changes in the grievance system by parties who used interest-based bargaining when compared to the parties who used traditional collective bargaining (Paquet et al. 2000: 290). Within the category of work scheduling, traditionally negotiated collective agreements achieved more union gains when compared to the interest-based collective agreement (Paquet et al. 2000: 290).

The research appears to suggest that traditional bargaining processes place unions in a better position when compared to IBN; however, Paquet et al. (2000:290) conclude that if the union gains and mutual gains are calculated together, the result is that IBN provided more gains than

traditional bargaining. Of equal significance, those parties who utilized IBN achieved more than twice the amount of innovative changes than those parties who negotiated using the traditional method (Paquet et al. 2000: 291).

The research in the Canadian context measured the concessions and gains within core categories of collective agreements, and it suggests that overall IBN had a positive impact on relationship building between labour and management; this is demonstrated by the creation of various joint committees and changes to the grievance procedures which emphasized consultation. When bargaining addressed monetary issues, unions fared well in traditional bargaining and faced concessions in IBN. This raises the question of whether IBN is an effective tool for negotiation, or whether it is only effective in non-monetary categories.

Two studies on the use of IBN in an American context will be discussed in the following paragraphs. The first study was conducted in 2001 by Cutcher-Gershefeld, Kochan, and Wells and it concerns the impressions and experiences of interest based bargaining amongst union and management participants. The second study, conducted in 2007 by Cutcher-Gershefeld, Kochan, Ferguson, and Barret is concerned with the popularity of the interest-based bargaining approach.

In 2001, Cutcher-Gershefeld et al. examined the data from a US National Labor Survey on negotiations between 1993 and 1996. The survey respondents were all clients of the US Federal Mediation and Conciliation Services, who were largely from manufacturing and health industries (Cutcher-Gershefeld et al. (2001:7). They found that while most of the respondents were aware of IBN principles, fewer than 50% of the respondents had employed the IBN process (Cutcher-Gershefeld et al. (2001:7).

In general, of those parties that used IBN, management appeared to have a higher preference when compared to their union counterparts (Cutcher-Gershefeld et al. (2001:8). Also, the use of interest-based bargaining within first collective agreements was reported as positive by both unions and management when compared to renewal agreements (Cutcher-Gershefeld et al. (2001:10). Moreover, they found that experienced negotiators were less inclined to use IBN when compared to less experienced negotiators (Cutcher-Gershefeld et al. (2001:15-16).

The outcomes of the participants' experiences IBN were mixed in the sample. Consistently economic issues were not effectively negotiated under the interest-based procedure, however, there were consistently significant innovations in the collective agreements (Cutcher-Gershefeld et al. (2001:17-18). Moreover, with regards to work place issues, there was

more cooperation, and management respondents reportedly dominated the conversation, however, in the economic discussions the reverse occurred and the unions dominated (Cutcher-Gershefeld et al. (2001:19). Cutcher-Gershefeld et al. (2007) theorize that the use of IBN will increase in industries where there have been positive experiences.

A second American study conducted in 2007 by Cutcher- Geershenfeld et al. (2007) used data from three national collective bargaining surveys provided by the American FMCS. The data was drawn from three year intervals and provided insight to current negotiation streams (Cutcher-Gershenfeld, 2007, p.252). In a comparison between 1999 and 2003, Cutcher-Gershenfeld et al. (2007) found that labour-management relationships become “more adversarial” and this is evident by a “reduction in work place innovation and a decline in a preference for interest-based bargaining” (p.253). Interestingly, union respondents appeared to emphasize that there were poor relationships, while the managers were more inclined to emphasize a positive relationship (Cutcher- Geershenfeld et al. 2007:254).

Cutcher-Gershenfeld et al. (2007) characterize the current state of bargaining as “concession based”, and that they “lack innovation” and found that the amount of time to reach a collective agreement is increasing (p.255-256). Cutcher-Gershenfeld et al. (2007) found that the bargaining power of both parties has been reduced and neither party is pursuing the right to strike or lockout (p.255-256). Cutcher-Gershenfeld et al. (2007) attribute the 2006 negotiation difficulties with a “recession”, where clearly on a distributive level the union and employer conflict (p.256)

Cutcher-Gershenfeld et al. (2007) found that, in general, both parties are relying less on IBN techniques; however, this was stronger for the union respondents. Moreover, they found that there has been an movement away from “joint training” (Cutcher-Gershenfeld et al .,2007:259).

They associate this with the perception that IBN may be viewed as an “employer initiative” and the concern over the recession (Cutcher-Gershenfeld et al .2007:258-259). Friedman (1993) would associate the shift away from IBN to a lack of trust amongst the parties. The research indicates that there has been an increase in the use of mixed processes of IBN and traditional bargaining (Cutcher-Gershenfeld et al ., 2007:259).

Clearly, there are benefits associated with IBN, for example the creation of new collective agreement language (Cutcher-Gershenfeld et al ., 2007:259).However, the use of IBN has not necessarily been associated with the effective conclusion of a collective agreement (Cutcher-Gershenfeld et al ., 2007:259). However, Cutcher-Gershenfeld et al . (2007) reveal that in general those parties that used interest-based

bargaining achieved benefit increases in the midst of a recession, which counters the union argument that interest-based bargaining leads to monetary concessions (p.260).

The North American research on federal IBN seems to suggest overall there is resistance from both management and unions to shifting from traditional bargaining to IBNs (Cutcher-Gershenfeld et al., 2007; Cutcher-Gershenfeld et al., 2001; Paquet et al., 2000). The research suggests consistently that IBNs tend to break down when monetary issues are discussed, and this is characterized by union concessions, which is counter to the principle of mutual gain (Cutcher-Gershenfeld et al., 2007; Cutcher-Gershenfeld et al., 2001; Paquet et al., 2000). However, on the positive side, the American and Canadian experiences suggest that contract language is very effectively discussed in interest-based bargaining (Cutcher-Gershenfeld et al., 2007; Cutcher-Gershenfeld et al., 2001; Paquet et al., 2000).

The three research studies suggest that IBN is still not the primary choice amongst labour negotiators. Shapiro (2000) states that here are six “interrelated reasons” for the resistance to adopting joint bargaining efforts and those include “social beliefs, personal and institutional habit enforcement, shows of strength, assumptions of moral righteousness, avoidance of emotional talk and the perceived perils of self disclosure” (p.411). Shapiro (2000) describes that commitment to traditional bargaining manifests through the lead negotiator’s “rationalizing the use of traditional bargaining with their experience and age, denying the contract failures, or by framing the negotiations within moral context” (p. 42).

Moreover, in order to promote a pure interest-based process there must be a change in beliefs and those can only occur through education and societal change (Shapiro, 2000). However, Shapiro (2000) also suggests that an integrated bargaining model may assist with the transition from traditional bargaining to interest based bargaining. The following paragraphs identify three cases studies which are characterized as IBN, however, the term “mixed bargaining” may be more fitting.

### **CASE STUDIES – IBN**

In this next section, three American IBN cases will be discussed and those include the 1992 Wisconsin State Government, the 1992 Chevron Salt Lake Oil Refinery negotiations, and the 2000 Kaiser Permanente negotiations (KP). These case studies will provide the reader with a practical application of the principles of IBN.

In 1992 at the suggestion of a union representative, the employer and union (Oil Chemical and Atomic Workers Union (OCAWU) at the Chevron

Salt Lake Oil Refinery (CSLOR) agreed to use IBN in response to the hostile bargaining relationship and economic uncertainty (Green & Valdez, 1993:60). The process included “team creation, issue generating, solution weighing and reaching a tentative agreement” (Green & Valdez, 1993:60). Green and Valdez (1993) suggest that the success was attributed to effective committee formulation.

The committees had equal representation from both parties and the lead negotiators acted as facilitators (Green and Valdez, 1993: 60). According to Green and Valdez (1993), the committee was successful because they were committed to open communication and adherence to the deadline. Green and Valdez (1993:60) characterized the settlement as “similar to the industry standard”, however, the “tone of the negotiations was different” because the principles of “communication, trust and respect” were evident. According to Green and Valdez (1993: 60), the process took seven months and the collective agreement was received positively by the union membership and was ratified by a high percentage.

In this case, the parties were highly independent; in fact, the union and employer lead negotiators facilitated the process without external assistance (Green and Valdez, 1993). This independence is rare and does not fit with the emphasis that most scholars place on the role of mediation. In the next two examples both parties relied heavily on facilitation in their respective negotiation sessions.

In 1992, the Wisconsin State Employees Union (WSEU) and the Wisconsin Department of Employee Relations (WDER) initiated “consensus building” bargaining in an effort to improve their poor labour-management relationship (Beil & Litcher, 1998). The WSEU was representing 27 000 public service workers including blue and white collar workers, and the WDER was representing the Employer (The State of Wisconsin) (Beil & Litcher, 1998).

In preparation for the 1992 collective bargaining year, both parties participated in a two day joint training session on “consensus bargaining” that was co-facilitated by mediators from the US Department of Labor’s Bureau of Labour-Management Relations and the US Federal Mediation and Conciliation Services (Beil & Litcher, 1998: 44). According to Beil and Litcher (1998), sixty participants representing management and the union participated in the workshop (p.44). The focus of the workshop was to train participants how to effectively use IBN, as well as providing training on “group problem solving, decision making, and communication” (Beil & Litcher, 1998: 44). Beil and Litcher (1998) state that “commitment, training, model behaviour, and long term planning” on the part of both parties was integral to the success of the first IBN collective agreement (p.47).

According to Beil and Litcher (1998), the WSEU and the WDER reported that the 1992 bargaining went well and that, since then, two subsequent collective agreements have been concluded using IBN (p42). The parties reported that the issues related to “leave, health and safety, grievance and arbitration, lay off, hours of work and transfers” were amenable to IBN, however, monetary issues were negotiated using traditional bargaining (Beil & Litcher, 1998: 44). The parties reported that, in their subsequent bargaining years, they have shifted away from the use of external facilitation and are using more self-facilitation (Beil & Litcher, 1998).

In the above case, the reported benefits of using IBN included that the relationship between the union and management had improved dramatically; and the parties reported that they were able to settle many issues prior to the issues reaching a formal grievance stage (Beil & Litcher, 1998: 45). The parties have also reported that the length of time for reaching a collective agreement has been reduced significantly as a result of the IBN process (Beil & Litcher, 1998: 45). Moreover, the union reports that its membership has become more open to the IBN process, and the union attributes that to the successful ratification of two additional collective agreements (Beil & Litcher, 1998: 45).

In this next case study, the process is very similar to the Wisconsin experience, it includes the same complexities, such as a large group of employees working in various segments under direction from various management, although the difference in the next example is that there are twenty six unions participating whereas, in the Wisconsin experience, there was only one union.

“In 1997, the Kaiser Foundation of Health Plan and Hospitals and the Permanente (KP) and a coalition of twenty-six unions representing 57 000 (the coalition of Kaiser Permanente Unions: CKPU) entered into a labour-management partnership” which was expanded in 1999 to include collective bargaining (McKersie, Eaton, & Kochan, 2004:13). According to McKersie et al. (2004:) this initiative was driven by a union representative and meant to improve the labour-management relationship as well as improve the collective bargaining relationship. The coalition was promoted by the key people in each respective organization: on the union side it was “John Sweeny, the president of the Service Employees International Union” and “Peter DiCaicco, the president of the International Union Development, and on the employer side “David Lawrence, the chairman and CEO of KP and Leslie Margoln lead negotiator” (McKersie et al. 2004:15-16).

According to McKersie et al. (2004) the employer and the union had reservations about over using the IBN process for the coming bargaining

year (p. 18). The employer was concerned that a National Agreement would result in a coordinated strike deadline, and the union was concerned that the employer would “not take the process seriously” (McKersie et al. 2004:19). Intervention by a private mediator assisted the parties in overcoming their concerns in two manners (McKersie et al. 2004:19). First, a “gate system” was created, and this meant that progress in negotiations could only be made in a systematic way; one item would have to be completed before moving to the next item (McKersie et al. 2004:19). The second initiative was the implementation of an “exit option”, which meant that if either party felt that the process was not working they could leave the process and revert to traditional bargaining (McKersie et al. 2004:19-20).

The IBN process unfolded in two phases; the first phase was dedicated to building the partnership and the second phase was dedicated to collective bargaining (McKersie et al. 2004). In the first phase, a mission statement was created by the parties with the assistance of the RAI mediator and it read: “to provide [KP] employees with maximum possible employment and income security within [KP] and/ or health care field” (McKersie et al. 2004:17). McKersie et al. (2004) attribute the successful buy in by both parties with the mission statement, suggesting that it established a common ground, and worked as a vehicle for educating and promoting their constituents on the IBN process (p. 18).

The second phase focused on the collective bargaining process which included: participant “recruitment for each respective side, three days of training, and committee development” (McKersie et al. 2004:19). The training consisted of “training on joint problem solving, negotiation, and the principles of IBN” (McKersie et al. 2004:23-24). The parties coordinate the process with the assistance of private and government mediators (Eaton, McKersie, & Fonstad, 2004). According to McKersie et al. (2004) there were “409 union and management participants from every geographical location, as well as 20 facilitators from RAI and FMCS” (p. 20).

A Common Interest Committee (CIC) and seven Bargaining Task Force Groups (BTG) were created (McKersie et al. 2004: 24-25). Each was comprised of an equal representation by union and management participants, and an FMCS and RAI (private) mediator was assigned to each committee (McKersie et al. 2004: 24-25). Each BTG’s role was to identify issues and generate options on an assigned collective agreement issue (McKersie et al. 2004:25-25). The CIC would later evaluate the options according to pre-negotiated criteria and decide on the implementation; as well, the CIC was responsible for the coordination of the process (McKersie et al. 2004:20).

According to McKersie et al. (2004) the IBN process took a significant amount of time, and the IBN process broke down when the discussion turned to monetary issues, and in response to the breakdown the CIC reduced its compliment and initiated traditional bargaining (p.22) There were two actions that led to deflating the financial conflict, first the employer side lead negotiator spoke to the union committee and explained that there were no more funds to be had, and secondly , the compensation was assigned a lump sum to be divided up by the parties (McKersie, 2004:22). Despite the breakdown in the IBN process during the compensation talks, the KP and CKPU has been deemed a success and their negotiation process has been touted as the largest most successful implementation of IBN (Eaton et al., 2004; Kolb, 2004;McKersie et. al., 2004).

Eaton et al. (2004) state that there were “five key factors” that assisted the parties in successfully achieving an IBN agreement, and those include “effective leadership, training, brainstorming, the creation of ground rules, and facilitation” (p.51). Eaton et al. (2004) also credit those five factors with overcoming four major challenges which included; “establishing a buy in, achieving effective coordination, working against a deadline, and managing internal relations” (p. 51).

According to McKersie et al. (2004), each party recruited a compliment of experienced and open minded participants; the union relied on its “elected officials”, and the employer relied of mix team of “human resources and labour relations professionals, managers, and medical administrators” (p. 24). The employer and union sides each selected a lead negotiator and each side chose very experienced and highly respected individuals (Eaton et al. 2004). The selected leaders played a major role in achieving the buy-in and the successful conclusion of the IBN process (Eaton et al. 2004:49). The leaders were able to convince external constituents that the IBN process would work, and contributed to the smooth progress by managing their respective committees (Eaton et al. 2004: 52). The relationship that developed between the two lead negotiators was infused with trust and the “negotiators modeled good IBN behaviour” (Eaton et al. 2004: 52).

The committees/working groups reported a mix of positive and negative experiences. Many participants felt that the process equalized their respective bargaining power, and most felt they could communicate openly (Eaton et al., 2004:54; McKersie et al., 2004). However, some participants reported that they would prefer a more diverse representation on the management side (Eaton et al., 2004). Some participants struggled with the differences in communication styles, as well some participants felt that the process was too long (McKersie et al., 2004; Eaton et al., 2004:30). In fact, one mediator reported that “the internal negotiations within the union

and management caucus were incredibly dynamic and time consuming” (p.50).

The lead negotiators and the facilitators played strong roles in attempting to resolve conflicts within the various committees (Eaton et al., 2004; McKersie et al., 2004). They were critical to the success of the KP and CKPU IBN bargaining (McKersie et al., 2004). Their roles consisted of “setting the agenda, clarifying issues, suggesting compromises, as well as mediation” (McKersie et al., 2004:33). Clearly, in the KP and CKPU example, there were two main stabilizing points: the two negotiators and the mediators, and had it not been organized in this manner, the result may have been different.

In all three case studies discussed, there are five common themes and those include; the reason for adopting the IBN process, the status of the labour-management relationship post negotiations, and the transition to traditional bargaining over monetary issues, the implementation of training, and the roles that participants held. In all three cases, the reason for adopting the IBN process was twofold; an effort to improve otherwise awful labour-management relationships, and in response to an uncertain economy.

Interestingly, in the SLCOR and OCAWU case and the KP and CKPU case, it was a union member that proposed the use of IBN (the initiator in the WDER case is unknown). Also in both of the aforementioned cases the lead negotiators were very experienced. These two points are significant because it contradicts the conclusion found in North American research noted above that management prefers the use of IBN, and that the experienced negotiators do not have a preference for IBN (Cutcher-Gershefeld et al., 2001; Cutcher-Gershefeld et al., 2007).

In all three cases, the participants reported that their respective labour-management relationships had improved, and that they planned to use the IBN process again. This point supports the finding that IBN improves the labour-management relationship (Cutcher-Gershefeld et al., 2007). In all three cases, the IBN process reverted to traditional bargaining, and this point is also supported by the research which suggests that monetary bargaining issues cannot be effectively negotiated under IBN (Paquet et al., 2000; Cutcher-Gershefeld et al. 2001; Cutcher-Gershefeld et al. 2007).

In all three cases training was provided to all of the participants and the training in all of the organizations is largely associated with the smooth process of the negotiations. The literature supports the importance of training, and some of the main benefits are “trust, understanding of the process, and a tool for gaining external support” (Katz & Pattarini 2008; Friedman, 1993; Susskind & Landry, 1991). Facilitation was critical in all

three cases, where the organizations differed was in their opinion on facilitation. In the SLCOR cases, the lead negotiators took on the role of the facilitator, and in both the WDER case and the KP case external mediators were utilized. All three organizations see the value of facilitators; however, the WDER and SLOR feel that this role is best served in house.

### **IN CONCLUSION**

This paper consisted of three sections meant to assist with answering the question “are labour unions and managers ready for interest-based negotiation? In the first section the principles and processes, as well as the benefits and draw backs were discussed. The second section examined three North American research studies which provided the impressions of unions and employers on the use of IBN. And the third section examined three cases studies in order to demonstrate the application of IBN theory. It is clear from the theory, the research and the three cases studies that industrial relations in North America are not ready for IBN. Friedman’s (1994) analysis that the “social, legal and political” norms dominate and promote traditional bargaining is supported by the research and case studies. However, there appears to be promise that the system is shifting and that the current regime will be more accepting of a mixed process of IBN and traditional bargaining.

### **WORK CITED**

- Beil, M., & Litscher, J. E. (1998). Consensus Bargaining in Wisconsin State Government: A New approach to labor negotiation. *Public Personnel Management*; 27(1). Pp. 39-50
- Cutcher-Gershenfeld. J., Kochan, T. , Ferguson, J., Barrett, B. (2007). “Collective Bargaining in the Twenty-First Century: A Negotiations institution at risk. *Negotiation Journal*. 23(3). Pp.249-265.
- Cutcher-Gershenfeld. J.,Kochan, T., Well, J, C. (2001). In Whose Interest? A First Look at National Survey Data on Interest-Based Bargaining in Labor Relations. *Industrial Relations* 40(1). Pp. 1-21
- Eaton, S, C., McKersie, R, B., & Fonstad, N, O. (2004). Taking Stock of the Kaiser Permanente Partnership Story. *Negotiation Journal*. 20(1). Pp.47-64.
- Federal Mediation and Conciliation Services Canada. (2008). [Online].  
[http://www.hrsdc.gc.ca/eng/labour/labour\\_relations/mediation/index.shtml](http://www.hrsdc.gc.ca/eng/labour/labour_relations/mediation/index.shtml)
- Federal Mediation and Conciliation Services USA. (2009). [online].  
<http://www.fmcs.gov/internet/index.asp>
- Fisher, R. (1983). *Negotiating Power: Getting and using influence*. *American Behavioural Scientist*. 27(2). Pp. 149-166.

Fonstad, N. O. , McKersie, R. B. & Eaton, S. C. (2004). Interest-Based Negotiations in a Transformed Labor-Management Setting. *Negotiation Journal*. 20(1) pgs 5-11

Friedman, R. A. (1994). Missing Ingredients in Mutual Gains Bargaining Theory. *Negotiation Journal*. 10(3). P.265-280

Friedman, R. A. (1993). Bringing Mutual Gains Bargaining to Labor Negotiations: The role of trust, understanding and control. *Human Resource Management*. 32(4). Pp.435-459

Green, D., & Valdez III, C. (1993). Mutual-gains Bargaining Assist Contract Negotiations. *Personnel Journal* . 72(8). Pg 60.

Katz, N. H., & Pattarini, N. M. (2008). Interest-Based Negotiation: An essential business and communications tool for the public relations counselor. *Journal of Communication Management*. 12(1). Pp. 88-97.

Kolb, D. M. (2004). The Shadow Negotiation And Interest-Based Approach At Kaiser Permanente. *Negotiation Journal*. 20(1). Pp. 37-46

McKersie, R. B., Eaton, S. C., & Kochan, T. A. (2004). Kaiser Permanente: Using interest-based negotiations to craft a new collective bargaining agreement. *Negotiation Journal*. 20(1). Pp.13-35.

Newall, I. (2006). Is Win-Win Just Pie in the Sky? *Strategic Direction*. 22(6).Pp 3-5.

Paquet, R., Gaetan, I., & Bergeron, J. (2000). Does Interest-Based Bargaining (IBB) Really Make A Difference In Collective Bargaining Outcomes? *Negotiation Journal*. 16(3). Pp. 281-296.

Shapiro, D. (2000). Supplemental Joint Brainstorming: Navigating past the perils of traditional bargaining. *Negotiation Journal*. 16(4). 16(4).

Susskind, L. & Landry, E. (1991). Implementing a Mutual Gains Approach to Collective Bargaining. *Negotiation Journal*. 7(1). Pp. 5-10.

The Canada Labour Code Part 1 "Preamble". (1972). [online].  
<http://laws.justice.gc.ca/en/ShowFullDoc/cs/L-2//20091014/en>

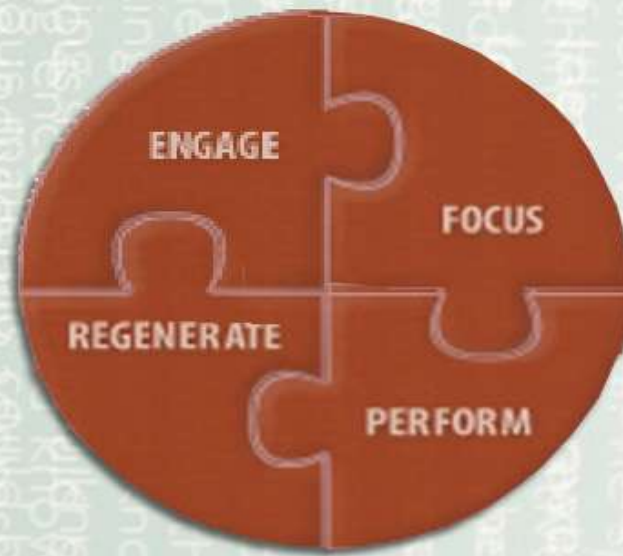
Walton, R. E., Cutcher-Gershenfeld, J. E., & McKersie, R. B. (1994). *Strategic Organizations: A theory of change in labour-management relations*. Boston: Harvard Business School Press.

Raising the Bar and Closing the Gaps



# Aberfoyle Consulting

*Leadership & Organizational Development*



ABERFOYLE CONSULTING IDENTIFIES AND CLOSES THE GAPS THAT INHIBIT TEAM AND ORGANIZATIONAL GROWTH.

WE DEVELOP AND DELIVER CUSTOMIZED SERVICES TO HELP YOUR ORGANIZATION MEET ITS SHORT-TERM AND LONG-TERM GOALS.

## **Aberfoyle Consulting**

One Yonge Street, Suite 1801, Toronto, Ontario M5E1W7

Phone: 416.214.7822

[www.aberfoyleconsulting.com](http://www.aberfoyleconsulting.com)

## THE UNION'S ROLE IN WORKPLACE HEALTH: THE SIX LEVELS OF WORKPLACE HEALTH THEORY

**A healthy body outperforms an unhealthy one in any competition.** Here, Donais draws an analogy between body and workplace providing solutions for improving workplace outcomes.

---

**Author: Blaine Donais**

*President and Founder of WFI, is a labour lawyer and expert in conflict management in the workplace.*  
[www.workplacefairness.ca](http://www.workplacefairness.ca)



**Recently Corporal Catherine Galliford of the Royal Canadian Mounted Police advised women considering a career in the RCMP to “run like your hair is on fire”.**<sup>1</sup> Moreover, she stated that the RCMP would only become accountable for its treatment of employees if the employees were allowed to unionize.<sup>2</sup> These two responses conveniently demonstrate the two significant topics of this article. The first part of this article explores the Workplace Fairness Institute’s Workplace Health Theory, called “The Six Levels of Workplace Health”. The second part of the article explores the role that unions play in promoting various workplace health levels and discouraging others. First let us consider the notion of “workplace health”.

### **PART I - THE SIX LEVELS OF WORKPLACE HEALTH**

The theory of “workplace health” can be best described by comparing a workplace to a human being. As humans, our health is often affected by the choices we make regarding diet, exercise, stress and generally the way we choose to live our lives. Poor diet, excessive stress, lack of sleep, lack of exercise and destructive behaviours such as alcohol and drug abuse can often lead to poor health.

---

<sup>1</sup> “Female Mountie Alleges Sexual Harassment,” Canadian Press, Nov 11, 2011.

<sup>2</sup> Ibid

The same can be said of a workplace's health. Often workplaces exhibit behaviours which are indicative of poor conflict health. Workplaces employ various approaches to managing conflict and getting work done.

WFI Workplace Health Theory: Six Levels of Workplace Health <small>© Elaine Dineen, WFI 2011</small>				
Constructive	Level 6	Holistic Constructive	Organizational analysis of contributors to workplace health issues and systemic solutions	Proactive
	Level 5	Preventative Constructive	Fair and thoughtful policies Conflict resolution Training and development Analysis of future problems	
	Level 4	Reactive Constructive	Mediation Fair and balanced decision Workplace intervention	Reactive
Destructive	Level 3	Reactive Destructive	Harsh and unfair punishment Lack of concern for individuals Concern only for legal liability	Inactive
	Level 2	Passive Destructive	Lack of concern, Under decision Allowing active destructive Too much bottom line focus	
	Level 1	Active Destructive	Bullying, Discrimination, Violence Harassment	Implosive

Some of these choices are destructive to the health of the organization and others are constructive. Some of these choices are reactive to conflict and others are proactive. Below is a model called the “WFI Workplace Health Theory: Six Levels of Workplace Health”. It describes both constructive and destructive workplace behaviours as well as reactive and proactive responses to conflict. By comparing these two elements we have identified six levels of workplace conflict health.

While most workplaces may show signs of each of these workplace health levels, it is our view that more productive, engaging and positive workplace environments focus upon the top three levels of workplace health. These levels are purposefully prioritized to symbolize their desirability. In other words, the most healthy workplaces are those that concentrate on “holistic constructive” approaches while the least healthy workplaces exhibit “active destructive” behaviours. The goal of any workplace should be to move toward holistic, constructive approaches and away from active destructive behaviours.

## **CONFLICT BEHAVIOURS**

Organizations, like human beings, are complex (and often schizophrenic) organisms. Humans may get up in the morning, have a balanced nutritious breakfast, go for a jog, then smoke cigarettes and drink coffee all day and alcohol for much of the evening. In other words, humans have destructive and constructive behaviours. Some humans have more or less of each but it is fair to say that most humans practice both types of behaviours.

The same can be said about organizations and “conflict behaviours”. Most organizations practice behaviours that are both constructive and destructive to their overall health.

## **TYPICAL DESTRUCTIVE BEHAVIOURS**

Many workplaces engage in some types of destructive behaviours. Some of the most observable destructive behaviours are:

- Bullying
- Harassment
- Discrimination
- Favouritism
- Lawlessness
- Unfair decisions
- Excessive bottom line focus
- Excessive “victory” focus
- Lack of concern for individuals
- Harsh and unfair punishments

While there are some workplaces that exhibit these behaviours directly and in abundance, many other workplaces have more subtle and nuanced versions of these destructive behaviours. For example, the employee who might be a little different or is not someone’s best friend is not selected for the promotion. The employee is not considered a “team player”.

A really good example of institutionalized destructive behaviour was Enron’s performance management policy. They had what is commonly referred to as the “rank and yank” method of succession planning. They would annually rank their employees from 1 to 100. Then they would draw a line at a certain percentile and fire employees who did not meet reach

that percentile. This encouraged all the above destructive behaviours we have mentioned. In a rush to the top, workplace participants would do anything necessary to make themselves look good and make others look bad. The excessive bottom line focus drove employees to lie to survive and this created a culture of extreme unfairness. Needless to say, this was one of the reasons for the massive implosion of the company. It is a good example of a Level 1 – Active Destructive corporate health culture.

However many organizations have much more subtle forms of destructive behaviours. Organizations that focus on the resignation/dismissal option for managing their conflicts tend to encourage workplace participants to use destructive behaviours to get their problems solved. In Canada and the rest of the world there are plenty of examples of organizations that wallow in the destructive side of workplace health.

Such organizations always suffer – sometimes in very severe ways. As estimated in the Corporate Leavers Survey conducted for the Level Playing Field Institute in 2007, two million professionals leave their jobs every year in the United States solely because of a perception that the organization will not treat them fairly.

In the last edition of the *wfiJOURNAL*, we introduced the “Head Down Theory” which proposes five responses to a culture of unfairness in the workplace and that only one of those responses can produce positive results for the organization – the “challenge” response. This response is usually made by employees with a high level of loyalty to the organization and a strong self-confidence in their employment options. This employee seeks to move the culture away from destructive behaviours and towards constructive behaviours. Three of the other four responses – “external exit”, “internal exit” and “head down” – allow an organization to entrench its destructive behaviour through lack of direct challenge. The fifth response, “assimilation”, actively supports and encourages destructive behaviours. These people “assimilate” into the culture of unfairness and become active participants, thinking that this is the way to get along and get ahead in this organization.

### **ACTIVE, PASSIVE AND REACTIVE DESTRUCTIVE BEHAVIOURS**

As noted in the model, we have identified three types of destructive behaviours. **Active Destructive** behaviours are the most obvious and damaging to workplace health. These include bullying, discrimination, violence and harassment. They can also include institutionalized unfairness like the “rank and yank” model of performance management and succession planning. We would call this “Level One Behaviour” as it is considered the most damaging to the organization’s health.

There are also **Passive Destructive** behaviours, like lawlessness, and what we call the “bottom-line fetish”, and generally a lack of concern for individuals in the workplace. These passive behaviours promote active destructive behaviours. In a lawless organization, for example, active destructive behaviours tend to take hold as people fight for their own survival and advancement without regard to fair rules and fair decision-making. We call this “Level Two Behaviour” because it indirectly promotes Level One behaviours.

The third level of workplace health is called **Reactive Destructive**. These behaviours are more commonly associated with excessive command and control or top-down cultures. They are typified by harsh and unfair punishments, excessive concern for legal liability and an undue focus on employee obedience rather than employee contribution. While organizations that are typified by such behaviour may discourage bullying and discrimination and they certainly will have rules, they tend to be too heavy-handed and patriarchal – thus leaving employees with a sense of fear throughout their working lives. We refer to these as “Level Three Behaviours”.

### **CONSTRUCTIVE BEHAVIOURS AND RESPONSES**

The top three levels of Workplace Health consider constructive behaviours and constructive responses to conflict. In ascending order we call these three levels “Reactive Constructive”, “Preventative Constructive” and “Holistic Constructive”, the highest level.

The Fourth Level of Workplace Health is dominated by **Reactive Constructive** behaviours and responses to conflict. Examples of **Reactive Constructive** approaches might be: fair and balanced dispute resolution decision-making, mediation, fair investigation processes. These approaches focus upon dealing with conflict as it arises. While we consider these approaches constructive, they are also mostly reactive in nature. They do not arise until the conflict has already happened. Additionally, they are mostly focused on dealing with the conflict at hand. These approaches can be helpful in dealing with the symptoms of an unhealthy organization – but they are not always useful at addressing the underlying causes.<sup>3</sup>

---

<sup>3</sup> I should note that many mediators and investigators would rightly disagree with this comment as they see their role as not just reactive but also proactive. They are not always focused on dealing with the matter at hand but will also often make recommendations to the organization on how to deal with some of the underlying issues. I agree that good mediators and investigators seek to add value by proposing structural change that will help deal with the causes of conflict. Their

To better understand the limitations of **Reactive Constructive** approaches to dealing with workplace issues, it is helpful to consider the Conflict Transformations theory advanced by Rubin, Pruitt and Kim in their book *Social Conflict*.<sup>4</sup> In charting the course of conflict in large scale international disputes the authors concluded that conflict takes on five transformations:

- The first transformation involves the efforts that people use to get their way in a conflict. They start out as light tactics to influence the other side and steady progress to heavier often threatening tactics
- The second transformation is to the issues involved in the conflict. The issue might start out as small and singular in nature, but they proliferate as the conflict continues.
- The third transformation involves the attribution theory. The parties start with a focus upon the issues themselves, but the conflict then transforms to conflict about the personalities and dispositions of the other side.
- The fourth transformation involves the goals of the parties in conflict. The parties might begin with a goal of doing well in the conflict or getting the matter dealt with quickly and efficiently. As the conflict continues unabated, the goals of the parties start to transform at first from doing well to winning and finally to hurting the other side.
- The fifth transformation relates to who the conflict affects. At the start the conflict might only be between two parties, but as it continues other parties must get involved. At its extreme (like the Arab-Israeli conflict) the world is drawn in on this conflict.

Whether the conflict is on the international stage or in the workplace, the transformations take on the same character. What seems an insignificant matter between two parties is morphed into an uncontrollable conflict that affects many people and can have dire consequences for all involved. It is for this reason that **Reactive Constructive** measures are considered to result in a lower level of workplace health than more proactive measures. By the time the reactive measure is invoked, there has already been

---

primary job in most cases, however, is to deal with the matter at hand and try to reach resolution either through agreement of the parties in conflict or by the finding of fact (i.e. who is right and who is wrong).

<sup>4</sup> Rubin, Pruitt and Kim, *Social Conflict: Escalation, Stalemate and Settlement* (McGraw-Hill, 2004)

considerable conflict transformation and the health of the workplace has already suffered – sometimes irreparably. This is why progressive workplaces are considering more proactive measures.

The Fifth Level of Workplace Health – **Preventative Constructive** – is indicative of generally proactive measures for dealing with workplace conflict. Workplaces which are predominately at the Preventative Constructive level of workplace health tend to concern themselves with forward thinking as it relates to conflict and unfairness. In such workplaces strategies will be developed to forecast and account for potential sources. Such workplaces will devise strategies to minimize the likelihood of conflict taking place. Preventative Constructive measures can include training and development of staff, managers and human resources professionals on how best to deal with conflict and how best to make fair and consistent decisions. There will also be thoughtful, balanced and well-researched policies in place that guide workplace participants through conflict situations and that inform workplace participants how to avoid unnecessary conflict. Conflict coaching, when used thoughtfully, can be a Preventative Constructive measure. Where workplace individuals are identified as in need of coaching and where the conflict coach is called well in advance of major conflict to help those in need, this has a preventative quality for future conflict.

The advantage of a Preventative Constructive approach is that much conflict and unfairness is forecasted and managed up front before it occurs. Workplaces that devote resources to training, good policy making, and thoughtful processes tend to moderate the transformations of conflict we discussed earlier and workplaces are more fair, healthy and conflict-free than workplaces that rely upon reactive approaches.

The sixth and highest level of workplace health is called the **Holistic Constructive** Level. Like the Preventative Constructive level, the Holistic Constructive level focuses on proactive approaches for managing workplace health. What distinguishes the Holistic Constructive level from the Preventative Constructive level, is that Holistic Constructive workplaces seek to integrate conflict management and fairness into the very business of the workplace. Such workplaces are keen on organizational analysis, considering the impact of all processes, policies, procedures and decisions upon the health of the workplace.

The consistent view of Holistic Constructive workplaces is that healthy workplaces are wealthy workplaces. A clear line is drawn between health and success for such organizations. Typically such organizations rely upon constant feedback from participants and are committed to continuous improvement in the way they deal with human issues. The goal is to

engage workplace participants to play a positive role in engendering workplace health as well as wealth. Thus while generally the responsibility falls upon “management” to ensure workplace health at the lower levels, at the Holistic Constructive Level this responsibility is openly and eagerly shared with each workplace participant through feedback forums, training and development, appreciative enquiry and thoughtful planning.

## **PART II - THE ROLE OF UNIONS IN WORKPLACE HEALTH**

As mentioned in the book *Engaging Unionized Employees: Employee Morale and Productivity* (Aurora: Canada Law Book, 2010), unions have a variety of roles to play both inside and outside the workplace. Typically employees expect their unions to ensure fairness in the workplace and to negotiate terms and conditions of employment. Thus they are traditionally expected to play a roll in the mitigation of the harmful effects of destructive behaviours. However a closer look reveals that the collective bargaining regime may have an impact (mostly positive although sometimes negative) on the use of constructive behaviours. Let us take these one at a time.



### **LEVEL 1 – ACTIVE DESTRUCTIVE**

Many workplaces become unionized precisely in response to the destructive behaviours of their employers and workplace leaders. Employees feel that they are treated unfairly, discriminated against, bullied and harassed (sometimes sexually). Often where unionization is called for, it is in response to these more active destructive behaviours.

A good recent example of this can be found in the case of a female British Columbia officer of the Royal Canadian Mounted Police (RCMP) – Canada’s national police service. Corporal Catherine Galliford has recently gone public with numerous allegations of sexual harassment from her superiors. She states that she endured many years of being treated like a “sexual plaything” often being called inappropriate names and constantly propositioned by her superiors.<sup>5</sup> The Canadian Press reported that Corporal Galliford said the RCMP is not accountable to anyone for the

<sup>5</sup> “Female Mountie Alleges Sexual Harassment,” Canadian Press, Nov. 11, 2011

treatment of their employees and that a union or similar organization is necessary to protect employees from what she described as a broken organization.<sup>6</sup>

The move toward unionization is seen as a protective measure against an employer that is out of control. This typifies workplaces dominated by Active Destructive behaviours but how does the existence of a union serve to moderate these extreme behaviours?

The Collective Bargaining Regime is well suited to combat the extremes of Active Destructive behaviours. This is accomplished first by the enabling legislation for most unions – which in Canada is referred to as Labour Relations Acts or Labour Codes depending on the jurisdiction. This legislation requires the employer to negotiate a collective agreement with the union and also protects union representatives from discrimination or reprisals on the basis of union activity. Moreover, the remedy for discipline without just cause in unionized work environments is reinstatement (as opposed to a monetary award in non-union workplaces). This means that union representatives are protected and the employer cannot fire away their problems.

Moreover, union members pay dues to their union who in turn use those dues to fight for their members' rights. This means that an employer engaged in Active Destructive behaviours is much more likely to be challenged in a union workplace than a non-union workplace.

In Canada at least, labour legislation requires a grievance-arbitration mechanism to be put in place to resolve disputes in unionized work environments. The grievance arbitration procedure requires the use of a neutral third party (jointly chosen by the employer and the union) to ultimately decide upon violations of the collective agreement. This means that Active Destructive behaviours can be grieved and an arbitrator can force an employer (through sanctions) to cease such behaviour.

Also an interesting development has occurred in Canadian jurisdictions regarding the powers and responsibilities of arbitrators in unionized work environments. They now have the power to enforce all workplace related legislation, including: human rights legislation, employment standards, equity legislation, the Canadian Charter of Rights and Freedoms (where it applies) and occupational health and safety legislation. This means that a union can force an employer, through the grievance arbitration process, to stop excessive bullying, harassment, discrimination and other Active Destructive behaviours.

---

<sup>6</sup> Ibid

Thus from a legal point of view unions play a central role in ameliorating the excessive Active Destructive behaviours in unionized workplaces.

## **LEVEL 2 – PASSIVE DESTRUCTIVE**

For the same reasons mentioned above, the union has an important role to play in ensuring that the excesses of Passive Destructive behaviours are ameliorated. An additional concept is important to understand when considering Passive Destructive behaviours – the concept of vicarious liability. In a unionized workplace, the employer is responsible and liable for the actions of the employer’s “actors” – like manager, supervisors, directors, and human resources professionals.

This means that where the employer has an excessive bottom-line focus and allows bullying, harassment and discrimination to occur as long as the bottom line is achieved, the union can grieve the acts of individual managers and hold the employer responsible for them. This has the effect of discouraging employers from encouraging or ignoring the destructive behaviour of their managers and other actors.

Moreover, specific collective agreement entitlements ensure that employees get treated fairly notwithstanding the excessive bottom line focus of an employer. The union can negotiate terms and conditions that are later enforceable through the grievance-arbitration process, to make sure that employees get fair wages and working conditions.

## **LEVEL 3 – REACTIVE DESTRUCTIVE**

One of the central features of most collective agreements is the prohibition against discipline without just cause. This enables the union to protect employees from an employer who would seek to invoke harsh and unfair punishments against an employee and/or would invoke punishment without proper due process. The arbitrator has the right to overturn any punishment no matter how large or small if that punishment is not found to be just under the circumstances. In practical terms, this means that an arbitrator can (and will) reinstate an employee who has been terminated without just cause following a just process. Thus the union has a significant role to play in ameliorating the Reactive Destructive behaviour of an employer in a unionized workplace.

#### LEVEL 4 – REACTIVE CONSTRUCTIVE

So far we have concentrated on the union's role in discouraging destructive behaviours. But what role do unions play in promoting constructive behaviour?

To answer this question we must look at the mechanics of the grievance-arbitration procedure. A typical grievance procedure will start with "pre-step" activities that might involve preliminary discussions and investigations, then move to the formal filing of a grievance with early efforts to resolve the matter at a local level.

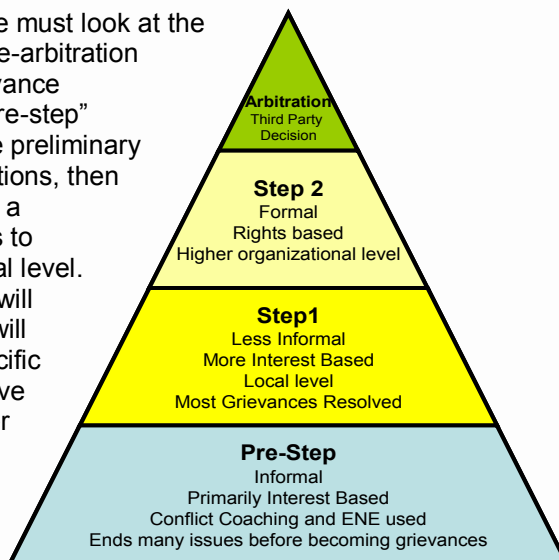
From there the procedure will become more formal and will usually require specific violations of the collective agreement (or other workplace legislation).

Also the issue is escalated to the corporate level of the workplace with senior

employer and union actors taking a lead role. Finally, if no settlement can be reached, the process requires arbitration by a neutral third party.

Earlier we mentioned that mediation is an example of a Reactive Constructive response to conflict in the workplace. Typically, in a unionized workplace, mediation might be tried between Step 2 and Arbitration. This means that the matter has already gone through a number of steps before it gets to mediation. The grievance-arbitration procedure provides an opportunity for the parties to resolve a conflict at a much earlier stage before it transforms in all the ugly ways we have mentioned above. In essence it allows the opportunity to move from a predominately Level 4 – Reactive Constructive conflict response, to Levels 5 and 6. This is so because structurally the grievance arbitration process is designed to resolve conflict much earlier through the use of "pre-step" and step 1 activities.

On the surface, the grievance arbitration procedure appears to be nothing more than a Reactive Constructive response to workplace conflict. It requires the conflict to already have occurred before the process kicks in. However, it has the value of resolving conflict much earlier, while the transformations have not yet occurred.



Therefore, minimally, the union has a role in promoting efficient Reactive Constructive responses to conflict through the grievance-arbitration procedure which seeks to resolve matters at the earliest stage possible.

#### **LEVEL 5 – PREVENTATIVE CONSTRUCTIVE**

The existence of the union in a workplace is also an opportunity to engage in a Preventative Constructive approach to workplace health. There are various windows of opportunity for this to occur.

First, the grievance-arbitration process often contains a right to file policy grievances. This allows the union to identify an issue that might not yet have affected any members for resolution through the grievance arbitration process. The union might challenge an employer policy or decision that might have a prospective affect upon employees. Thus before the policy actually does cause conflict, its reasonableness is tested through a fair process.

Second, unions and employers often have “union-management committees” where any matter involving terms and conditions of employment can be discussed. Usually this is an opportunity to inform the union about potential issues that might give rise to conflict and engage the union in forecasting solutions before the conflict arises. A typical example of this is when the company is in downsizing mode. Engaging the union in a smooth transition to the new size will often prevent needless worry and conflict to occur. This also provides a sense of fairness for employees when they see the union has been properly engaged.

Third, at the line level, union representatives often play a positive role in managing and preventing conflict in a variety of ways. They often act as informal conflict coaches for employees that might have trouble dealing with each other or their managers. The union representative might also play a role in Early Neutral Evaluation by helping the employee understand what options are available to the employee concerning a potential conflict. Also union representatives sometimes play the role of peer mediator, helping parties who have issues with each other address them before they become serious conflict. While this is reactive in nature, it call also be proactive given that the representative can provide advice and coaching about how to handle future conflicts.

#### **LEVEL 6 – HOLISTIC CONSTRUCTIVE**

The exercise of collective bargaining on a regular basis is an opportunity for the union and the employer to re-examine how their systems are working, to seek feedback from their stakeholders, to research best practices in other organizations and to apply this analysis to their workplace through the negotiation process. Often unions will survey their

members to find out what is working and not working at the line level. Likewise the employer will seek feedback from managers and HR professionals. This can be incorporated into the negotiation process. To be sure, the likely focus of most bargaining is on “economic” issues but there are plenty of opportunities to focus on issues that will have an integrating impact on workplace health.

Where the relationship between the parties is strong and trusting, the union has a significant role to play in aiding the workplace to favour a Holistic Constructive level of workplace health. This is done by providing constant and neutral feedback to the employer about the success and/or advisability of traditional employer functions. It is not uncommon for an employer to ask the union for feedback on all sorts of management functions – such as training and development, managerial decision-making, business approaches and strategies, etc. In more progressive relationships the union is seen as a partner in the operation of the workplace – providing valuable feedback that serves to improve the quality of workplace health. The union may also play a role in encouraging the employer to take an integrated approach to workplace health and workplace success.

#### **DOES THE UNION HAVE A NEGATIVE ROLE IN THE SIX LEVELS OF WORKPLACE HEALTH?**

This is entirely contingent on the history and realities of the workplace. Some unions and union representatives have resisted higher levels of workplace health for fear of losing control. Others have in fact participated in destructive behaviours. Every workplace is a different situation.

By in large, though, most modern unions are committed to positive and constructive approaches to workplace health. Their very existence is predicated on moving the employer away from the destructive behaviours and toward constructive approaches. The institutional role of the union in the workplace is in fact to use constructive approaches to improve the organization’s health. Most unions are highly committed to combating destructive behaviours such as bullying, harassment and discrimination. They are legally required and morally committed to discourage such behaviours in the workplace.

This means that there might be nasty battles between a union and an employer over these issues – where either side might accuse the other side of being unreasonable. This might lead one to believe that unions cause more conflict than they manage – that they promote lower level workplace health responses because of their efforts to “whip-up” the membership. While there may be some truth to this in some

circumstances, by in large unions are much more interested in proactive constructive approaches than destructive approaches.

## **CONCLUSION**

Proactive Constructive levels of workplace health promote harmony, collegiality, trust, loyalty, employee engagement and often financial success for modern workplaces. Many organizations are recognizing this and are becoming much more strategic and deliberate in their efforts to manage and improve the health of their workplaces. Organizational Design functions feature prominently in larger workplaces; diversity departments are also common fixtures in modern progressive workplaces.

A union definitely plays a significant role in moving a workplace away from destructive behaviours and toward more constructive approaches. The success of a union's involvement in this effort depends on the union, the employer and the circumstances. The most progressive unions and employers work together to promote Level 6 Workplace Health approaches favouring a Holistic organizational view.

Even where the employer has no intention of cooperating, the union's legal position in the workplace allows it to push the employer toward, at the very least, a Reactive Constructive workplace health level. It is thus not surprising that people like Corporal Galliford are recommending unionization in workplaces where the employer clearly needs some help to move away from behaviours that are destructive to workplace health. The alternative, as stated aptly by Corporal Gillard is to "run like your hair is on fire" away from such workplaces.<sup>7</sup>

---

<sup>7</sup> "Female Mountie Alleges Sexual Harassment," The Canadian Press, November 11, 2011.

## MEDIATION IN A UNIONIZED ENVIRONMENT: DECADES OF STRUGGLE

With satisfaction rates between 80-90%, why is mediation not sticking? This article explores the North American success rates of mediation, compares mediation to arbitration and then asks, "Why aren't unionized workplaces relying more on such a successful approach to workplace conflict?"



---

**Author: Yakov Sluchenkov**

*Yakov Sluchenkov [B.A.S.(Hons), MIRHR (Candidate)] is a Human Resources and Labour Relations Professional with experience at various levels of the public sector (Provincial, Federal and Crown).*

**Many years ago, in a barren African savannah, Ancient-man Steve squabbles with his cave mate over the remains of this week's dinner. As any self-respecting caveman would, Steve uses his club to make contact with his opponent's head...and...well... the rest is history.** This familiar scenario involving our ancient predecessors may seem like a primitive scene right out of a Discovery Channel special, but one must wonder: has anything really changed?

The modern man has long since lost the club and traded his loincloth for a neatly-pressed business suit but the propensity for conflict has remained an unfortunate constant. In the many years that have passed since, Steve and his fellow homo sapiens (that's us) have waged colossal bloody wars and battled over a variety of prized possessions such as land, access to water and the last slipper in a dollar-store super-sale blowout. Although conflict has followed us throughout our existence (and will likely continue to do so until our collective enlightenment), the way in which we deal with it, and how we move forward after, is what differentiates us from ancient man.

The workplace environment which most of us inhabit on a daily basis is not devoid of conflict. Employers are keenly interested in it as its development and resolution (or lack thereof) directly and indirectly affects worker

cohesion, productivity and profit<sup>8</sup> Thus, in a very logical progression, the employer's outmost and basic need for conflict management and resolution is born.<sup>9</sup>

The most prevalent method present for dealing with conflict in a unionized environment is grievance arbitration, present in nearly every single collective agreement bargained for in North America. It sets out a very strict set of rules and procedures, involving timelines and expectations by which the employer and the employee/labour union must abide. Grievance arbitration pits an employee with union representation against a management representative, typically a labour relations specialist. Not unlike the slipper scenario mentioned above, the process brings with it a win-lose aspect. In others words, it is inherently assumed by both parties that once they reach the end of the procedural process, a final grievance arbitration must result in someone winning and someone losing.

Assumptions like these drive us to seek something better. They compel us to seek a superior, revolutionary alternative where everyone can come out as winners in the end. We look for a method with a lasting positive impact on the workplace and the individuals involved in the conflict, to replace adversarial show-downs and the creation of a poisoned work environment<sup>10</sup>. We can hope and cross our collective fingers in anticipation that one day this method will be invented - and we would be wasting our time - as it has been around in the workplace environment since the early 1940's. Yet here we are, 70 years later, still stuck in formalized grievance arbitration, leaving mediation wandering around the streets, quite possibly lonely, wet and cold<sup>11</sup>. Where is mediation? Should we/can we mediate in a unionized environment? If we can, how do we do it? We begin our exploration by examining why we must do whatever we can to make mediation a mainstay in conflict mediation/management across organizations and industries.

---

<sup>8</sup> Keashly, L. and Jagatic, K. (2003), "By any other name: American perspectives on workplace bullying", in Einarsen, S., Hoel, H., Zapf, D. and Cooper, C.L. (Eds), *Bullying and Emotional Abuse in the Workplace: International Perspectives on Research and Practice*, Taylor & Francis, London, pp. 31-61.

<sup>9</sup> Lutgen-Sandvik, P. and McDermott, V. (2008), "The constitution of employee-abusive organizations: a communications flows theory", *Communication Theory*, Vol. 18 No. 2, pp. 304-33.

<sup>10</sup> Sigler, John C.. (1987, October). *Mediation of Grievances: An Alternative to Arbitration?* *Employee Relations Law Journal*, 13(2), 266. Retrieved October 1, 2010, from ABI/INFORM Global. (Document ID: 1076256).

<sup>11</sup> Block, R., John, B., and Olson, A. R. "Low Profile/High Potential." *Dispute Resolution Journal*, Oct. 1996, 54-61.

## THE CASE FOR MEDIATION

In order for one to get into a discussion about mediation in a unionized environment, it is important to highlight the historical context within which unions operate as well as some general assumptions about internal driving forces that are consistent across them. In the process of attempting to describe the internal workings of a unionized environment, one has to be mindful that one workplace can be quite different from another and that an attempt to pigeon-hole or create a cookie-cutter solution is bound to fail.

Those who use mediation swear by it. They perceive it to be the ultimate conflict management method currently available and feasible in many workplace environments. They view the grievance arbitration as an antiquated process akin to trying to kill a fly with a tank.

Proponents of mediation point to the following merits when advocating for it:<sup>12</sup>

- Mediation is voluntary. Either party can end it if they feel it is not working.
- It is considered a safe space to air concerns.
- It helps to clarify misunderstandings and intent.
- The conversations are confidential unless a major violation is revealed and the mediator is legally liable to act.
- As we will see below, mediations save money, time and the emotional energy of all involved.
- Not only are the issues raised resolved but the underlying ones are as well.
- Mediation can also cover issues not covered under the grievance procedure.

We do not need to go far to examine the effects of mediation on a workplace environment, as our own provincial experiences highlight the positive impacts of mediation. Section 45 of the Ontario Labour Relations Act allows either party to request the minister of labour (MOL) to select an arbitrator for a quicker arbitration. When such a request is made, the minister of labour can select a Grievance Settlement Officer (GSO). The

---

<sup>12</sup> Donais, Blaine. Workplace Fairness Institute, 2007. Power Point Presentation Slide 10; and Hanley, J.. (2010, April). Transformative Mediation. HRMagazine, 55(4), 64-65. Retrieved October 16, 2010, from ABI/INFORM Global. (Document ID: 2007002091).

GSO acts as a mediator and seeks to find a mediated settlement during the 21-day period between the date of the arbitrator's appointment and date of hearing<sup>13</sup>. A study by Rose (1986) into the Provincial process described above found that between the periods of 1979-80 to 1984-85, there were 7,947 applications made for expedited arbitration to the MOL. Of those, 72% were referred to the GSO for attempted mediation. The GSO was able to settle 65% of those cases<sup>14</sup>. It is also fair to note that Rose highlighted the reduction of GSO appointments as a percentage of total applications and interpreted this as a possible dissatisfaction with the process of grievance mediation<sup>15</sup>.

As a reply to Rose's interpretations, Butt (1988) also examined the Ontario experience plus an additional two years worth of data (to 1986-87). She suggested that the decline was not due to dissatisfaction with the process, but rather to the MOL gaining experience in determining which cases might be better mediated and which were better off going through the arbitration process. The settlement rates, however, continued to remain stable around the 67.5% mark.

To further highlight her positive view of the impact of mediation over the years, Butt noted that in 1981, the MOL began to appoint GSOs without appointing arbitrators. These assignments increased every year and had settlement rates of 79.9%. One of the most important qualitative observations made by Butt in her study was that both sides were generally satisfied with the mediation, one of the most important measures of long-term success and the impact on the working environment. One can read results into settlement numbers but the real story is told by how the individuals perceived the process. Their comfort with what had transpired and the entire process in general, also lends to the perception of fairness by both parties and the serves to highlight the importance of this tool<sup>16</sup>.

Our neighbours to the south have vast amounts of experience with mediation. Four districts of the United Mine Workers of America decided to participate in a mediation pilot program with their various employers in order to resolve interest based disciplinary issues<sup>17</sup>. The study was

---

<sup>13</sup> Block, R., John, B., and Olson, A. R. "Low Profile/High Potential." *Dispute Resolution Journal*, Oct. 1996, 54-61.

<sup>14</sup> Rose, Joseph B, "Statutory Expedited Arbitration: The Case of Ontario" *Arbitration Journal*, vol. 41, No. 4 (December 1986) pp. 30-45.

<sup>15</sup> Ibid

<sup>16</sup> Butt, Elizabeth Rae, *Grievance Mediation: The Ontario Experience*, School of Industrial Relations Research Essay Series No. 14, Industrial Relations, Queen's University at Kingston, Kingston, Ontario (1988)

<sup>17</sup> Goldberg, S. "How Interest-Based Grievance Mediation Performs over the Long Term." *Dispute Resolution Journal*, Nov. 2004-Jan. 2005.

exhaustive and lasted twenty-three and half years over which time 3,387 grievances were mediated. Out of all of these grievances, a resounding 86% resulted in settlement. As one can imagine, the fact that these grievances did not go to an arbitrator resulted in significant cost savings to both the employer and the union, as well as shortened the time it took to get a grievance from the “complaint received “ to the “resolution” stage<sup>18</sup>. Another example with similar results can be derived from the experiences of AT&T and the Communication Workers of America (CWA) union, which also used a mediation pilot for the resolution of discipline grievances. The pilot spanned 14 states and revealed results nearly identical to the UMWA pilot: 87% of the cases were settled or withdrawn, cost reductions and expediency in getting a resolution.

Combining both the Canadian and American examples, it appears that there are both significant quantitative as well as qualitative data to support the implementation of mediation as a conflict management and dispute resolution method. The important thing to keep in mind in light of the staggering improvements demonstrated is the fact that the employees’ grievances were so quickly and efficiently resolved. Being able to deal with conflicts in this manner is bound to do wonders for the work environment and the employees in question. Not having to wait years until your problem has been heard is bound to alleviate ill feelings and the potential productivity loss in an unpleasant work environment full of perpetual tension<sup>19</sup>. Going through all the quantitative and qualitative data, one is left wondering: Why is Mediation not more prevalent in unionized environments? It is disappointing to learn that even the highly successful UMWA pilot sputtered into a wall. Of the 19 employer-union pairs, 5 stopped using grievance mediation altogether. Although the remaining 14 pairs continued, they had placed limitations on the usage of the grievance mediation system<sup>20</sup>. In the CWA and AT&T example, grievance mediation was not widely used outside of the areas included in the pilot, this despite the fact that it was provided for in all AT&T master agreements with its unions<sup>21</sup>.

One doesn’t have to go back 10 years to get solid examples supporting the effectiveness and the positive reception users get from mediation. The

---

<sup>18</sup> Ibid

<sup>19</sup> Sigler, John C.. (1987, October). Mediation of Grievances: An Alternative to Arbitration? *Employee Relations Law Journal*, 13(2), 266. Retrieved October 1, 2010, from ABI/INFORM Global. (Document ID: 1076256).

<sup>20</sup> Goldberg, S. “How Interest-Based Grievance Mediation Performs over the Long Term.” *Dispute Resolution Journal*, Nov. 2004–Jan. 2005.

<sup>21</sup> House, N. “Grievance Mediation AT&T’s Experience.” *Labor Law Journal*, [www.mrep.org]. Aug. 1992.

Department of Agriculture and Agri-Food Canada (AAFC) in 2002 established an Office of Conflict Resolution (OCR) to ensure compliance with the Treasury Board's 2001 *Policy on the Prevention and Resolution of Harassment in the Workplace*. OCR mediation feedback forms over the period of 2004-2008 show an 80-90% satisfaction rate and respondents felt that they would recommend the service 90% of the time. The settlement rates for those cases that used OCR's mediation service indicated a settlement rate of 83%, a number consistent with the examples cited above and with numbers in other federal departments<sup>22</sup>.

It is very difficult to reconcile the knowledge of successful results in such pilots, and mediation in general, with the lack of implementation in more organizations and industries. Before we examine why mediation is not more prevalent in unionized environments, we must first consider the historical role of unions in the workplace.

### **THE UNION**

One cannot understand how a union views mediation without first examining the context in which it occurs. Traditionally, unions exist to defend the rights of the employee, advocating for fair wages and safe working conditions. This is done through day-to-day advocacy, representation at grievance hearings; ensuring that the contracts and procedures agreed upon (e.g. Collective Agreements) are correctly enforced. Unions also advocate for large scale change by banding together with other unions with like-minded organizations to lobby governments. Traditional unions and their members describe the employer-employee relationship as an eternal struggle in which the union is the defender. Members of the union are brothers and sisters who must band together in order to resist the push of the employer. In many cases, it has been exactly that, as employers treated their employees with blatant disregard for safety or fair wages, focusing on their profits and even the violent repression of the union movement. Unions around the world and throughout history have given us the labour standards that we have today and should not, and cannot, be understated. It is safe to say that this description of the union's role in the workplace is very generalized, simplistic and limited, but it attempts to cover as much as possible of the union's identity with a broad brush stroke.

At the heart of each unionization drive is the goal to achieve a collective agreement that lays out the rights of employees. At the cornerstone of every such agreement, the grievance procedure provides for the

---

<sup>22</sup> Evaluation of Informal Conflict Management Services Offered by AAFC's Office of Conflict Resolution. Report approved by AAFC's Departmental Evaluation Committee on June 9, 2009.

clarification of these rights and their enforcement by a third party arbitrator. The adversarial nature of the grievance arbitration process gives the union a method with which to drive home to the employer the recognition of a union's rights<sup>23</sup>.

At face value, an organization with an entrenched adversarial relationship - "us versus them" and *fighting* for the rights of people - will naturally be resistant and mistrustful of initiatives that call for everyone to sit together and try to solve problems. The organizational skills required for such interactions were not developed historically and an environment conducive to mediation simply does not exist. Since the union uses the grievance arbitration process as a way to re-enforce its rights, the mediation process which offers to replace it will, at its core, be perceived suspiciously. Mediation, as an alternative to the known, threatens to remove existing rights and thus the union is less likely to want to partake and adopt it.

Perhaps one of the most important and most complex issues of mediation in a unionized environment is the struggle of a union to remain viable and relevant to its membership. In the process of representing an employee in the grievance process, the union demonstrates to the grievor and to its membership its importance in the workplace. It is a most vivid example of the plight of the collective against the employer. Successful arbitrations are frequently posted on bulletin boards and spread actively through employee gossip. It is not unusual for a union steward, who has assisted a member with their grievance, to ask this member to participate more actively in the union or to volunteer.

The introduction of a mediation procedure that takes away from fighting for employees but rather coming together and collaborating, strikes directly at the purpose and threatens the relevancy of the union. A member may ask him/herself, "If I can approach the employer and we will mediate this, what's the point of the union?" Secondly, because the mediation process does not have a winning party, the union cannot advertise to its membership that it is fighting or winning the battle for them. The confidential nature of the mediation further clouds the role of the union and threatens the perception of being irrelevant in the workplace, losing membership and ultimately facing decertification. Thirdly, the union component in an organization acts as much as possible as a self-sustaining entity serving the membership. Keeping this in mind, the union will naturally feel that any conflict that arises can be dealt with internally by the union and would resistance a third-party intervening.

---

<sup>23</sup> Sigler, J. "Mediation of Grievances: An Alternative to Arbitration?" Employee Relations Law Journal, 1987, 13, p. 266-286.

The union's struggle for existence and relevancy in the workplace can be perceived as a boundary for the introduction of mediation in unionized environments on a wider scale. Despite the analysis of union tendencies and perceptions described above, it is crucial to note that the employer is just as responsible in keeping mediation out of the workplace.

### **THE EMPLOYER**

The failure of mediation's ability to break into unionized workplaces is not by any stretch of the imagination the sole fault of the union. The employer is not an innocent party but rather an accomplice in the matter. The conclusions of the quantitative and qualitative analysis of Block, R., John, B., and Olson, A. R reveal that the employer see benefits to the formality, structure and costs associated with arbitration. They feel that sitting down in a mediation pressures them into dealing with grievances that are created and forwarded based on the union's political needs. One company felt that the costs associated with going to arbitration made the union consider the merits of the case in a stringent manner that would be less susceptible to political gamesmanship. In essence, the employer preferred to force the union to make an economic choice ("Can we afford this?") on the merits of the case, rather than permitting the option of mediation. This particular viewpoint is further reinforced by the fact that employers usually have more financial resources available to them. One may perceive this as a source of power when it gets down to calculating who can afford the process more<sup>24</sup>. An important note to make is that in nearly 30% of employer participants in the Butt (1988) analysis results were neutral on the issue of cost reduction and delay<sup>25</sup>. This neutrality appears to be a case of putting "being difficult with the union" ahead of the maximum efficiency and profitability of the company. The results of Butt's analysis go hand in hand with the sentiments provided by various employers mentioned above. Butt (1988) indicates that 91% of union respondents were satisfied with grievance mediation, compared with only 64% of the employer's respondents. Granted, one can wonder whether the lower result is present because most employers would rather have no process at all.

Overall, it appears that a major source of the employer's resistance to mediation and towards grievance arbitration is from a very short-term and adversarial approach towards the union. Inversely to the union's view, a

---

<sup>24</sup> Block, R., John, B., and Olson, A. R. "Low Profile/High Potential." *Dispute Resolution Journal*, Oct. 1996, 54–61.

<sup>25</sup> Butt, Elizabeth Rae, *Grievance Mediation: The Ontario Experience*, School of Industrial Relations Research Essay Series No. 14, Industrial Relations, Queen's University at Kingston, Kingston, Ontario (1988)

large number of employers view the labour movement as a nuisance that prevents them from operating effective companies and hurts their bottom line. Collective Agreements are seen as protecting unproductive employees and creating a lot of procedural red tape and delay in “getting work done“. A very close-minded view makes employers feel that butting heads and forcing the union to make economical choices is the most beneficial choice to make when dealing with workplace conflict. The fact that 30% of employer participants in the Butt results felt that cost reduction and delay is not important, highlights that the conflict is overriding common and business sense. Although the union may indeed be forced to more carefully select which grievances to go forward with, the employer misses out on extremely valuable long-term benefits that a positive workplace environment amongst co-workers can bring through mediation.

One of the main advantages of the grievance arbitration procedure is the highly formalized process which both parties follow in order to get a resolution. The end result of these processes is a ruling by an arbitrator on the merits of the grievance. Part of the reason that employers tend to gravitate towards this system is because it allows issues to be resolved with a definitive answer that is binding for both parties.

After undergoing a thorough analysis of both parties present in an unionized environment, one can safely conclude that they each have their own unique and sometimes overlapping reasons for being resistant to mediation and preferring grievance arbitration. In order to institute truly successful mediation systems that are desired and adopted by others in the industry, one must design a method that keeps those differences in mind and mitigates the earlier pitfalls that have led to failure in the past.

### **WORKING TOGETHER**

It is perhaps most fitting that the introduction of a mediation system into a workplace needs to be done by mediating the various interests of both the union and employer. The individual biases and contexts that both parties bring into the process is what has prevented mediation from taking off across many workplaces and industries.

Part of obtaining honest and persistent buy-in from the prospective union partner is ensuring that the union does not see the mediation process as an “oppression story“. Advanced by Bush, R. A. B., & Folger, J. P., this theory argues that mediation is dangerous because of its informality and “consentuality” as it allows the stronger party to manipulate the weaker. It

also allows mediators enormous amounts of power to manipulate the outcome in accordance with personal interests and agendas<sup>26</sup>.

The obvious - but necessary - word when discussing successful long-term implementation of any system in a unionized environment is of course "collaboration". Despite the traditional adversarial relationships that exist between a union and their respective employer, working together to solve strategic and common problems is possible and occurs on a daily basis. The federal government's Labour-Management Partnerships Program (LMPP) has observed many circumstances where management and labour have come together to prove the value of co-operation. In one example, Our Neighbourhood Living Society, a Halifax-based operator of homes for the mentally challenged, through working together with the International Union of Operating Engineers, obtained LMPP funding to create a pilot grievance resolution process that could be used by other small and medium sized companies as well as unions<sup>27</sup>.

Keeping in mind the lessons learned from the union and employer perspectives, one needs to take a better approach in order to create a truly effective mediation system that will be readily adopted by union and employers across various industries. The assumption that the union movement perceives rights-based mediation almost in direct conflict with the purpose of their existence, we must explore the types of mediations that should not be done in order to preserve the relationships and increase the chances of success.

Sigler (1987) has argued that the following types of grievances are inappropriate for mediation:

1. Those involving factual issues which are best resolved through a formal hearing process.
2. Those that raise issues where the arbitrator's reasoning is important in establishing the law of the shop.
3. Those situations where compromise and settlement are unlikely because the parties are so entrenched in their own positions.

Taking the assumption that certain types of grievances should not be meditated allows the union to fight for and provide victories for their employees. The mediation process, however, can be combined with other types of grievances that fall outside the "forbidden" zone, the zone that

---

<sup>26</sup> Bush, R. A. B., & Folger, J. P. (2nd edition-2005). *The Promise of Mediation: The Transformative Approach to conflict*. Pg 17. San Francisco: Jossey-Bass.

<sup>27</sup> Katy Burnett. "Management and labour can work together." *Canadian HR Reporter* 11 Oct. 2004: ABI/INFORM Global, ProQuest. Web. 02 Oct. 2010.

threatens the union's relevancy and role. A side-by-side system combining the best of both worlds would allow it to be more applicable and susceptible to assimilation into unionized environments. Allowing the grievance arbitration process to deal with certain rights-based issues serves the interests of the union to remain relevant to their membership while still being able to advocate for employee needs. The employer, in this scenario, will still be able to resolve other types of conflicts in expedient and cost-effective manners which positively impact the workplace environment through transformational processes, and indirectly, the bottom line. The employer's desire for a definitive answer to the grievance that is binding to for both parties is easily achieved through the two, parallel conflict management systems. All the employer needs to do is use the grievance arbitration half of the system to deal with that particular grievance. Since mediation is voluntary, both parties will be able to switch and collaborate depending on the grievance and the kinds of resolutions that are necessary. As an example, grievances that have to do with interpersonal conflict amongst employees - which frequently presents a conflict of interest for the union - may be more effectively addressed and resolved using the mediation procedure.

The REDRESS program, started in 1998 at the United States Postal Service, is a primary example of how the grievance arbitration process and a mediation system can co-exist and benefit both partners. REDRESS offers voluntary mediation of complaints alleging workplace discrimination and has been very successful with 90% of the complainants and 93 % of the respondents reporting some level of satisfaction with the mediation process<sup>28</sup>. Widespread use of similar mediation systems that work in collaboration with a grievance arbitration system is significantly more likely to succeed in a unionized workplace and be picked up as an industry standard.

The key to instituting an effective conflict resolution system is ensuring that managers, supervisors and union representatives have the skills to solve problems as early as possible in the process. As in the City of Saskatoon example, discussed by Burnett, support needs to be implemented in the form of training plans for managers, supervisors and union executives as well as a communication plan for all employees<sup>29</sup>.

---

<sup>28</sup> Bingham, L., Kiwhan, K., and Raines, S. "Exploring the Role of Representation in Employment Mediation at the USPS." *Ohio State Journal on Dispute Resolution*, 2002, 17, 341-377.

<sup>29</sup> Katy Burnett. "Management and labour can work together. " *Canadian HR Reporter* 11 Oct. 2004: ABI/INFORM Global, ProQuest. Web. 02 Oct. 2010.

## CONCLUSION

No process is perfect and an ambitious venture such as combining mediation and grievance arbitration may require modification of both processes. The union and employer partnership needs to mould the system to suit their unique needs, as no two workplaces are alike. The union values its relevancy and function in the employee-employer relationship (its sole reason for existences!) and will be resistant to mediation systems that try to undermine that role. Using mediation to resolve rights-based disputes such as wages or disciplinary issues is bound to be met with significant resistance and hostility. On the other side of the table, the employer feels that the mediation process does not give clear and definitive answers that are sometimes needed. The questions that require these types of answers, more often than not, are rights-based in nature and highlight an area of overlap and common interest. As a result of this overlap, we realize that the grievance arbitration and the mediation processes must work together to better deal with issues most appropriate for each system. As the experience with the Ontario expedited arbitration and mediation approach has shown, a learning curve is associated with determining which kinds of grievances should be forwarded to mediation and which can be mediated. Working together to establish a process for deciding where to go with a grievance, as well as which path it should take, will allow the union to receive the victories (due to arbitration) it needs to remain viable as organization in the eyes of its employees. Conversely the employer will be more comfortable with the types of grievances raised, as the union will be more stringent in the kinds of grievances that go through the process.

The future of mediation is a gray one and, despite all the positive information and successful examples of mediation, other methods of Alternative Dispute Resolution may be taking over. The evaluation by the AAFC shows that use of OCR's mediation services decreased in 2007 and 2008, the first this has happened since that office's creation. Despite this decline, other OCR's services, such as Information and Consulting as well as Conflict Coaching, are seeing great increases in use. The report suggests that use of these methods results in individuals developing conflict resolutions competencies with which they are able to use themselves without resorting to a mediator.<sup>30</sup> Although this is a good hypothesis, one can't help but wonder if individuals prefer these methods because they are the most "conflict free". In other words, perhaps employees are turning to these other methods as a strategy of avoidance

---

<sup>30</sup> Evaluation of Informal Conflict Management Services Offered by AAFC's Office of Conflict Resolution. Report approved by AAFC's Departmental Evaluation Committee on June 9, 2009.

because they do not want to be facing the individual they are having a conflict with and talking things through in mediation. Whatever the reason for the trend, employers would benefit greatly by focusing their efforts in involving strategies that are most positively perceived and most frequently used by employees.

The process of creating a truly effective conflict management/resolution system cannot only be done through trial and error. Significant time and effort needs to be spent on training employees on both sides of the employment partnership<sup>31</sup>. Training and mentoring of employees provides a dual benefit for the participants involved. On the one hand, it can speak to the details and processes of conflict management as well as develop the knowledge and soft skills required to deal with conflict-related issues. The most important role of the training, however, is to get the employer and the union to come to the table in a collaborative environment that is crucial to the success of mediation.

It is time to move on from the adversarial relationships that have historically plagued the workplace and move towards partnerships where labour and company alike are fighting together (not each other) for survival in an increasingly hostile and competitive marketplace. Worsening market conditions and tightening of profit margins presents a very simple proposition for the partnership: work together or you will both fail. One can't fight for employee rights when the company ceases to exist.

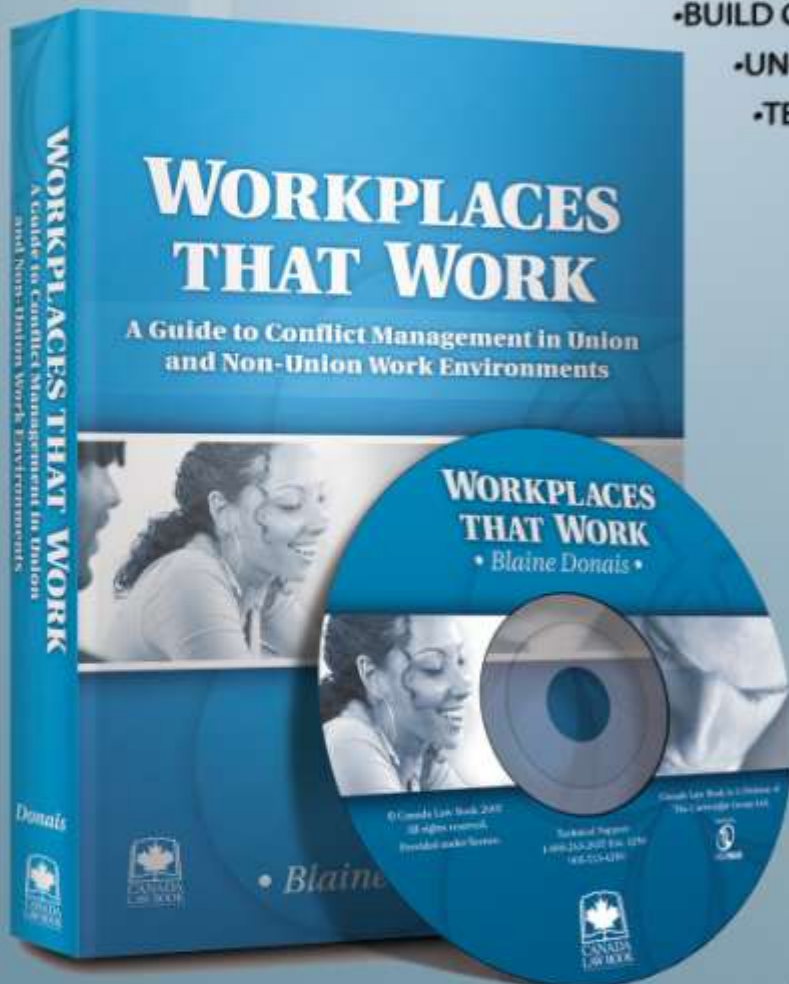
---

<sup>31</sup> Katy Burnett. "Management and labour can work together. " *Canadian HR Reporter* 11 Oct. 2004: ABI/INFORM Global, ProQuest. Web. 02 Oct. 2010.

# WORKPLACES THAT WORK

The first-ever resource to provide a practical guide to conflict management in both union and non-union workplaces.

- BUILD AN EFFECTIVE WORKPLACE CONFLICT MANAGEMENT SYSTEM
- ENGAGE UNIONS AND THE EMPLOYER TO SUPPORT CHANGE
- ENSURE THE SYSTEM REMAINS EFFECTIVE
- BUILD CONSENSUS AROUND CHANGE
- UNCOVER WORKPLACE CONFLICT
- TEST YOUR PRESENT WORKPLACE
- DEFINE WORKPLACE CULTURE
- SAVE MONEY BY MANAGING WORKPLACE CONFLICT BETTER



To order contact:  
[www.canadalawbook.ca](http://www.canadalawbook.ca)

**“ Written for both unionized and non-unionized environments, *Workplaces that Work* offers practical pathways to enhancing workplace fairness, efficiency and the building of trust between employees and managers.”**

**Julie Macfarlane  
Professor of Law, University of Windsor**

## CRITICAL THINKING AND COLLECTIVE BARGAINING: HOW THINKING SKILLS ARE AN ADVANTAGE IN NEGOTIATION

You have heard every trick in the book. Donal O'Reardon pulls apart bargaining tactics using devices in sound critical thinking, a skill that he argues is fundamental to sound bargaining. He outlines bargaining fallacies and approaches which will improve your bargaining abilities and strengthen your successes.



### Author: Donal O'Reardon

*Donal O'Reardon [M.A., M.Litt., H.DipEd., O.C.T., ADR Cert.] is founder of O'Reardon Consulting and author of "I Think Therefore: Critical Thinking for Beginners" (Emond Montgomery, Dec. 2011). O'Reardon Consulting delivers corporate training and educational consulting in the area of thinking skills focusing on how they can positively impact productivity and can be used to manage conflict. He has served on the bargaining committee of CUPE 3904. [www.oreardonconsulting.com](http://www.oreardonconsulting.com)*

**Like any other negotiation, collective bargaining requires key skills and aptitudes. What is not usually recognised, however, is the extent to which critical thinking skills are an intrinsic part of this process.** "Critical Thinking" refers to the ability to, first, assess an argument and its supporting reasons, second, analyse it for shortcomings and, finally, evaluate whether the position is coherent and valid. It also enables their holder to offer powerful counter arguments.

The connection to good negotiation is clear. At the heart of all negotiation is an exchange of positions based on supporting reasons. The ability to scrutinise these in way that may expose their shortcomings, and to offer strong rival arguments, is an asset to anyone involved in negotiation.

In this piece I will explore three key critical thinking skills and link their relevance to the collective bargaining process. My intention is to

demonstrate that to be skilled at collective bargaining is to be skilled at critical thinking whereas to neglect these competencies is to leave yourself and your team at a significant disadvantage.

### **SECTION ONE: FALLACIES**

To be valid, all positions require supporting reasons. Anyone in a negotiation who simply asserts a position without offering a *reason why they hold that position* is unlikely to be seen as taking it seriously. This is because a negotiation is not only an exchange of positions but an exchange of reasons for these positions. Once reasons are exchanged, there is the possibility of integrating interests. Unless they are exchanged, it is impossible.

#### **THE SLIPPERY SLOPE: IF WE GIVE IN TO THIS, WHAT NEXT?**

There are many forms of supporting reasons that may be offered by a bargaining side. In this context it is critically important to be aware of fallacies, that is, faulty forms of reasoning. A key and frequently found fallacy is the “slippery slope” argument. For example, management may say that if they “give in” on the matter under discussion, it will open the floodgates to any number of other compromises in the future. Now this may well be, and indeed it may be the union’s agenda that this is the case, but it doesn’t *necessarily* follow and that’s where the problem lies. Saying that you can’t agree to x because you fear that y will follow (and after that z) is a classic “slippery slope” ploy. The response, of course, is to insist that each case is taken on its merits and other questions can be discussed as and when they arise, and only then. Hypothetical scenarios about the future are not valid reasons to reject a concrete proposal in the present.

#### **THE ARGUMENT FROM TRADITION: THAT’S NOT HOW WE DO THINGS**

Another fallacy here is the so-called “argument from tradition”. This happens when a proposal is met with the response “that’s not how we do things around here”. This can be coded by being expressed in terms of “protocols”, “practices”, “workplace culture” and so on, but the result is the same: We won’t do it because it’s not the kind of thing we’ve done up to now. It is a self-serving, self-fulfilling piece of argumentation that is manifestly inflexible. The response when met with this pseudo-argument is to raise the issue of protocols and whether they operate in the service of the employees or the other way around. Who, after all, is all this “tradition” for?

### **AD HOMINEM ARGUMENTATION: WE DON'T LIKE YOU AND SO WE'RE NOT LISTENING TO YOUR IDEA**

*Ad hominem* argumentation presents itself when a person or a group, instead of the proposal itself, are attacked. For example, "we couldn't possibly listen to that proposal, we know that it was formulated by Gerry and he has a bad record in our books". This fallacy is pretty much the opposite of "separating the person from the problem". Instead it is *making* the person the problem. It is almost guaranteed to result in gridlock and reflects a side's inability to see past the personalities involved. (That said, if it is understood that some people are not trusted by the other side, it is, of course, prudent to have key proposals coming from the mouths of those deemed more "reliable"). However, there are times when *ad hominem* argumentation is appropriate. When examining a candidate for a position, it may be relevant to ask about them, their work style their employment history and so on. On the other hand, it is not a legitimate reason to reject a position in the collective bargaining context. Rather, it is a red-herring as it confuses the issue of what's under discussion.

### **CORRELATION AND CAUSALITY: IF THEY HAPPEN AT THE SAME TIME, ONE CAUSED THE OTHER**

The confusion of correlation (things happening at the same time or close to one another) with causality (one thing making another thing happen) is another example of faulty thinking. Let's take the case of a proposed increase in benefits. Management may object to this with the following argument: The last time we increased benefits, we found that productivity went down because staff were so busy attending their funded medical appointments that there were too many half-days and missed days for us to meet our targets. Now this assumes that the missed days were *caused* by the new benefits and that the time off was always medically related. In other words they assume that because these things happened at the same time (increased benefits and missed days), that one caused the other. In order to make good this claim, evidence is needed. It could well be that there was a seasonal illness, or a pike in absenteeism that is part of the usual statistical pattern, or any other number of reasons. The point is that claiming causality because there is correlation is an unfair ploy and, when identified, can be successfully challenged.

### **SECTION TWO: ASSESSING EVIDENCE**

In the collective bargaining setting it is likely that many positions will be supported by evidence, i.e. data, statistics and so on. This evidence may be presented in charts, mathematical tables or another visual medium. The power of these media is that they have the appearance of objectivity that derives from their scientific form of presentation. It is possible, when

presented by evidence in this manner, that an inexperienced or ill-equipped bargaining team will feel they are powerless against the force of this supporting material. Because of this, the critical thinking skill of assessing evidence is a crucial facility for participating in collective bargaining.

### **THE PROBLEM OF ASSUMPTIONS**

A key requirement for assessing any evidence is to examine the *assumptions* that underscore it. For example, if management were to say that their statistics indicate staff do not have a strong desire for health coverage, it would be helpful to examine how the question was pitched and so what assumptions lay beneath. If the question was asked as “which would you prefer, basic health coverage or a pay increase?” it suggests management are operating on (and promoting) the assumption that these are mutually exclusive options. To take another example, if management suggest that an increase in the price of on-site parking does not impact employees because they usually take public transport, it assumes that taking public transport does not inconvenience staff and therefore “impact” them in other ways. Assumptions are actually unavoidable in argumentative exchange. It is therefore critical that those involved in the collective bargaining process be equipped with the capacity to identify and challenge them.

### **THE QUESTION OF METHODOLOGY**

Another important feature in the task of assessing evidence is, of course, examining whether the data was collected using a legitimate *methodology*. Let's take the example where management surveyed staff about an imminent strike vote and offered “evidence” at collective bargaining that there is no appetite for a strike. In this scenario, it is a good idea to ask about their methodology: Who did management ask about whether they favour a strike or not, senior staff or everyone? When were they asked? Four years ago, before a series of attacks on work conditions, or last week? *How* were they asked? Was it anonymous feedback, or a public meeting where they are open to scrutiny? To take only one of these: Asking senior staff close to retirement whether they support a strike motion is likely to skew the results. Many staff at this level will have their pension calculated on the basis of their final salary which will be negatively impacted if they go on strike, even for one day. To canvass only them, or to disproportionately canvass them, will lead to unrepresentative data all of which serves to undermine this “evidence”. While it may sound technical, most people have a good intuitive grasp of when a method is fair and when it is self-serving. The challenge therefore is to find the appropriate

language to articulate these concerns. This language is the language of critical thinking.

### **SECTION THREE: BELIEFS AND VALUES**

Beliefs and values have a notoriously stubborn place in argument exchange. It has become conventional to demure if a person invokes a personal belief or value when they are explaining why they side with a particular argument or find a particular course of action unpalatable. The reason for this is that in the contemporary North American cultural climate there are few more damaging accusations, in the professional context at any rate, than that a person is intolerant or insensitive to another person's personal beliefs and values.

#### **BELIEFS AND VALUES ARE *NOT* THE SAME**

It is crucially important not to be brow-beaten by this as, of course, the power of invoking beliefs or values, can be used to halt discourse and shame other participants into giving in. We would do well, therefore to clarify what is meant by "beliefs" and "values". Values refer to what we believe is important ("valuable") in life. Beliefs refer to our idea of what is *true* about these parts of our life. Imagine for example, that a person has the value that education should be equally available for all people, no matter what their economic circumstances. It is likely then, that they will have a *belief* in free education and so they may also *believe* that any form of private education is unfair. They may have accompanying beliefs about the importance of public libraries and so on. Values organise and group beliefs and, in turn, beliefs serve values.

#### **VALUES = ETHOS, BELIEFS = BEST PRACTICES AND EITHER CAN BE CHANGED**

When a belief or value comes up in collective bargaining it may be couched in different language. Institutions often refer to their collective values as their "ethos". If this is the case, then it's likely that "best practice" refers to the beliefs that service the values in their ethos. For example if their "value" is that impeccable customer service is a core part of their business model (their company ethos), then they are likely to believe in first-class follow-up, absolute attention to detail and so on (their "best practices"). Other language may be deployed but the point is that when discussing work practices it is inevitable that one encounters other beliefs and values.

It is important not to be intimidated here. A skilled collective bargaining team can feel their way into the role that these values play in the organisation, explore whether they are realistic and sustainable and, if so, whether it is possible to find more employee-friendly beliefs that serve

them. Let us take the case of customer service. It is possible that this value may result in the employer's belief that "staff should be contactable twenty-four hours a day, seven days a week" issuing in a very poor quality of life on the part of the employee as there is a refusal to accept the importance of a work-life balance. A collective bargaining team can identify the importance of the value to the employer (and the employee as presumably the company's reputation will enhance the employee's job security) while still examining whether other beliefs better serve the value. These may not be that employees are ever-available, but that there are reliable and agreed upon customer service structures with well trained staff: different belief, same value, happier employee.

### **CONCLUSION**

Collective bargaining is not an arid dry exercise. But it has important intellectual components one of which is the analysis of arguments. Thinking and argumentation do not happen in a vacuum. They take place in the context of our emotions, or commitments and the political climate of the bargaining arena (institutional, provincial, federal). This does not diminish the importance of thinking straight in these circumstances; it highlights it. Given these pressures, and others too, the stakes are too high *not* to be equipped with these thinking tools. Collective bargaining trades on clarity of understanding. Critical thinking facilitates this.

## ROSETTA BELCASTRO'S BOOK REVIEW

*COMPLETE GUIDE TO CONFLICT RESOLUTION IN THE WORKPLACE*

Authors: *Marrick F. Masters and Robert R. Albright.*

(New York. AMACOM, 2002) 343 pages.

Belcastro finds this 'complete guide to conflict resolution' significantly incomplete and lacking in key areas of competency. Among other deficits, the book fails to describe the consequences of union avoidance practices for fair conflict resolution. Belcastro fills in the gap with an in-depth description of the advantages of including participation of all workplace actors.

---

### Reviewer: Rosetta Belcastro

*Rosetta Belcastro [B.Sc. (Hons), H.R.M. (Hons), M.I.R.H.R., WFA.] has worked at the Hospital for Sick Children for 18 years and has over 10 years in the health sciences industry in a managerial/supervisory capacity. She is a seasoned author with over 25 peer reviewed publications in the field.*



**Masters and Albright's *The Complete Guide to Conflict Resolution in the Workplace* provides readers with an overview of conflict management and resolution in the workplace.** This manual proposes, step by step, how to design a conflict resolution system and develop the skills to put it into practice. The authors suggest that conflict consumes thirty percent of management's time. Consequently, reorganizing the process of dealing with conflict and improving effectiveness can be of significant value for an employer.

### CHAPTER SUMMARY

The book is divided into five sections.

Part 1. *Getting a Handle on Workplace Conflict* has chapters discussing how to appreciate, recognize and handle conflict.

Part 2. Identifies the techniques used to resolve conflict with a considerable focus on Alternative Dispute Resolution (ADR) techniques.

Part 3. *Special Topics* focuses on workplace violence, equal employment opportunity disputes, union-related conflicts and international issues.

Part 4. Presents concepts for designing, implementing and developing a conflict-resolution system in the workplace.

Part 5. Provides the reader with a summation of key concepts using maps and guide posts.

In section one the authors briefly gloss over the Thomas-Kilmann Conflict Mode Instrument. The text did a poor job of helping the reader appreciate the various negotiating styles and the most suitable approach or mixture of approaches to consider when in conflict. Also, little emphasis was placed on the core competencies (interpersonal, managerial, analytical personal and technical) that a professional should possess when dealing with conflict. Effective leadership of tomorrow will require an interpersonal dimension. Technical expertise is now assumed with position. This quality is no longer the exception but rather the rule. Leadership is a relational process. It involves interactions among leaders, employees and external constituencies. Whether personal or in the workplace, conflict is inevitable and can be destructive. Managed incorrectly, real and legitimate differences between people can break down co-operative efforts ultimately threatening an organization's mission. It is essential that the individuals involved be able to identify and subsequently deal with situations that instigate conflict, in order that issues can be resolved quickly, fairly and effectively. A more thorough discussion, by Masters and Albright, in this section would have helped emphasize the importance of these competencies.

Section two is the largest part of the book which includes negotiation (chapter 4), facilitation (chapter 5), mediation (chapter 6), arbitration (chapter 7) and the following collection of techniques used by employers to resolve conflict: mini-trials, ombudsman, partnering peer review, and summary jury trials (chapter 8).

Section three examines particular areas of conflict involving Equal Employment Opportunity (EEO) disputes, violence in the workplace, the role of unions during conflict, and disputes arising in an international setting. Chapter 9 helps identify violence in the workplace and the challenges faced for employees and employers. In chapter 10, the authors discuss resolving EEO disputes, while steering the reader through an EEO complaint process together with the role of mediation. Sexual harassment complaints continue to increase and the authors address this topic in some detail. They present several ideas for organizations to consider in their sexual harassment policy. Chapter 12 briefly touches upon conflict across nation borders. With the continued increase of globalization, social,

cultural, political, and structural differences can have an impact on breeding conflict.

In the remaining two sections of the book, the authors include the steps involved in designing, implementing, and developing a conflict-resolution system, while highlighting the importance of education and training.

### **COMMENTARY**

On the whole, this book provides a basic overview of the conflict-resolution process and the steps used to identify, deal with, resolve and prevent conflict. The emphasis placed exclusively on alternative dispute-resolution methodology seems to limit the usefulness of this book for the HR professional. The literature identifies many competencies typical of effective leaders. Emotional intelligence, integrity, self-confidence and adaptability are personal characteristics that are important and will have an impact on people management. Effective leaders have the ability to empathize with others and have the social skills required for creating and maintaining healthy working relationships. The importance of ADR in helping resolve disputes is unanimously clear (Donais, 2006). However, a more detailed discussion of the skills or competencies that HR professionals or line managers need to develop would have served their HR audience better (e.g., active listening, communication, coaching, problem solving).

It is agreed that the effective implementation of a conflict management strategy has a significant impact on the outcome. However, the authors fail to consider the roles that the different parties relevant to the employment relationship have, in regards to conflict management. Unions have essential roles and should not be avoided, as undemocratically suggested by the authors. Unions are a component of the employment relationship that exists regardless of the approach to management. Unions have a vital role in the negotiation process in collective agreements. They help ensure that health and safety standards are met and workers are able to obtain compensation as a result of work-related injuries (Godard, 2005).

It is unfounded to suggest that unions would encourage and benefit from a workforce that is unable to resolve disputes. Unions are formal organizations that represent individuals employed in an organization, throughout an industry (Stone et. al, 2000). Their role in reducing conflict however, does depend on the approach of management. The unitarists, a position taken by Masters and Albright, believe that unions are one of the major causes of conflict. They compete with management for the commitment of employees. Under this approach, unions have no function in reducing conflict, other than to disrupt management.

On the other hand, a pluralist sees unions as legitimate representatives of employees and their interests (Donais, 2006). It is their responsibility to negotiate compromises with management over employment issues. Therefore the role of unions in resolving conflict under this approach is important, provided unions are reasonable in their negotiation with management. Managers taking a pluralist position acknowledge the presence of unions. The rationale for this differing attitude is that a union presence and voice is believed to positively contribute to facilitating communication and change in the employee relationship (Stone et. al, 2000). Breakdown of communication is one of the major causes of conflict (Stone et. al, 2000).

Trade unions have significant experience in organizing, negotiation and engaging in constructive dispute resolution options. Training in these areas helps members recognize, define and communicate their needs and possible areas for negotiation. Peace is unlikely to be sustained unless it is supported by appropriate domestic institutions. This calls for the development of legalized, well implemented and socially accepted institutional practices competent at resolving conflict before conflict arises.

A culture of engagement, encouraged by management with the support of the union, will create a less toxic and more desirable work environment. Feedback is important to help employees understand their roles and responsibilities and improve overall workplace performance. Learning needs can be met by obtaining feedback from the union, through workshops or learning events, program training and policy review.

Although the initial costs may seem high, it is best to view these expenses as long-term investments in human capital that will greatly improve overall performance of the organization. Thus this strategy works not to abolish the existence of conflict but to encourage methods of resolving conflict soon after it arises. Unions can be one of the instruments in the resolution process rather than a deterrent.

Changes in the labour market can generate problems for worker and union input into governmental regulations. Case in point, in various industrialized countries, unions make crucial contributions to Occupational Health and Safety (OHS) standards. Unions are central to the collective labour law regimes that establish a baseline of employment conditions (wages, hours etc) as well the framework for workers negotiating safety concerns without fear of reprisal. They exert influence through political lobbying on OHS laws, representing injured workers in compensation proceedings and providing logistical support for the representatives and committees established under OHS laws or industry agreements. I would like to remind Masters and Albright that reforms to legislation in industrialized societies

were predicated on a joint approach based on informed employees and a high level of union organization. Participatory mechanisms such as employee health and safety representatives and joint workplace committees usually entailed establishment procedures/requirements which meant they were unlikely to occur in small or non-unionized workplaces. Even where laws grant participatory rights to non-unionists this has proved problematic in practice (James and Walters, 1997).

Contrary to the beliefs of many, the impact of declining union membership in industrialized nations will have serious implications for future employee/employer relationships. A dangerous trend has been noted that union presence is significantly lower amongst contingent workers such as the self-employed, those in small business, part-time and temporary workers and the growth of precarious employment has contributed to a decline in union density experienced by many industrialized countries (Campbell, 1996). Falling union membership levels have weakened worker input and this gap has not been filled by alternative forms of employee representation (James and Walters, 1997). There is evidence that the combination of labour market change and decentralized industrial relations regime have played a role on work intensification and an erosion of employment standards. These effects are most likely to be pronounced amongst contingent workers with little bargaining power (Nichols, 1997).

The growth of precarious forms of employment and smaller more unstable employment sectors can weaken these developments by:

- reducing the number of workers employed by large organizations where these systems are most applicable;
- increasing the number of workers in isolated or inadequately planned work-settings and encouraging competition amongst workers;
- making it virtually impossible to establish a workplace fairness system whereby disputes are managed fairly;
- making it more difficult to address dangerous health risks of exposure to hazardous substances;
- creating groups of contingent workers in large organizations whose integration in OHS management/internal control systems will be difficult;
- making it even harder for unions to keep an eye on or inspect systems performance (Nichols, 1997).

It is impossible to deny that unions serve as a medium to ensure employee rights. Pia Simonsen (2008), a Rotary World Peace Fellow at Duke University specializing in peace, conflict and a background in the international trade union movement, comments on how unions bridge communities and enforce respect for the fundamental rights to associate, assemble and for free speech and, finally, provide a shared belief system

for hostile individuals to commence dialogue. In this way unions can mediate conflict by promoting communication between ethnic and religious groups, fighting racial and class barriers, and demanding equal employment opportunities which do not discriminate according to gender, ethnicity or religion. Simonsen makes reference to organizations like the Solidarity Center based in Washington DC which helps workers resolve conflict by building relationships to bridge ethnic and religious differences and provide training and education to give workers needed skills and opportunity. Simonsen (2008) suggests that focusing on workplace concerns has positive externalities for community relations. In Sri Lanka, the Solidarity Center with funding from the Canadian International Development Agency brought together Sinhalese Buddhist and Christian plantation managers and Tamil Hindu union members from the plantation sector to improve industrial relations and overcome communication barriers based on differences in ethnicity, religion and language (Simonsen, 2008). Interventions aimed at changing worldviews through psychological and perceptual change, eliminating prejudice and promoting compassion are considered essential for establishing a long-term basis for resolution.

In addition to personal transformations by bringing communities together, unions can support the development or reform of labour organizations that address the inequities that fuel conflict and to institutionalize methods of managing and resolving conflict. In any negotiation one must think clearly about information that is available, together with what is unknown, specifically the feelings and perspectives of the other party. It is important to consider that the purpose of most negotiations should be the goal of mutual learning and respect.

#### REFERENCES

- Blaine Donais, *Workplaces That Work: A Guide to Conflict Management in Union and Non-Union Work Environments*, (Aurora: Cda Law Book, 2006)
- Campbell, I. (1996), 'Casual Employment, Labour Regulation and Australian Trade Unions' *Journal of Industrial Relations*, 38(4):571-90.
- Godard, J. (2005). *Industrial Relations, the Economy, and Society*, (3rd Ed.). Captus Press
- James, P. and Walters, D. (1997), 'Non-union Rights of Involvement: The Case of Health and Safety at Work', *Industrial Law Journal*, 26(1):35-50.
- Hanycz, C., T. Farrow & F. Zemans, eds., *The Theory and Practice of Representative Negotiation* (Toronto: Edmond Montgomery Ltd., 2008).
- Nichols, T. (1998), 'Review Article: Health and Safety at Work', *Work, Employment and Society*, 12(2):367-74.

Simonsen, P. (2008). The Role of Trade Unions in Peace Building. *Journal of the International Centre for Trade Union Rights*, 15(1)

Salovey, P., & Mayer, J.D (1990). Emotional intelligence. *Imagination, Cognition and Personality*, 9(3), 185-211.

Stone D., B. Patton, S. Heen & R. Fisher, *Difficult Conversations. How to Discuss What Matters Most*, (Penguin, 1<sup>st</sup> ed., 2000).



The advertisement features four product categories with their respective covers and prices. The products are: wfiJOURNAL in print, Workplaces That Work (a book and CD), Engaging Unionized Employees (a book), and WFI White Paper (a document). Below the products, the prices are listed for individual and institutional purchases. At the bottom, there is a purchase instruction, the Workplace Fairness Institute logo, and the tagline 'Conflict Management Solutions'.

Product	Individual Price	Annual Price	Institutional Price
wfiJOURNAL in print	\$15	\$60	
Workplaces That Work	\$89		
Engaging Unionized Employees	\$54		
WFI White Paper	\$30		\$125

TO PURCHASE by PayPal or credit card: [www.workplacefairness.ca](http://www.workplacefairness.ca)

 Workplace Fairness Institute  
Conflict Management Solutions

*wfi*JOURNAL

Advertisements 2010

SIZE/ISSUE

Bus.Card \$ 50  
1/3 page \$100  
1/2 page \$150  
2/3 page \$175  
Full Page \$250

COVER RATES

Outside Back (colour)  
\$500  
Inside Front \$300  
Inside Back \$300

Please deliver digital TIFF format ,  
JPEG or PDF, minimum 300 dpi at  
full size, no compression.

*wfi*JOURNAL

335 Delaware Avenue, Toronto,  
Ontario, Canada. M6H 2T7

[wfijournal@workplacefairness.ca](mailto:wfijournal@workplacefairness.ca)





**Workplace Fairness Institute**  
Conflict Management Solutions