

INTEREST BASED BARGAINING WITH A FACULTY UNION:
A CASE STUDY OF THE UNIVERSITY OF MINNESOTA
AND THE UNIVERSITY EDUCATION ASSOCIATION

by
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ABSTRACT

The traditional "positional" collective bargaining process can be inefficient and confrontational, leading to outcomes that are not in the long-term interest of the either side. The "interest-based" bargaining model has emerged as an alternative to the traditional model. The purpose of this case study is to analyze the use of a interest-based bargaining model in an actual negotiation. First, the organizational and legal context of the negotiation will be set. Second, the traditional bargaining model and the interest-based model will be drawn and compared, and the literature commenting on the latter will be reviewed. Third, the application of the interest-based model in the negotiation will be described in detail. Use of the model will be shown to have met the criteria put forth by advocates of interest-based bargaining. The paper concludes with a reflection on the interest-based bargaining literature in light of this case study and a consideration of the extent to which the results of this case study may be generalized to other settings.

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CHAPTER I

INTRODUCTION

The 1993-1995 collective bargaining agreement between the University of Minnesota and the University Education Association (UEA) was set to expire June 30, 1995. The agreement covered 350 faculty at the University of Minnesota, Duluth (UMD), the only union-represented faculty unit in the University of Minnesota system. Previous negotiations used the traditional positional bargaining model. In response to dissatisfaction among faculty and administration with previous negotiations, interest-based bargaining was used in this negotiation. As the University's chief negotiator for this negotiation, I had a unique opportunity to both participate in and observe the implementation of interest-based bargaining in the negotiation. This paper is a case study of the negotiation.

NEGOTIATIONS FOR THE 1995-1997 AGREEMENT

The parties commenced negotiations for a successor agreement in March 1995 and concluded two months later. In the words of the UEA president in a post-negotiation letter to the University president,

... past negotiations have been difficult, necessitating the use of a mediator for each of the previous three negotiations. This negotiation, by contrast, was concluded without a mediator and literally in record time.

Most notable among the reasons he cited for the successful negotiation was the "'problem-solving' negotiating atmosphere [and] your team's willingness

to hold to that spirit..." Among his suggestions for future negotiations was the continuation of "an expressed commitment to a problem-solving approach, ("interest-based" rather than "positional" bargaining, in negotiations jargon)."¹

The parties agreed to use an interest-based bargaining model instead of the traditional "positional" model in order to address serious concerns raised by administrators and faculty with experience in previous contract negotiations. These concerns included the following. The negotiations required a great deal of time to complete, sometimes taking over a year past the expiration of the prior agreement. Scheduled bargaining sessions repeatedly were delayed or rescheduled, causing disruption in negotiating members' schedules and leaving the impression that the negotiations were not of primary importance. Negotiators did not appear to be prepared and were perceived not to have the authority to negotiate. Traditional bargaining techniques, such as side-bar bargaining, caused concerns among other bargaining team members. The traditional reliance on the chief spokespersons at the bargaining table resulted in other team members feeling uninvolved, especially problematic when those team members were particularly knowledgeable and interested in an issue. Finally, both UMD administration and UEA had indicated frustration with the apparent lack of emphasis placed on matters at the Duluth campus by the University system's central administration in Minneapolis. This is an important point because the legal and organizational authority for negotiating collective bargaining agreements at the University resides with central administration.

¹ Correspondence from Stephen Chilton, President, University Education Association to Nils Hasselmo, President, University of Minnesota, June 12, 1995.

The purpose of this paper is to analyze the application of an interest-based bargaining model in the negotiation of a 1995-1997 collective bargaining agreement between the University administration and UEA. In the remainder of this chapter, the legal and organizational setting of this negotiation and the importance of this topic will be discussed. In the second chapter, the interest-based bargaining model used in this negotiation will be described in the dual context of the traditional "positional" model and the literature the interest-based model has spawned since its emergence in the early 1980s. In the third chapter, I will describe in detail the actual negotiation process using the interest-based model, from pre-negotiation preparation to post-negotiation ratification and implementation. In the concluding chapter, I will evaluate the application of interest-based bargaining in this negotiation in light of the interest-based bargaining literature and I will suggest that the interest-based bargaining model may be extended with positive effects to other settings.

LEGAL AND ORGANIZATIONAL CONTEXT

As a public employer, collective bargaining at the University of Minnesota is subject to the Minnesota Public Employment Labor Relations Act (PELRA).² Originally passed into law in 1974 and substantially revised in 1981 to more or less its current form, PELRA includes provisions for union organization, certification elections, unfair labor practices, rights and interest arbitration, bargaining unit definition and clarification, contract negotiation and mediation, scope of bargaining, management rights, meet and confer

² Minnesota Public Employment Labor Relations Act, Minnesota Statutes, 179.A.01-279A.25

with professional employees, agency fees, and a neutral state agency to oversee implementation of the act.

For our purposes, the most significant statutory revision made in 1981 was to define thirteen bargaining units at the University of Minnesota. These bargaining units are listed in Table 1 below.³ Among the units established in PELRA is the "outstate" faculty unit composed of faculty at the University's Duluth, Morris, and Crookston campuses. The Duluth faculty voted for union representation by the UEA in 1982. Since the faculties at the Morris and Crookston campuses have not elected to be represented by a union, UEA represents faculty at the Duluth campus only. It should be noted that at the time the bargaining units were created, the option of defining one faculty bargaining unit for the entire system was considered. Had this option prevailed, due to resistance from the Twin Cities faculty, it is highly unlikely that any faculty at the University would be unionized.

Table 1

<u>Unit</u>	<u>Representative</u>	<u># Employees</u>
Police	LELS (Independent)	43
Trades	Joint Trades Council	200
Service	Teamsters	1,400
Hospital Non-Professional	AFSCME	700
Professional Nurses	No representative	1,500
Clerical	AFSCME	2,800
Technical	AFSCME	1,400
Academic Professional	No representative	2,500
UMD Faculty	UEA/MEA	350
Professional	No representative	3,000
Supervisors	No representative	1,200
Twin Cities Faculty	No representative	4,000
Graduate Assistants	No representative	4,500

³ Source: University of Minnesota Office of Human Resources, Employee Relations Division, 1995.

The UMD faculty elected to unionize in 1981 for political and economic reasons.⁴ The political bases for unionization were (1) the interest in gaining greater local control over local issues, especially promotion and tenure; (2) the desire among the faculty and UMD administration to have a more effective voice in the University system's policy making process; and (3) the need to have an effective grievance procedure so that faculty complaints would be assured a response. The economic basis for unionization was the faculty's concern about salaries. Although the amount of salary adjustments was an important issue, the more critical issues were the distribution of salary funds between the Duluth campus and the Twin Cities campus, and the distribution of salary funds among UMD faculty.

UMD is one of four campuses in the University of Minnesota system. Originally founded in 1895 as a normal school to train elementary school teachers, and expanded in 1921 into the Duluth State Teachers College, the Duluth campus became part of the University of Minnesota system in 1947. The campus now has over 7,500 students in 80 undergraduate majors and 17 graduate programs, including a two-year rural medicine program in its medical school. The primary emphasis of UMD is undergraduate education. Approximately 1,000 faculty and staff are employed at UMD, 350 of whom are in the faculty bargaining unit represented by UEA. By way of contrast, the University's Twin Cities campus is a major research institution, with approximately 55,000 students served by 4,000 non-union faculty and by over 15,000 union and non-union staff. The faculty at the Twin Cities campus have not elected to unionize, nor have they even petitioned for an election.

⁴ The foregoing review of UEA's unionization is based on discussions with Vincent Magnuson, Acting Vice-Chancellor for Academic Administration, UMD; and Sabra Anderson, Dean, College of Science and Engineering, UMD. Both were faculty during the unionization process.

RELEVANCE OF THIS ANALYSIS

This analysis of interest-based bargaining, should be of interest to students of collective bargaining, in that it will provide an empirical analysis of an actual negotiation. It will add to the very limited store of negotiation case studies on which other academic and theoretical work may be based. To practitioners of collective bargaining, both labor and management, it will show how the bargaining process may be improved through the introduction of an alternative bargaining model and techniques.

This paper also may be of interest to students of political organizations and public policy because, unlike the private sector where union penetration is currently at 11 percent, in the public sector the extent of union penetration is currently 35 percent and growing.⁵ If public sector organizations as employers and the unions representing public employees are able to introduce more effective techniques for collective bargaining, the results will likely include improved labor-management relations and more effective provision of services to the public.

This analysis is important because it demonstrates how some of the major problems with the collective bargaining process can be addressed through the introduction of interest-based bargaining. The time required to reach an agreement was dramatically reduced. One party was not required to fail as a precondition for the other party to succeed. The agreement that resulted from the negotiation was reasonable in that it was responsive to the

⁵ Jelf, Gregory and James Dworkin, "Unionism in the USA: Past, Present, and Future." unpublished manuscript, October 23, 1995, pg.18. Troy, Leo. "The End of Unionism," *Society*. Vol. 32, No.3, March-April, 1995. pp.27-33.

most important needs and interests of the parties and their constituents. The level of antagonism the parties had experienced with each other in the past at the table and in other labor-management forums was reduced. The historically neglected interests of students and the tax-paying public were recognized and considered. Problems with the collective bargaining process can be addressed by the parties and do not necessarily require statutory remedies.

This final point is especially important in that problems in public sector collective bargaining are increasingly subject to public concern and legislative intervention. In response to perceptions that both the number and compensation levels of public employees have become excessive, a major recent trend is to restrict public employers and unions from bargaining issues where there is an overriding public interest. Examples of issues recently taken off the bargaining table by legislatures include retirement, health insurance, and subcontracting out. These developments appear to have occurred where there are serious concerns regarding both the process and the outcomes of negotiations. The process is very time consuming, expensive, complex, and heedless of the public interest. Unions are perceived to be too powerful and to focus on the interests of union members at the expense of the public. Employers are perceived to be at once too easy on the unions and unresponsive to the legitimate needs of employees. The outcomes often do not resolve the critical issues between the parties and do not sufficiently address the interests and concerns of the citizens served by the employees.

In this paper, I take no position on the various legislative initiatives with respect to the collective bargaining process. Whether or not the scope of

mandatory bargaining subjects or the impasse resolution procedures are changed by the legislature, this paper shows that significant improvements in the collective bargaining process can be made by the parties themselves. It is hoped that such improvements will represent an opportunity for labor-management cooperation to resolve critical issues and to enhance services to the public.

Although this case study of interest-based collective bargaining focused on a faculty bargaining unit in a public university, the results may be extended to a wider variety of collective bargaining contexts. This view is based on the following four points which will be addressed more fully in Chapter IV, Conclusion. First, while there are significant differences in collective bargaining law between the private and public sectors, and within the public sector among the various federal and state jurisdictions, the legal framework as it affects the collective bargaining process is fairly consistent. Second, the problems in the collective bargaining process the parties had experienced over the years, prompting them to take up the interest-based model, are characteristic of many collective bargaining relationships. Third, the underlying issues of concern to the faculty and the administration (e.g., job security, performance appraisal, management flexibility, productivity, working conditions for part-timers, and salaries) are similar to the issues addressed by labor and management outside the university. Finally, the resources suggested for successful implementation of interest-based bargaining are increasingly available to labor and management negotiators.

CHAPTER II

INTEREST-BASED BARGAINING

In this chapter, the interest-based bargaining model used in the negotiation is set forth. First, the theoretical context out of which the interest-based bargaining model emerged will be reviewed. Next is a description of the interest-based model as popularized by Fisher, Ury, and Patton⁶. After reviewing some recent commentary on the interest-based model, the specific approach used in this negotiation will be described.

POSITIONAL BARGAINING

Instead of reviewing the positional bargaining model as it is set up for critique in the interest-based bargaining literature, this review of the positional bargaining model is based on a practical guide to faculty collective bargaining.⁷ As will become clear below, this guide was written primarily from the perspective of the faculty. My use of a faculty version of the positional bargaining approach is not intended to be critical of the faculty perspective. Indeed, with only slight revision, this guide could represent an excellent example of positional bargaining from an administration perspective.

⁶ Fisher, Roger, William Ury, and Bruce Patton. Getting to Yes: Negotiating Agreement Without Giving In. 2nd ed. (New York: Penguin, 1991).

⁷ Graham, David L. and Donald E. Walters, "Bargaining Process.", In Faculty Unions and Collective Bargaining. Ed. Duryea, et al. San Francisco: Jossey Bass Publishers, 1973. 44-65.

The traditional "positional" method of negotiation found in Graham and Walters' work on the bargaining process involves faculty unions. This is a practical guide to negotiation in two parts. The first is written by Graham, a negotiation specialist with the National Education Association, from the union perspective. The second is written by Walters, an administrator in the Massachusetts State College System, from an administration perspective. For Graham, the collective bargaining process can be:

segmented into preparation of the proposal, constitution of the bargaining team, formal negotiations at the table, and away from the table communications and arrangements-all of which lead to a formal contract which binds the two constituencies for a definite period of time.⁸

The preparation of the proposal is the union's responsibility because, according to Graham, the employer is satisfied with the status quo and employees are not. "All faculty problems, concerns, and desires must be identified and translated into written proposed solutions."⁹ The proposal should be prepared by a committee, with representation from the various constituencies within the faculty, based on a communication plan which includes an educational component for the faculty and then feedback from them to the committee. Also, prior to the onset of negotiations, the committee should review the union's recent grievance and arbitration experience, the employer's policies and procedures, and any past practices that may have developed under the previous agreement. In addition, the committee should review other collective bargaining agreements for ideas and for existing contract language which may address the faculty's concerns. The actual proposal prepared by the committee should "mandate optimum

⁸ Graham and Walters, 45-46.

⁹ Graham and Walters, 47.

policies and procedures and all working conditions that would be in effect if conditions permitted."¹⁰

In selecting the bargaining team, Graham asserts the minimum requirements of strong advocacy for faculty rights and commitment to the collective bargaining process. Although reasonable tools such as logic, facts, persuasiveness, and good manners may be useful "...without the support of other bargaining weapons, [they] will win few concessions."¹¹ Other bargaining weapons include political action, news releases, faculty censure of the administration, community censure, impasse proceedings, fact-finding, and the strike. In addition, bargaining team members must be able to patiently sit through negotiation sessions without speaking and deal with an administration slow to make progress. They should be able to make a "total idealistic and personal commitment" to the negotiation.¹² They involve attendance at all sessions and the willingness to be away from their families for long periods of time. Graham also suggests that bargaining team members should be selected, not elected, and that, in order to obtain expertise and to avoid possible conflicts of interest, an outside professional negotiator should be employed to lead the team.

The faculty is ready for the bargaining table once it is "armed with facts, figures, and logical conclusions."¹³ At the table, the chief negotiator should be the only member of the team to speak. Such team discipline is critical so that the chief negotiator's strategy is not undermined by unplanned

¹⁰ Graham and Walters, 47.

¹¹ Graham and Walters, 48.

¹² Graham and Walters, 49.

¹³ Graham and Walters, 51.

statements from negotiating team members, and so as to avoid giving the administration team enough information about individual priorities that it can divide and conquer the faculty. At the first negotiation session, the faculty presents its complete proposal and then attempts to work out scheduling and other procedural matters for the negotiation. In subsequent meetings, the faculty explains its position on each clause and the administration responds. Low priority or non controversial issues should be discussed prior to more difficult and controversial issues. As a condition of agreeing on an issue, Graham recommends that the new contract language be agreed prior to agreement on the issue. Before committing anything at the negotiation table, the team should discuss the issue in a private team caucus. Over time, the parties differences are narrowed "through repeated exchanges of proposals, . . . [which] lead to a settlement without the need for either party to pull other weapons from their collective bargaining arsenal."¹⁴ However, administration resistance to the faculty union's proposed changes generally is so strong that it can only be overcome by tools other than persuasion and logic.

Away from the negotiation table, due to more restrictive labor relations law and regulation in the public sector than in the private sector, Graham suggests that faculty explore the use of tactics other than the strike. These tactics include public relations, political action on the local and state level, lobbying, mediation, and fact-finding. The more recalcitrant the administration in progressing at the negotiation table, the more these tactics should be used by the faculty negotiating team. All of the tactics rely on an effective communication plan with the rank and file faculty, community,

¹⁴ Graham and Walters, 54.

board of trustees, and legislature. Graham argues that an effective communication plan with faculty will bring short term benefits, in terms of support for the negotiation team, and long term effects, in validating collective bargaining as a legitimate vehicle of change.

Another tactic used away from the bargaining table by experienced negotiators is the side-bar conversation between the chief negotiators, sometimes in the presence of a mediator. These discussions enable the negotiators to explore possibilities in a less formal setting. If they are able to move forward in resolving issues in a side-bar, they will report this to their respective teams. However, "[if] they cannot reach agreement, they return to the bargaining table as if no meeting had occurred."¹⁵

Ultimately, if none of the aforementioned tactics are successful at bringing the parties to agreement, Graham suggests that the faculty union must consider the strike. His view is that the historical role of the faculty in university governance of advising administration on a wide variety of matters is fundamentally altered by the introduction of collective bargaining. Faculty increasingly will demand that changes be made and that they be guaranteed in the contract. If, in response, the administration is unwilling to alter practices and procedures, the strike is inevitable.

Graham and Walters' work concludes with Walters' administration perspective on the collective bargaining process for faculty. Walters begins by suggesting that the origins of the bargaining process in higher education can be found in industry. Thus, the approach typically used by the parties in

¹⁵ Graham and Walters, 58.

faculty collective bargaining is adversarial and involves all the tools of the industrial bargaining approach, including the strike.

The appropriateness and utility of the adversarial approach assumed by Graham is questionable in Walters' view. He suggests that the bargaining process needs to be amended to accommodate the unique environment of higher education in several ways. First, "the original concept of the sharply defined status of the parties as employer-employee fails to take account of the supplementary status of faculty as professionals,"¹⁶ who must pursue goals in teaching and scholarship that are not as production oriented as is the case for industrial workers. Second, the assumption that the relationship between faculty and administration is inherently adversarial overlooks the extent to which there are mutual interests in broad institutional commitments to teaching, research, and service. Third, the assumption of an adversarial relationship neglects the academic tradition of collegiality and shared governance as means to resolve conflicts. Finally, the imposition of the industrial model, which assumes that university administration possesses the powers of private corporate ownership and that the faculty are limited to pursuing higher wages and benefits packages, has the effect of excluding faculty from input in matters of professional importance to them.

Walters' concludes his discussion with a suggestion that the parties to collective bargaining in higher education negotiate faculty governance into the labor contract. While there may be dangers for both faculty and administration, he proposes that a governance structure be established which is independent of both the union and the administration. He argues that

¹⁶ Graham and Walters, 61.

such a structure would stabilize the university by consolidating the interests of faculty, students, and administrators. It would preserve collegiality by affirming in the contract a joint commitment on shared authority in reaching decisions. It would ensure institutional autonomy from the particular interests of one constituency. Finally, it would preserve and enhance the professional stature of faculty; they would not be mere employees. In sum, Walters holds that what is ultimately at stake in faculty collective bargaining is much more than a contract, it is their ongoing relationship, their mutual pursuit of the goals of higher education.

INTEREST BASED BARGAINING

The interest-based bargaining model was developed as an alternative to the positional bargaining approach. Other terms used to describe a collaborative, non-adversarial bargaining process include mutual gains bargaining, win-win bargaining, principled negotiations, and integrative bargaining. While there may be slight differences among these bargaining approaches, their similarities are so great that I will consistently use the term interest-based bargaining throughout this paper.

Among the numerous works advocating a more collaborative approach to negotiations are Walton and McKersie¹⁷, Jandt¹⁸, Raiffa¹⁹, and Fisher, Ury, and Patton. As the use of the interest-based bargaining model has spread, it has increasingly been the subject of research and evaluation by both

¹⁷ Walton, Richard, and Robert McKersie. A Behavioral Theory of Labor Negotiations. New York: McGraw-Hill, 1964.

¹⁸ Jandt, Fred. Win-Win Negotiating: Turning Conflict Into Agreement. New York: John Wiley and Sons, 1985.

¹⁹ Raiffa, Howard. The Art and Science of Negotiation. Cambridge: Belknap/Harvard, 1982.

academics and practitioners. The literature indicates that interest-based bargaining is a positive and constructive development in labor management negotiations and that obstructions to its implementation can be overcome. A review of this literature will follow a discussion of the interest-based bargaining model, based primarily on Fisher, Ury, and Patton's work.

The most widely used exposition of the interest-based model is Fisher, Ury, and Patton's Getting to Yes. They begin by posing what they believe to be the central problem of positional bargaining; that is, it does not produce a wise agreement, efficiently and amicably.

A wise agreement is not reached because negotiators get increasingly locked into their positions as they assert and defend their position in the face of the other side's position. Agreement requires either capitulation by one side or the other, or a mechanical splitting of the difference between the two positions. Thus, neither side's underlying interests are met.

The process is inefficient because the parties perceive that their interests are served best by initial positions that are extreme and by concessions that are small and only gradually made. Since the incentive is to delay and to hide the "bottom line" from the other side, the negotiation process is time consuming and expensive.

Third, the reliance on will power in the positional bargaining process increases the strain between the parties to the point where the ongoing relationship is harmed or even irretrievably destroyed. If the parties' relationship is unimportant because it is a single negotiation, the positional

bargaining model may be more effective, especially for the winning side. But if the relationship between the parties is important due to the likelihood that the parties will do business again in the future, an alternative to the positional model is needed.

According to Fisher, Ury, and Patton, one common alternative to the problems caused by positional bargaining is for one side or the other to seek a more gentle style of negotiation, "soft" bargaining. Although "soft" bargaining may address some of the problems associated with "hard" bargaining, without a fundamental change in the negotiation process from the positional approach, even "soft" bargaining will cause problems. The table on the following page, taken from Fisher, Ury, and Patton²⁰ summarizes the "soft" and "hard" variants of positional bargaining and then counterposes the interest-based alternative.

²⁰ Fisher, Ury, and Patton, 13.

Table 2

Problem Positional Bargaining: Which Game Should You Play?		Solution Change the Game-- Negotiate on the Merits
Soft	Hard	Principled
Participants are friends.	Participants are adversaries.	Participants are problem solvers.
The goal is agreement.	The goal is victory.	The goal is a wise outcome reached efficiently and amicably.
Make concessions to cultivate the relationship.	Demand concessions as a condition of the relationship.	Separate the people from the problem.
Be soft on the problem and the people.	Be hard on the problem and the people.	Be soft on the people, hard on the problem.
Trust others.	Distrust others.	Proceed independent of trust.
Change your position easily.	Dig in to your position.	Focus on interests, not positions.
Make offers.	Make threats.	Explore interests.
Disclose your bottom line	Mislead as to your bottom line.	Avoid having a bottom line.
Accept one-sided losses to reach agreement.	Demand one-sided gains as the price of agreement.	Invent options for mutual gain.
Search for the single answer: the one they will accept	Search for the single answer, the one you will accept.	Develop multiple options to choose from; decide later.
Insist on agreement.	Insist on your position.	Insist on using objective criteria
Try to avoid a contest of will.	Try to win a contest of will.	Try to reach a result based on standards independent of will.
Yield to pressure.	Apply pressure.	Reason and be open to reason; yield to principle, not pressure.

Fisher, Ury, and Patton's interest based bargaining method is based on the four points highlighted in the right most column in the above table. First, separating people from the problem by addressing emotional issues apart from substantive issues is intended to deal with the problem of egos becoming inextricably linked with bargaining positions. This element of the interest based model reflects a recognition of the fact that in many relationships, such as labor management relations, the parties share an interest in their relationship as well as in substantive issues. Second, focusing on interests, not on positions, allows the parties to work on satisfying underlying interests as opposed to asserting or defending positions which may not relate to the parties' real needs. Third, generating a variety of possibilities is intended to address the problem of the parties' attempts to find a single ideal solution while in the presence of the bargaining adversary. There is rarely one solution to a problem and the pressure filled environment of the negotiation room is not conducive to creative problem solving. Finally, relying on objective criteria for the evaluation of options allows the parties to avoid giving in to each other; instead, they defer to an objective standard independent from the will power of the other side.

The interest-based bargaining model set out by Fisher, Ury, and Patton has been adopted by growing numbers of negotiators. The United States Federal Mediation and Conciliation Service provides interest based bargaining training and assistance to parties in negotiation.²¹ In Minnesota, the Bureau of Mediation Services provides training in the interest based

²¹ United States Federal Mediation and Conciliation Service, "Guidelines: Innovative Collective Bargaining Contract Provisions," Issue No.1, Washington, D.C.: United States Department of Labor, January 1995.

bargaining model and has participated in numerous negotiations using the model.²²

As noted above, as the use of the interest-based bargaining model has spread, it has increasingly been the subject of research and evaluation by both academics and practitioners. A brief review of this literature follows.

Raymond Friedman²³ found that interest-based bargaining offers "an essential ingredient in any effort to change the basic structure of labor relations."²⁴ Unfortunately, however, dissemination of the model to labor negotiators has been constrained by the difficulty of negotiators to understand it, by the cost of prenegotiation training, by the added time usually involved in interest-based negotiations, and by the traditional structure of labor relations. Friedman recommends that these constraints can be reduced through intervention involving the expansion of training opportunities available to negotiators before negotiations, the inclusion of key constituents in the training, and the provision of ongoing assistance to the negotiators during the bargaining process.

Hindy Schachter²⁵ examined the strengths and problems of interest-based bargaining in schools. Like Friedman, she found that many negotiators

²² State of Minnesota Bureau of Mediation Services, "Interest Based Collective Bargaining: The Process of Negotiation," and "Interest Based Collective Bargaining: Guidelines and Examples," St. Paul: State of Minnesota, June 14, 1995.

²³ Friedman, Raymond. "Mutual Gains Bargaining: The Evolution of Intervention Strategies" I.R.R.A. 44th Annual Proceedings, Vol. 44. Madison, WI: Industrial Relations Research Association, 1992, pp. 169-178.

²⁴ Friedman, 169.

²⁵ Schachter, Hindy Lauer, "Win-Win Bargaining: A New Spirit in School Negotiations," Journal of Collective Negotiations, Vol. 18(1) 1989, pp. 1-8.

find the concept attractive, but they have difficulties implementing the model effectively. Shachter suggests that for interest-based bargaining to work in a school setting, the negotiators should not be professional negotiators from outside the school system, the parties should not confine their meetings to negotiation sessions but should meet frequently in a variety of forums, there should be open communication between the parties, and the negotiators should be personally committed to the process. Schachter concludes that interest-based bargaining is most likely to be successful in smaller school districts, where there has been some cooperation in the past and where teachers' professional expertise is respected by the administration.

If interest-based bargaining is such an improvement over positional bargaining, Charles Heckscher and Lavina Hall²⁶ ask why the model has been applied very little in labor-management negotiations. They suggest that negotiators are resistant to change and there are factors away from the bargaining table that constrain the parties from using the model, even if the negotiators themselves would prefer to use it. Heckscher and Hall evaluated two options for overcoming these constraints. The first involved an outside party providing prenegotiation training to the negotiators and ongoing assistance during the negotiation. Because this approach focused on the negotiators at the bargaining table, it was found to result in only limited improvement to the bargaining process. The second involved an outside party helping "to create sufficient consensus and trust within the two sides to enable the bargainers effectively to explore new options."²⁷ Because this

²⁶ Heckscher, Charles and Lavina Hall, "Improving Negotiations: Two Levels of Mutual Gains Intervention," *I.R.R.A. 44th Annual Proceedings*, Vol. 44. Madison, WI: Industrial Relations Research Association, 1992, pp. 160-168.

²⁷ Heckscher and Hall, 165.

approach focused on the relationship between the parties at the table and their constituencies away from the table, it was found to be more effective.

Joseph Byrnes²⁸ evaluated the application of interest-based bargaining theory in two negotiations between a municipal government at its police and highway department employee unions. He identified several problems in these cases. The union negotiators were experienced positional bargainers who, because they were comfortable with the approach, would not adopt a different bargaining model. The bargaining teams were too busy with other demands on their time to generate creative ideas or objective standards for the evaluation of options. The bargaining teams felt an obligation to pursue the demands of their constituents, no matter how irrational they may have been. To address these problems, Byrnes, like Friedman, suggests that the relationship between each bargaining team and its principals away from the table should be addressed in prenegotiation training.

Cutcher-Gerschenfeld, et al,²⁹ investigated the determinants and consequences of the tone of collective bargaining in the public sector. Their focus was on police and fire employees in Michigan. Based on a survey of labor and management negotiators, they found that an interest-based tone is more likely to occur in negotiations with smaller bargaining units which receive considerable support from their state-wide organizations. The interest-based approach was perceived to be less time consuming and reduced

²⁸ Byrnes, Joseph, "Applying Negotiating Theory to Real Life Bargaining Situations on the Municipal Level," Journal of Collective Negotiations, Vol. 18(1) 1989, pp. 1-8.

²⁹ Cutcher-Gerschenfeld, Joel, Matthew Bodah and Patterson Terry, "Determinates and Consequences of a Mutual Gains Orientation in Public Sector Bargaining," I.R.R.A. 44th Annual Proceedings, Vol. 44. Madison, WI: Industrial Relations Research Association, 1992, pp. 487-499.

the need for expensive third party intervention. This was especially important with respect to public sector employees with the right to have outstanding negotiation issues resolved by an arbitrator in lieu of the right to strike.

Pat Crisci³⁰ bases his argument for interest-based bargaining on a distinction between the nature of work in industrial organizations and educational institutions. Whereas, industrial workers "work to obtain the funds necessary for them to enjoy their lives," for faculty, "teaching is their life and joy."³¹ Crisci argues that the traditional model of collective bargaining may make sense in an industrial setting, but the interest-based bargaining is more suited to the educational workplace. For interest-based bargaining to work in education, the parties must have incentives for resolving and controlling conflict, communications between management and labor should focus on the substance of the message as opposed to the person delivering it, each side should understand the other side's views, the lines of communication must be open, and the parties should trust each other.

E. Edward Herman³² evaluated the implementation of interest-based bargaining with the faculty at the University of Cincinnati. Based on a post-negotiation survey of both negotiating teams and their key principals, Herman found a positive attitude about interest-based bargaining, and that

³⁰ Crisci, Pat E. "Implementing Win/Win Negotiations in Educational Institutions," Journal of Collective Negotiations, Vol. 15(2) 1986, pp. 119-144.

³¹ Crisci, 120.

³² E. Edward Herman "Mutual Gains Bargaining in Academia: Negotiations at the University of Cincinnati," I.R.R.A. 44th Annual Proceedings, Vol. 44. Madison, WI: Industrial Relations Research Association, 1992, pp. 186-199.

successful interest-based bargaining requires training, constituencies that are involved, positive and trusting attitudes among the participants, and continuous interaction between the parties after the negotiation has concluded.

In addition to the generally positive literature on interest-based bargaining, there are evaluations of the model which are somewhat more critical. For example, Fred Jandt³³ agrees it is important to go beyond positions and to probe the other side's interests. But he does not believe it is possible to negotiate without compromise, without ever giving in to the other side. Nor does he believe that the use of objective criteria for the evaluation of bargaining options is very realistic, since he does not believe there is any objectively right or wrong in negotiations. Finally, he challenges the goal of "getting to yes" as propounded by Fisher, Ury, and Patton by arguing that it is even more important to "get past yes" by resolving conflicts in ways that serve both parties' interests, the most important of which is their ongoing relationship.

Ira Lobel,³⁴ an experienced federal mediator, does not challenge the techniques used in interest-based bargaining. However, he argues that it should not be seen as a panacea for all the complex problems of collective bargaining. In Lobel's view, interest-based bargaining "is simply a reaffirmation of sound bargaining practices."³⁵ He argues that the interest-based bargaining critique of positional bargaining is flawed because effective

³³ Jandt, 137.

³⁴ Lobel, Ira, "Realities of Interest-Based (Win-Win) Bargaining," Labor Law Journal, Vol. 45, No.12, December 1994, pp. 771-778.

³⁵ Lobel, 771.

negotiators have always focused on interests, sought creative solutions to problems, used power wisely, and created linkages with apparently unrelated issues to create opportunities for compromise. He concludes that to the extent the discussion of interest-based bargaining serves to "remind people that power should not be used recklessly, that proposals should not be pursued unwisely, that negotiators should deal in a civil manner with each other, and that interests of both sides should always be considered," it will improve the negotiation process. "But saying that changing the form of negotiations will help make the problems go away may be developing an expectation that no system of bargaining can achieve."³⁶

The literature evaluating interest-based bargaining at both theoretical and practical levels is not extensive. However, it is instructive to parties who are concerned about their collective bargaining relationships and who, as a result, are considering the use of interest-based bargaining. The literature suggests that several conditions are critical for successful implementation of the model. All parties, including those not present at the bargaining table, should be committed to the use of the method. Expectations about the bargaining process should reflect the more open and collaborative approach. Training before negotiations commence and regular intervention as necessary through the negotiation should occur. The parties should realize that their most important interest in collective bargaining is the ongoing relationship with the other side. Improved labor-management relations require not only the use of an alternative model at the bargaining table, but also on a daily basis during the administration of the contract between negotiations.

³⁶ Lobel, 778

BARGAINING MODEL FOR THIS NEGOTIATION

In order to address the concerns expressed about previous negotiations noted in the introduction, prior to the beginning of negotiations³⁷, the chief negotiators for the administration and UEA agreed to use an alternative problem-solving format, i.e., interest-based bargaining. The bargaining model progressed through the following steps.

First, each side identified the issues of greatest interest or concern to its constituency. Instead of the traditional approach in which the parties' initial proposals reflect hundreds of unfettered demands of all constituents, the issues were to be those of the highest priority and were to be relatively small in number.

Second, the parties agreed to a schedule of negotiation sessions, committing to hold to the schedule and to strive for completion of the negotiation by the end of the academic year. It was agreed that a negotiation session would proceed irrespective of the absence of a bargaining team member (with the sole exceptions of the chief spokespersons).

Third, at the bargaining table, the moving party for each issue provided background on the problem it was attempting to address. The parties identified their interests related to the issue, explored a wide variety of options for addressing the issue, developed standards for evaluation of the options, and applied the standards to the options. At this point in the process,

³⁷ A more extensive discussion of the selection of the bargaining approach is provided on page

the option that most closely met the standards would emerge as the agreement.

Once agreement was reached on all the issues, the chief negotiators met outside negotiations and drafted the new contract language. The language was then presented to the two negotiating teams for review and approval. The final step in the process was to obtain ratification of the agreement by the UEA membership and the University Board of Regents.

It should be noted that the parties discussed bringing the bargaining teams together before negotiations began to receive training in interest-based bargaining. Due to the need to begin negotiations quickly and in light of the parties' apparent readiness and ability to engage in an alternative mode of bargaining, pre-negotiation preparation did not include training. Nor was there ongoing assistance from an outside party through the negotiation.

CHAPTER III

NEGOTIATIONS

In this chapter, I will describe the actual negotiation process. This will include a review of the pre-negotiation preparation, from the selection of bargaining team members, through the planning process, to the identification of the highest priority issues. Second, we move to the bargaining table, negotiating groundrules, exchanging information, and establishing a negotiation schedule. Third comes the main body of the paper, the issue by issue description of the negotiation. The chapter concludes with the steps taken by the parties to implement the agreement once the negotiation was completed.

PRENEGOTIATION PREPARATION

TEAM SELECTION

UEA's bargaining team was selected by the union president and the chief negotiator. The composition of the team was intended to provide continuity, expertise, and legitimacy in the eyes of the various faculty groups. Among the factors considered during the selection process were previous negotiation experience, expertise in industrial relations and communications, ability to represent a certain college or identifiable faculty group, future role in union leadership, mediation/dispute resolution experience, and a willingness to employ a non-traditional bargaining model. The disciplines

represented on the UEA team included economics, philosophy, sociology/anthropology, biology, music, and communications.

The administration's chief negotiator was selected by the Associate Vice President, Human Resources, the University officer charged with overall responsibility for the negotiation and administration of collective bargaining agreements, in consultation with UMD administration. UMD administration selected the UMD bargaining team members. They were the Dean of the College of Science and Engineering, the Dean of the School of Business and Economics, and the Associate Vice Chancellor of Academic Administration. Factors considered in the selection of the team were previous experience in negotiations, familiarity with historical and current academic issues, expertise in academic administration, and a willingness to use a bargaining approach as yet untried anywhere in the University system.

PLANNING AND RESEARCH

UEA began its preparation for the negotiations by reviewing the bargaining record from past negotiations, analyzing the grievance and arbitration experience under the prior contract, collecting market salary data, and establishing several committees to survey members, analyze issues, and make recommendations to the bargaining team. Committees were established to address compensation and benefits, workload issues, and non-regular faculty concerns.

The administration's planning process for UEA involved reviewing the bargaining record from past negotiations, analyzing the grievance and

arbitration experience under the prior contract, collecting market salary data, consulting with negotiators of faculty contracts at other universities and colleges, and numerous meetings with the deans and other principal administrators at UMD to identify their major concerns and interests and to begin to develop options for addressing those matters.

Although the specific steps taken by the administration to plan for UEA negotiations are described above, it is important to note that this planning effort occurred within the context of planning for negotiations with all of the unions representing University faculty and staff. The following discussion provides that context.

Administration preparation for negotiations for the 1995-1997 began in the fall of 1994. The University's Executive Negotiation Committee renewed meeting on a regular basis. This committee, established just two years before, was composed of several academic and operational unit vice-presidents, a dean, an associate dean, the UMD chancellor, the budget director, a department head, the president's chief of staff, the director of the University hospital, the chief financial officer of the medical school, an attorney from the General Counsel's office, and the director of the library system. The committee's role is to provide input from a wide variety of organizational perspectives and levels into the University's overall collective bargaining program.

The first several steps of planning the 1995-1997 negotiation cycle were at a general level, including bargaining units other than UEA. For context, recall the listing of the University's bargaining units summarized in Table 1

above.³⁸ The Committee began by reviewing a draft bargaining plan from staff which included such components as planning, research, administration, legal, budget, and the activity at the bargaining table. A key activity in the proposed plan was the assessment of managers' and supervisors' concerns and interests for the negotiations. Information was gathered from a variety of sources and brought to the bargaining teams and the Executive Negotiation Committee.

In addition, the administration reviewed the University's Collective Bargaining Principles, a document originally created for the 1993-1995 negotiation cycle. (See Appendix A.) These principles are intended to serve as a standard by which both administration and union interests and proposals are evaluated during negotiations. A proposal, from whatever source, that is inconsistent with these principles would not be agreeable to the Executive Negotiation Committee. For the current round of negotiations, the committee made one revision only, that was to reinforce the need for salaries and benefits to be competitive in the marketplace.

The principles are organized into four categories: equity, efficiency/cost effectiveness, participation/development/teamwork, and accountability. In the area of equity, the University is especially interested in pursuing equity in compensation from both internal and market perspectives. In the area of efficiency/cost effectiveness, the University is striving to work with the unions to pursue opportunities for improving efficiency and ensuring cost effectiveness. In the area of participation/development/teamwork, the University is committed to providing and supporting opportunities for

³⁸ See page 5.

employee participation in decisions affecting the work, appropriate training and employee development, and enhanced job performance. Finally, in the area of accountability, the University is working to ensure that all faculty and staff at the University are accountable to the mission of the University, i.e., teaching, research, and service, through maintaining required job skills and by accepting responsibility for assigned tasks.

The next step in preparing for the 1995-1997 negotiation cycle was to identify bargaining goals and objectives. The University's first goal was to work with the union to address total compensation issues in order to achieve or maintain a competitive position in the market. Under this goal were two objectives. First, the University would examine total fringe benefits, including leave accrual and leave usage, at the University and in appropriate markets to determine where changes are necessary. Second, the University would strive to establish differential wage adjustments to maintain market comparability, giving appropriate consideration to recruitment, retention, and total compensation.

The University's second goal was to enable management quickly and effectively to address problems and bring about change. Under this goal, the University's objectives were to identify opportunities for cooperative ventures to improve organizational flexibility, to pursue the removal of contract language which inhibits the University from enhancing organizational flexibility, and to refrain from agreeing to any language in the contract which inhibits the University from increasing its ability to change.

AT THE BARGAINING TABLE

PROCESS

After suggesting to University administrators that the parties consider employing an alternative bargaining approach in these negotiations, the University's chief negotiator discussed this possibility informally with the UEA chief negotiator. UEA also was considering a new approach to the negotiations. Though at times from a different perspective, the parties shared many of the same concerns about the bargaining process and appeared equally willing to try some alternative.

Early in the planning process, the parties agreed to a prenegotiation meeting. The purpose of the meeting was for the teams to "break the ice," to get to know each other, and to share ideas for improving the bargaining process. This meeting was held on March 23 in a hotel meeting room with a view of Lake Superior. Perhaps fortuitously, during the meeting it was noticed that the first ship of the spring was making its way behind a U.S. Coast Guard cutter through the ice into the Duluth harbor.

Groundrules. At the first bargaining session the parties agreed to conduct the negotiation according to a basic set of groundrules proposed by the administration to, at least in part, address the concerns and suggestions raised in the pre-negotiation meeting on March 23. Following is a summary of the groundrules agreed between the negotiating teams.

Each bargaining team would have a chief spokesperson who would be the only person authorized to bind the bargaining team she/he represents and who would be responsible for the conduct of her/his team.

The parties would treat each other with respect. Concerns regarding the conduct of a team member would be raised by the chief spokesperson to the other chief spokesperson. The parties would attempt to resolve these concerns in a prompt manner. Negotiation items that were tentatively agreed would be initialed by the chief spokesperson and would be binding through the conclusion of negotiations. Once an item had been tentatively agreed, any further discussion or modification would require the mutual consent of the parties. The effective date of tentative agreements would be the effective date of the entire agreement, unless otherwise mutually agreed by the parties. In recognition that all members of the negotiation teams have ongoing responsibilities which may require their occasional absence from negotiations, the parties committed to continue with a scheduled session, regardless of the absence. The parties would be free to take notes of the negotiations. However, no tape recorders would be allowed in the negotiations and no verbatim record of the proceedings would be kept. Finally, the groundrules could be amended by mutual agreement of the parties.

Information Requests. The next matter taken up at the negotiation table was a UEA request for information from the administration. UEA requested a listing of all non-student academic employees and their actual annual salaries for each of the last three years. The lists were to include academic employees on the other campuses as well as in administrative positions. With this information, UEA would be able to compare the overall

rates of increase in base salaries and to assess whether salary adjustments for faculty at the Twin Cities campus exceeded the limit established by central administration. This information was provided at the first negotiation session. In addition, UEA requested data regarding the workload of the Duluth faculty. This data also was provided at the first negotiation session. As the parties proceeded through the negotiation to economic issues, extensive budget information was provided to UEA. (This is addressed more fully below on page 59.)

Scheduling. Once all the issues were identified, the parties agreed to a bargaining schedule. Two consecutive days were set every other week from April 6 through May 26, 1995. Issues which were not economic and which appeared to be most conducive to agreement were scheduled early in the negotiation. The potentially more contentious non-economic issues and the several economic issues were scheduled toward the end of the process. The rationale for this scheduling arrangement was that the parties should become familiar with the model on the less difficult issues, that we should get some agreements early so as to build momentum and trust before taking on the most difficult issues, and we should address issues once we had sufficient information; such was not the case with the economic issues until the legislative session was concluded in late May.

Format. Although the parties had discussed several times using interest-based bargaining in this negotiation, it was not until the first bargaining session with substantive issues on the table that the specific format was introduced and adopted for the negotiation. (The format is set out above in Chapter 2, page 25.)

NEGOTIATION ISSUES

Conflict of Interest Policy. Federal granting agencies, such as the National Institutes of Health and the National Science Foundation, require that University faculty working on grant funded projects avoid conflicts of interest. In addition, the University Regents has established a policy prohibiting conflicts of interest.

In June 1993 during negotiations for the current contract, the administration proposed changes to the policy, but elected to drop the proposals without a change in the contract.

In April 1994, the Regents revised the University policy to comply with changes in federal regulations³⁹. Since then, the policy had been in the process of implementation on the Twin Cities, Morris, and Crookston campuses. Although during negotiations the granting agencies were considering revising the date of final implementation, our target implementation date was July 1, 1995.

In October 1994, the university-wide Associate Vice President for Research requested a meeting with UEA representatives to discuss the revised policy. UEA responded that the application of the policy to UMD faculty was a negotiable issue, as evidenced by a contract reference to a specific Regents' policy. In addition, the parties would soon be commencing contract negotiations. Therefore, the impact of the changes in the policy on the faculty

³⁹42 CFR Part 94, June 28, 1994.

should be negotiated as part of the new contract. The administration agreed and initiated discussion of this issue in negotiations.

The administration began by citing two major interests in the negotiation of a Conflict of Interest Policy for faculty. First, the administration wanted to ensure that the faculty were in compliance with the requirements of federal granting agencies, as noted above. Second, the administration had an interest in flexibility so it could work with UEA to amend the University-wide policy to suit UMD⁴⁰.

UEA expressed an interest in the compliance of the policy with the terms of the contract. An example is the policy section on compliance, which conflicts in several respects with the contract section on discipline and grievances. Second, UEA stated that the policy should encourage activities outside the University in support of the University's mission, activities which may increase the likelihood of a conflict. Third, the policy should enable potential conflicts of interest to be addressed where they arise, and not by an overly broad response. Finally, it should be an excellent policy, one to which the other campuses may look as a model. The parties were able to agree that the interests brought forward were shared by both sides.

A wide range of options for compliance with the Conflict of Interest Policy was identified and explored. These included doing nothing in the contract, adopting the University-wide policy without revision for UMD, adopting the University-wide policy with revisions for UMD, including the

⁴⁰ See reference to flexibility in Appendix A, University of Minnesota Collective Bargaining Principles, 1995-1997.

entire text of the revised policy in the contract, and including only revisions to the policy in a Memorandum of Understanding.

The negotiating teams then turned to identifying the standards that would be applied to the various options. The standards were that the policy would need to be applied consistently, administration of the policy should be cost effective, the policy should be widely available and easily understood by faculty, it should not conflict with the terms of the contract, and the appeal process should result in timely decisions.

The parties first considered the option of doing nothing in the contract. This option may have been cost effective, consistent with University-wide policy, and able to provide timely decisions. However, without reference to the policy in the contract, this option would not satisfy the standard of being available and understandable to faculty. Nor would it be acceptable in that it would conflict with certain terms of the contract, thus increasing the likelihood of disputes over compliance the policy in the future.

The second option considered by the parties was to adopt the University-wide policy without revision. This option, not altogether inconsistent with the first option, also did not satisfy the standard of being available and understandable to faculty, nor the standard compliance with the contract.

The third option was to adopt the University-wide policy with revisions for UMD faculty. Depending, of course, on the nature of any substantive revisions, this option appeared to satisfy all the standards agreed

between the parties. This option allowed for consistent and cost effective application, it made the agreement available and understandable to faculty, it complied with the terms of the contract, and provided a timely appeal process.

The parties next considered an option related to implementation, whether the entire policy should be written into the contract. While there were advantages with respect to consistency and availability and understandability, the parties agreed that it would not be cost effective and it was not considered necessary in order to comply with the contract.

The last option before the parties was to rewrite the entire policy for UMD. Although this option met the standards for availability and understandability and timely decisions, it did not meet the standards for consistency, cost effectiveness, and compliance with the contract.

The option which appeared to meet the standards best was to revise the University-wide policy to suit the particular needs and circumstances at UMD. The specific revisions would be contained in a Memorandum of Understanding. Following is a summary of the revisions agreed by the administration and UEA.

Since department heads are included in the faculty bargaining unit, their role in the policy would be changed from making decisions to providing recommendations to their dean or principal administrator whether an outside relationship represents an activity for further review. This change also reduces one step from the review procedure, thus streamlining the

process. Due to the number of faculty at UMD (approximately 350), it was agreed that there would be one Conflict Review Committee for the entire campus, as opposed to one committee for each of the five collegiate/administrative units at UMD. Timelines were added to the review process so potential conflicts will be move through the entire review process in no more than 60 days. To resolve the conflict between the compliance section of the policy and the discipline section of the contract, the policy will defer to the contract. Finally, a representative from Duluth would be selected by the Vice President for Research to serve on an advisory committee composed faculty members, and representatives from private sector corporations, law firms with expertise in patent, and the state legislature.

Promotion and Tenure. The promotion and tenure process for UMD faculty allows only tenured faculty who are in the bargaining unit represented by UEA to vote on promotion and tenure cases in their department. Therefore, faculty with tenure in the department without sufficient teaching duties to be included in the UEA represented bargaining unit are not permitted a vote. However, several of these faculty currently occupy positions in which they may be asked by a dean or vice chancellor for their recommendations on promotion and tenure decisions. In addition, a dean or vice chancellor may obtain input from outside reviewers as he/she considers promotion and tenure cases.

The administration raised this issue in negotiations. The general interest in doing so was to provide these faculty their traditional rights in the promotion and tenure process in their departments. In light of the fact that several of these faculty did have a role, though not a vote, in the process, the

administration's interest was narrowly drawn to enable non-UEA member faculty currently without a role to participate in the process.⁴¹

UEA expressed several interests related to this issue. First, the clarification of which faculty were in the bargaining unit and which were not was only recently achieved in the contract, so including them now may cause confusion. Second, was an interest in maintaining the integrity of the vote by peers, peers being only those assigned duties which place them in the bargaining unit. Only faculty performing the traditional faculty role should be able to enjoy traditional faculty rights. Third, UEA had an interest in avoiding a possible conflict of interest by non-UEA faculty which could come about if he/she had a vote in the department and then had another role in support of the dean or vice chancellor. Finally, UEA indicated that it shared the administration's interest in providing non-UEA faculty some role in the promotion and tenure process.

Several options were generated by the negotiating teams. These included doing nothing, putting non-UEA faculty into the bargaining unit, providing them an opportunity for input, allowing them to serve on *ad hoc* committees, and allowing them to vote.

The parties proceeded to discuss the standards that would be applied to the options. The standards included consistency across collegiate administrative unit lines, avoidance of conflicts of interest, compliance with the terms of the contract, recognition of the distinction between the roles of

⁴¹ See reference to participation in Appendix A, University of Minnesota Collective Bargaining Principles, 1995-1997.

UEA member and non-UEA member faculty, and that there be some input (non-voting) from non-UEA member faculty into the promotion and tenure process.

An application of the standards to the options resulted in the exclusion of all but two of the options, doing nothing in the contract and providing some degree of input short of a vote, remained viable.

The parties agreed then to combine the two options. No change would be made in the contract but deans and vice chancellors would be able to continue to solicit comments from outside reviewers and non-UEA faculty may be included among the outside reviewers.

Compliance with the Americans with Disabilities Act. In order to comply with the Americans with Disabilities Act of 1991 (ADA)⁴², the parties amended the 1993-1995 contract. However, two issues arose over the last year, one in a contract grievance, which caused the parties to revisit compliance with the ADA.

The administration raised the issue of the absence of guidelines for distribution, access, use, and storage of medical information confidential under the ADA. Briefly, the ADA requires that such information be held in confidential files separate from other personnel files, and that access to those files be restricted to those whose work required access to files⁴³. UEA raised the issue of faculty on disability leave who, due to their condition, are not

⁴² 42 U.S.C. §§12101 et seq

⁴³ 42 U.S.C. §§ 12112(d)(3)(4).

able to complete their academic record files for purposes of merit salary adjustments.

The administration's interest in the matter of confidential medical information was to comply with the ADA's requirements regarding the distribution, access, use, and storage of this information. In addition, the administration wanted to clarify the merit salary adjustment issue for faculty on disability leave, based on its interest in allowing these faculty access to merit adjustments. But, at the same time, the administration did not want to delay the merit salary adjustment process for other faculty in order to accommodate faculty on disability leave. Finally, the administration was interested in maintaining the limits on merit salary adjustment funds; that is, it did not want to be in the position of being forced to provide merit salary adjustments retroactively after the funds had already been distributed.

UEA shared the administration's interests on both issues.

The parties generated several options, including doing nothing, addressing the issues specifically in policy and procedure and not in the contract, addressing the issues specifically in procedure and generally in the contract, and adding specific contract language as necessary and leaving out of the contract changes more appropriately addressed in procedure.

Standards discussed at the table were that legal requirements would need to be met, that faculty have ready access to the guidelines, that any new procedures be consistently applied and not be overly complicated or

expensive to apply, and that contract issues be addressed in contract and procedural details be provided in procedure.

The parties agreed that the consistency and access standards would be difficult to meet by doing nothing or by providing only general reference in the contract to specific guidelines in policy and procedure. It appeared that the most viable option was address contract issues in the contract and procedural issues on procedure.

Agreement was reached according to the following terms. First, provision was made in the contract section covering personnel files that confidential medical information would be retained in separate, confidential files with restricted access. Second, faculty requests for a short term disability leave to the department head would not require supporting medical information. However, requests for a long term disability leave would be transmitted directly to the Human Resources Department and would continue to require supporting medical information. Last, the parties agreed that faculty who, due to a disability leave were not able to complete their files for purposes of merit salary adjustments, will be permitted to complete their files upon return from leave, but the information would only be considered as part of future merit reviews.

Course Evaluation Tools. Among the major issues in the 1993-1995 contract negotiations was the evaluation of courses by the faculty. The following changes were made in the agreement at that time. The number of courses required to be evaluated increased (eventually all courses would be evaluated), the courses to be evaluated for purposes of personnel decisions

were to be agreed between the faculty member and the department head, the faculty member had the right supplement the file with his/her own interpretation of the evaluations, a labor/management task force would develop a set of survey instruments and protocols, and evaluation tools used by the faculty would be from among the set of tools developed by the task force.

The labor/management task force met in 1994-1995. It conducted an extensive search of the literature, surveyed other institutions, and developed a set of evaluation tools and protocols. Although its charge was to have the evaluation tools ready for implementation for the fall quarter 1995, the task force recommended that its charge be extended an additional year so that it would have the opportunity to review the tools in application and revise them as necessary prior to final implementation. The parties jointly agreed that this issue should be addressed in negotiations.

UEA indicated it had several interests in this matter. First, it wanted to support the task force not only because of its work, but because it has been an effective way for the administration and UEA to work together on an important issue outside of negotiations. Second, UEA believed it would be important to give the task force an additional year to review the use of the evaluation tools and protocols prior to final implementation. Third, UEA wanted to implement some set of evaluation tools in 1995 so that there would be a basis for future merit salary adjustments. Fourth, UEA wanted to ensure faculty accepted the tools so that there would be fewer disputes over merit salary adjustments in the future. Finally, UEA expressed an interest in faculty members being given the option to supplement the required number

of course evaluations with additional evaluations when the faculty member believed an evaluation was of questionable validity, or abnormal, due to a course being an exceptional "bad class."

The administration shared UEA's interests in supporting the task force in terms of both its work product and as a method for addressing particularly complex issues. In addition, the administration agreed that tools should be in place in 1995 for merit salary adjustment purposes and wanted the final evaluation tools and protocols to be of high validity and reliability, so there was a mutual interest in extending the task force so it could review and revise the tools as necessary. However, UEA's interest in taking care of the "bad class" problem, was not shared by the administration. This was due to the administration's interest in eventually receiving evaluations for all courses. If indeed there were occasional "bad classes", they would likely be exceptions and, in most cases, would be considered as such. Finally, due to the lack of experience with the changes made to the contract in 1994, the administration expressed an interest in letting this process work out for a time prior to taking it up again at the bargaining table⁴⁴.

The parties proposed options such as doing nothing, immediate implementation of the task force's recommended evaluation tools, running a limited trial during 1995-1996 and implementing the final tools campus wide in fall 1996, and introducing the task force's recommended evaluation tools campus wide in fall 1995 and reviewing them during the 1995-1996 academic year for final implementation in fall 1996.

⁴⁴ See reference to accountability in Appendix A, University of Minnesota Collective Bargaining Principles, 1995-1997.

The standards identified by the parties included full implementation no later than fall 1996, reliance on the task force for finalizing the evaluation tools, acceptance of the evaluation tools by the faculty, and the reduction in the number of grievances in response to merit salary adjustments.

The options of doing nothing and full immediate implementation were rejected on the grounds that the evaluation tools should be tested before full implementation and that the task force needed more time to complete its work. The option of running a limited trial created a concern about inconsistencies of the tools being used across campus causing an inequitable distribution of merit salary adjustment funds.

The final option, that of introducing the task force's recommended evaluation tools campus wide in fall 1995 and reviewing them during the 1995-1996 academic year for final implementation in fall 1996, was deemed the most acceptable to the parties. This option provided full implementation no later than fall 1996, reliance on the task force for finalizing the evaluation tools, acceptance of the evaluation tools by the faculty, and the reduction in the number of grievances in response to merit salary adjustments.

Workload. The current contract includes numeric limits on the number of student contact hours for an academic year. These limits vary by academic department and are based on the predominant pedagogies used in the department. For example, the contact hour limits in the Department of Art History are 28 and in the Department of Theater Production they are 72. Originally, the student contact hour limits were derived by calculating the