



Labor-Management Bargaining Ethics: A Transformational Exercise for Students

By Chuck Fischer

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ABSTRACT

The purpose of this article is to set forth a student exercise aimed at developing students' decision-making skills in the context of ethical bargaining behavior. Some background information on ethics is provided, followed by an exercise (a transformational challenge). The exercise is set up on the basis of modules, allowing

for flexibility in how the instructor wishes to proceed with it. Suggestions for the instructor and selected readings are provided.

INTRODUCTION

In this paper I provide a guide for incorporating ethical decision-making into the teaching of negotiating/bargaining behavior (negotiations and bargaining are used interchangeably in this paper). My interest in this topic, as a labor economist, concerns my Collective Bargaining and Labor Economics classes, which each treat the important topic of labor-management bargaining.

The vehicle for this guide is a transformational exercise, with the challenge of moving from a hostile, conflict bargaining relationship between management and the union to a productive one that is characterized by cooperation and joint problem-solving. In the hostile, conflict bargaining situation the parties behave unethically toward each other; in the cooperative relationship, the parties pursue ethical strategies. The challenge for the parties is to move from a long history of unethical behavior and conflict to an ethical relationship aimed at benefiting each side.

Students are introduced to important ethical concepts and strategies relevant to this transformation. The goal is to get students to see ethical behavior as part of decision-making strategy, instead of the simplistic notion of ethics as doing the right thing because it is the right thing to do.

My motivation for developing this exercise relates to economics as an analytical, decision-making science. It is important for students to learn to think analytically and ethical decision-making is well suited to this task. (Also, this teaching exercise fits well into our business school's efforts to achieve reaffirmation of AACSB accreditation, with its emphasis on ethical decision making in the business school curriculum.)

In this exercise:

- Students examine the dynamics of labor-management bargaining ethics
- There is an emphasis on the strategic implications of ethical decision-making
- Distributive versus integrative bargaining is examined
- Strategies for moving from distributive to integrative bargaining are developed

The exercise involves thinking about ethics both in analytical and practical terms. The challenge is to go beyond moral imperatives (e.g., the ethical principle of "do unto others as you would have them do unto you"), as important as they are, and to see ethics as having value strategically. This is done within the context of implementing a bargaining turnaround.

I developed this teaching exercise Fall 2012 and used it for the first time in my Spring 2013 Collective Bargaining class. Below, I discuss my experience with it, noting successes and future challenges (which I will soon encounter in my Fall 2013 Labor Economics class). No doubt, my use of this teaching exercise will evolve and, hopefully, improve over time. (As the “FOR INSTRUCTOR” inserts suggest, the exercise can be developed in a variety of ways and can easily be modified over time, as desired.)

FORMAT

In this exercise basic concepts are first provided. This gives students both a foundation and framework for the exercise. This is followed by the transformation scenario. Students are given a turnaround challenge. Questions and problems are posed to get students involved in ethical decision-making. For the instructor, teaching suggestions and supportive literature sources are provided.

BASIC CONCEPTS

Ethics (Suggesting Reading (SR): Sims, 1992; Grover, 1993; Lewicki & Robinson, 1998; Bainton, 2012)

Ethics is the study of morality as it is applied to moral judgments and principals of behavior. For example, there is the ethics of principle (e.g., treat others as you would want to be treated). In contrast, there is the ethics of consequence (e.g., the end is seen as justifying the means). In the case of the bargaining turnaround component of this exercise, the parties will have to agree on what ethics is to them.

Self-Interest (SR: Kim, Diekmann & Tenbrunsel, 2003; Lincoln & Homles, 2011)

Self-interest behavior is seeking personal gain/avoiding personal costs. This poses a dilemma for the parties in that self-interest is impossible to completely avoid and often conflicts with ethical behavior. Thus, there is a tension between ethics and self-interest in the bargaining relationship.

The Ethical “Gray Zone” (SR: Keld, 2011)

Generally, there is common understanding among the parties on what is clearly unethical in bargaining (e.g., falsification, coercion, bribery) as opposed to what is a normal part of the “dance” (e.g., concealing your “sticking points” in distributive bargaining). However, there remains “gray zone” areas (e.g., selective omission of important information, a self-serving “spin” on the data) in which there is no easy agreement between the parties. For those pursuing a cooperative, ethical bargaining relationship, a possible solution is for the parties to agree upon a code of bargaining ethics (explored later) and thus eliminate as much of the ethical gray areas as possible.

Distributive Bargaining (SR: Aquino, 1998; Aquino & Becker 2005)--Key Characteristics:

Parties are interdependent and have conflicting goals.

Power bargaining exists and information is a key element of the power of one party over the other.

Attainment of goals by one party is at the expense of the other party (may be zero-sum in nature).

Classic distributive example: wage increase for workers results in a decrease in profits for the company.

FOR INSTRUCTOR: At this point, the instructor may want to move the discussion to Integrative Bargaining by asking the students how the above conflict might be mitigated or even eliminated (e.g., wages and profits linked to profit-sharing provisions).

Relevant to distributive bargain are conflict bargaining strategies. Key ones follow:

Deception (SR: Crampton & Dees, 1993; Aquino, 1998; Provos 2000; Robinson, Lewicki & Donahue, 2000; Moran & Schweitzer, 2008; Stawiski, Tindale, & Dykema-Engblade, 2009)

FOR INSTRUCTOR: At the heart of conflict-oriented negotiations are tactics of deception. Leaving aside for now the issue of what is ethical or unethical, students could be asked to think about the various ways they see deception being used in the world they live in (e.g., product advertising, politics) and to what extent it can be found in their own personal behavior (e.g., modifying the facts to suit one's needs). This should facilitate an understanding of the relevance and use of deception in conflict negotiations.

General definition of deception: deliberate action (e.g., disinformation, omission) by one party to cause or contribute to false perceptions by the other party. Lead other party to a wrong conclusion.

Deception tends to be information-oriented (based on information disparity between the parties)—concealing, falsifying, and omitting information. There is much opportunity for deception when the facts are difficult and/or costly to verify and when the negotiations are short-term in nature.

Deception is often used when one party believes his/her goals are in conflict with the goals of the other party. Deception is not likely to be of value in achieving mutually beneficial/integrative negotiations, at least in the long run. Unethical behavior can damage the basis for trust and cooperation and imperil the possibility of future mutual gains bargaining.

Bluffing (SR: Boles, Crowson & Murningham, 2000; Provos, 2000)

False presentation of a threat (e.g., company would rather shut down operations than meet the union's demands) or a promise (e.g., company promises no layoffs during contract if union agrees to). Party does not intend to follow through.

Bluffing usually involves some form of deception about what one is willing or able to accept.

Falsification (SR: Aquino, 1998; Robinson, Lewicki & Donahue, 2000)

Misrepresentation of objective information could be achieved by such things as skewing wage comparability data to support one's bargaining position.

Use of incorrect information as if it were true.

Misrepresentation (SR: Gino & Pierce, 2009)

A common form of misrepresentation in conflict negotiation is the strategy of concealing one's "sticking points" (e.g., management's maximum acceptance or union's minimum).

FOR INSTRUCTOR: Here, the instructor could ask students to consider what the differences are, if any, between deception, bluffing, falsification and misrepresentation. Don't they all seem pretty much the same? Well, yes and no.

In terms of intent and substance, yes. Essentially, in varying degrees, they are different forms of lying. However, these forms of lying have significance as bargaining tactics as well as providing insight into the issue of what is and is not considered ethical. For example, one might accept bluffing as being a mutually-accepted part of the game of conflict bargaining (as is also the case in the card game of poker), whereas falsification would likely be viewed as not acceptable, as unethical. We will return to this in our discussion of a bargaining code of ethics.

Integrative Bargaining (sometimes referred to as Interest-based bargaining or Mutual Gains bargaining) (SR: Kochan & Osterman, 1994; Provos, 2000)—Key Characteristics:

Win-win outcomes; enlarge the economic pie (e.g., a quality of work program that increases labor productivity and thus allows for increases in both wages and profits).

Problem solving in nature.

Common acceptable ethical standards agreed upon by the parties.

Open and free exchange of information.

Building trust.

FOR INSTRUCTOR: The contrast between integrative and distributive bargaining raises some important issues for students to consider, such as: What key ingredients are necessary for integrative bargaining? What are the rewards and risks of integrative bargaining?

These questions are examined in the transformation scenario as they relate to ethical decision-making.

TRANSFORMATION SCENARIO FOR EXERCISE

Now, we come to the bargaining turnaround challenge. Consider the following.

The Company and the Union have a long history of conflict (distributive) bargaining where both sides have used a variety of unsavory tactics, such as falsification of documents, fabricating negative stories about the other side for the news media, failing to honor commitments, undermining the negotiation process (e.g., unnecessary delays), and illegal threats/promises.

It was this way from the beginning. The union's organization drive was a long and bitterly fought one. The company fired pro-union employees during the organizational drive and the union "salted" (union organizers went undercover to gain employment with the company and thus access to the workers) the company's labor force. In the end, the union prevailed, winning the NLRB certification election, but by a narrow margin.

Years of bargaining conflict between the parties followed union certification, resulting in costly strikes and lockouts, as well as low worker morale, productivity, and retention. All of this threatened the profitability of the company in an increasingly competitive product market. (It was not considered practical or strategic for the company to relocate.)

After several years of such conflict, there was a change in the leadership of the company with the replacement of their long-time CEO. The new CEO strongly believed that it was essential to the survival of the company to forge a new, productive relationship with the union, one that would facilitate joint problem solving. Otherwise, the company would suffer financially and might go out of business.

STUDENT'S ROLE/ASSIGNMENT: The student plays the role of a strategy consultant (with experience in labor-management relations) hired by the company to assist the CEO in achieving his/her goal of transforming union-management relations from conflict to cooperation. (Note: students might approach this individually or in teams.)

FOR INSTRUCTOR: This exercise may involve students in (Socratic-motivated) class discussion, a written paper, a written examination, etc. This will depend on the

preferences of the instructor. (In my first use, I used class discussion and written examination. I may next try class discussion and a written paper. I feel that class discussion is a key ingredient in the exercise, so as to guide students in what is likely a new way of thinking for them.)

What follows are a variety of strategies our consultant (student) might offer to management to help them accomplish the transition. They are presented as a series of modules. Based on these modules, students could be encouraged to strategically consider the order/timing of the different strategies, which strategies he/she may want to modify, add and/or delete. (The instructor may offer ideas for refining the following modules, or even steering students in a different direction.) With each strategy, the intended focus should be on ethics as a key variable in the transformation.

MODULE 1: IMPORTANCE AND CHALLENGE OF DEVELOPING TRUST

Building trustworthiness and having the ability to trust are important to the transformation, but they involve some risks. The risks are essentially trusting too much and trusting too little. If you trust too much, you may be taken advantage of. However, if you trust too little, you may never develop the trusting bargaining relationship desired.

Building trust is particularly important to a long-term bargaining relationship (SR: Olekalns & Smith, 2009). This can be understood in terms of “bargaining karma,” or “what goes around comes around.” In other words, building trust between the parties is an investment in future bargaining. Whereas, in the case of a one-time or short-term bargaining relationship, there is the incentive to behave unscrupulously and exploit the other side (as illustrated in the “snake oil” salesman of the Wild West who quickly moved on to the next town after selling the bogus product).

Trust involves a reciprocity of behavior. Recall the old adage, “to have a good friend, you must be a good friend.” Likewise, if we want to be trusted by someone, we have to trust in return. One must demonstrate that one is worthy of trust and that one will trust.

The matter is complicated by the fact that even in the case of cooperative bargaining, there often are elements of conflict which may undermine trust. For example, a profit-sharing plan calls for cooperation, but the issue of how the profits are to be divided between labor and management can be distributive in nature. As such, there will be the temptation to deceive, bluff, etc.

FOR INSTRUCTOR: Prior to the presentation of this module, the instructor may motivate students to think about these issues by asking such questions as the following:

- What are the benefits and costs of trusting the other side?
- Does the time frame of the relationship affect the incentives to trust or not trust?
- Is trust a reciprocal form or behavior or can/should it be unilateral?

- Are trust and cooperation perfect complements, and why or why not?

MODULE 2: PRACTICAL STEPS TOWARD BUILDING TRUST

FOR INSTRUCTOR: Now is a good time to ask your students how they would actually go about building trust with the union and its members. To get them started, you might ask how they would mend a personal relationship they had where trust was lost (e.g., deceived a good friend).

The following steps are suggested for building a trusting relationship for bargaining negotiations:

- Have regular meetings prior to negotiations to discuss ethical concerns (e.g., how to treat relevant bargaining data in a fair and objective manner, thus avoiding the practice of “cooking” the data as was common among the two sides in the past).
- Show you trust the other party, but make sure the risk taken is reasonable.

FOR INSTRUCTOR: This may be a good opportunity to introduce students to the “prisoner’s dilemma”—the parties can have joint benefit by working together, but can do better by defecting when the other continues to act in good will.

Minimizing this downside of trust and cooperation (SR: Anton, 1992):

- One strategy is to make fractional concessions in the beginning—small, low-risk concessions in expectation of reciprocal action by the other side. If successful, this facilitates another fractional concession by the initiating party, reciprocal action by the other side, etc. A trust-building dynamic takes place. A fractional concession not only may induce reciprocal behavior, it also communicates a willingness to cooperate while minimizing the risk of doing so.
- Along with this, the parties may share and verify important bargaining information via independent sources (e.g., BLS data regarding wage comparability) and direct access (e.g., company healthcare costs)

MODULE 3: DEVELOPING AN ETHICAL CLIMATE

FOR THE INSTRUCTOR: As background to this module, the instructor may want to discuss the concept of organizational culture and how ethical climate may fit into the overall culture of an organization.

Ethical climate determines the perceptions of those in the organization about how their organization functions and what is and is not acceptable behavior (SR: Olson, 1998). It consists of and is evidenced by the organization’s procedures (e.g., due process), practices (e.g., zero tolerance for sexual harassment), reward structures (e.g., performance appraisal), standards of honesty (e.g., its code of conduct), and conduct of

its members (e.g., treatment of subordinates). A strong ethical climate helps individuals know what is right or wrong organizationally, and gives them guidance in navigating the troublesome gray areas of moral ambiguity.

Negotiations are not isolated from the institutional environment, but rather are embedded in the ethical climate of the organization (SR: Lincoln & Holmes, 2011). Ethical negotiations are a consequence of an ethical organization and are unlikely to take place in an unethical or ethically lax organization.

Ethical climate may be communicated in informal ways by the behavior of key individuals in the organization. Culture is set at the top (SR: Anderson & Thompson, 2004). The CEO who is committed to strong ethical standards will communicate a high priority for ethical practices to be followed at all levels of the organization. Management must then “walk the talk.”

Ethical climate may also be communicated formally through ethical training and written codes and policies. In the case of labor-management negotiations, a bargaining code of ethics can be valuable.

MODULE 4: DEVELOPING A BARGAINING CODE OF ETHICS

A bargaining code of ethics can facilitate an integrative, problem-solving relationship between the parties (the aim of this case) (SR: Tenbrunsel & Diekmann, 2007). The goal is to get agreement on what you will do (e.g., be fair, honest and respectful), will not do (e.g., hold back relevant information) and important principles that will guide you (e.g., cooperation is more productive for all concerned than competition/conflict).

FOR INSTRUCTOR: Here it might be useful to divide the class into two large teams—one for management and the other for the union. Their task is to come to an agreement on a bargaining code of ethics as outlined above (does, don'ts, and principles). To help the students get started, the instructor might recommend some relevant sources. For example, the following is provided by Keld Jenson, a negotiation expert (<http://keldjensen.wordpress.com/2011/06/21/by-the-book-the-value-of-negotiating-with-a-code-of-conduct/>).

We will not:

- We will not lie/bluff
- We will not intentionally put any pressure on counterparty, including time pressure
- We will not make inflated offers

- We will not practice emotional manipulation
- We will not employ aggressive and hostile negotiation strategies and tactics
- We will not be holding back information

We will:

- We will put forth our best efforts to keep the trust level in negotiation as high as possible
- We will restrain from spying, bribing and infiltration attempts
- We will walk as we talk and will fully observe our agreement, if concluded
- We will be open about variables and values and share the information on an equal level
- We will try to observe fairness and even sharing of gain added value

We believe:

- We believe that working together outperforms winning at the expense of the counterpart
- We do believe in the power of ethics and morality in negotiation

Students could be asked what they would like to exclude from this code, add, and/or modify. Also, they might be asked to provide bargaining examples for each (e.g., in the case of bluffing, a statement from the union such as “we would rather have no contract than accept the new health care premiums” is not helpful to integrative problem solving, especially when it is not true, but only a bluff). Asking students to provide examples would help them to actively think about ethical behavior and thus breathe some life into the code of ethics.

MY EXPERIENCE WITH THIS EXERCISE

Overall, I was pleased with the exercise in that it engaged my students in the analytics of decision-making and bargaining ethics. And, it had the added benefit of generating some good class discussion on the issue. They began to see bargaining ethics as a way to obtain important goals, instead of ethics as a moral imperative aside from organizational and personal gains.

Generally, students did well linking the ethical climate of the organization with the ethical behavior of its individuals. This was not a new concept for most of the business students, but the exercise did reinforce the notion in a new way for them.

However, an important problem area did emerge. Several of the students had a strong anti-union bias and saw them as an evil, destructive institution. This, naturally, gets in the way of seeing ethics as a strategic, positive tool in union-management relations. (My goal in the class is not to get students to accept or reject labor unions, but to know and understand them from an enlightened management perspective, since most of them will become managers.)

Presently, I am not sure how I will deal with the bias problem in the future. I am considering using the approach my professor used in his Collective Bargaining class. Over forty years later I can still remember him saying: "Everyone is biased in some way. The key is to know your biases and then don't let them get in the way of your analysis." This fits well with this exercise, since it takes a pragmatic approach on how to save a financially troubled company with an entrenched union. It is not about whether one should like or dislike unions. I believe I need to take more time in the future use of the exercise to discuss the pragmatic aspects of the scenario.

With the ongoing use of this exercise, I am sure it will be changed in a variety of ways as new ideas emerge on how it can be improved. The above modules can be modified, new ones can be added and/or existing ones eliminated, as desired.

CONCLUDING PERSPECTIVE

The main goal of this teaching exercise is to get students to think about ethics in a strategic manner, which goes beyond the notion of "do the right thing because it is the right thing to do." Strategic ethical decision-making is goal-oriented, and is an integral part of effective decision-making in general.

This is operationalized in terms of a union-management bargaining scenario. The task is to forge a productive, mutual gains relationship between the two sides. The motivation is to prosper in a highly competitive environment. The past practice of conflict between the parties had not been financially beneficial to either side. Thus, the challenge is to overcome a legacy of bitterness, distrust, and destructive behavior.

The transformation scenario calls for building trust between the parties, developing an ethical climate, and agreeing upon and committing to a common set of norms and values. Ethics and ethical decision-making are instrumental to each of these, as demonstrated in the teaching exercise and the modules presented. The modules are only suggestive, leaving room for the instructor and students to develop their own approach to the transformation challenge—their own approach to thinking about ethics strategically.

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