

Chapter 5

Negotiations in the Workplace: Overcoming the Problem of Asymmetry

Ray Fells and Peter Prowse

A company was preparing to submit a tender for a construction project. The company had a good reputation and confidence in its tender proposal but it faced a major problem: work on the project was not due to start for 12 months but company's agreement with the union covering all the employees' terms and conditions was due to expire in 6 months. The company could use an estimated rate in its tender proposal but faced the real risk that the negotiated rates under the new agreement would be higher and might make the project unviable. (Like most construction unions, the union at this company had a reputation for militancy). On the other hand, if the company were to cover this risk by using a quite high calculation rate in the tender document then it would instead risk not winning the tender at all.

The CEO of the company called a meeting with the Union Secretary to discuss the company's dilemma. He needed to know what the wage rate would be in an agreement that was not due to be negotiated for a further 6 months. After some discussion, the two men shook hands on what the forthcoming rates would be and even though the handshake had no legal force the company used that rate in its tender document. It won the contract. When the parties later opened negotiations to renew the enterprise agreement, the Union's wage claim was the agreed handshake rate.

In this example, the company and union negotiators are operating in a situation of risk. They were in the highly competitive construction industry where high value projects could mean good profits and high wages, or catastrophic losses and unemployment. Management and the union have to find a way to negotiate their undoubted

R. Fells (✉)

UWA Business School, University of Western Australia, Crawley, WA, Australia
e-mail: ray.fells@uwa.edu.au

P. Prowse

Department of Management, Sheffield Hallam University, Sheffield, UK
e-mail: p.j.prowse@bradford.ac.uk

differences and reach agreements that suit both parties without putting at risk what is important to each of them.

A situation such as this reveals an important aspect of trust – the need for trust arises out of specific situations of risk. As Alan Fox (1985) pointed out, if there is no risk, there is no need for trust. At the same time trust emerges – or perhaps doesn't – from the broader context being experienced by those involved.

This chapter will take a negotiation perspective on the issue of trust in the workplace. Trust between two parties might be recognised as being either calculus- or identification-based (Lewicki and Wiethoff 2000), perspectives on trust that are described more fully in the Chap. 7 of this volume (Lewicki, Elgoibar and Euwema) in this volume. Here we examine the proposition that irrespective of the general level of trust between the parties, trust has to be exercised in specific situations though making decisions that involve a risk. Negotiators have to earn trust in a negotiation, not assume it.

However, the workplace – the context within which management and union negotiate – has a number of characteristics that work against the evolution of trust and cooperation. This chapter will first describe these workplace characteristics and offer them as one explanation why the goals of mutual gains or interest-based bargaining and partnership have generally failed to realise their potential (Cutcher-Gershenfeld et al. 2001; Deitz 2004; Guest and Peccei 2001). The key point is that the workplace context for negotiation is asymmetric and this necessarily impacts the way negotiators negotiate, irrespective of their best cooperative intentions.

We should, at this point, indicate a difficulty with the word, 'cooperation' – it has a range of meanings. Cooperation is typically contrasted with competitiveness but as Fisher and Ury (1981) rightly pointed out, what 'cooperation' often means in practice is that the negotiator tried the competitive approach and failed so attempts to be 'cooperative' which means finding ways to concede without giving too much away. So when negotiators are then described as being cooperative what they are doing is looking for information to create value. Or, to highlight the flexible meaning of the term 'cooperation' in a different way, when I negotiate I am being cooperative because I explain exactly what are my needs that must be addressed while at the same time expecting you to be cooperative by agreeing to accommodate those needs. We will return to the different meanings of 'cooperation' later in the chapter.

The critical examination of the context and processes of workplace negotiation presented in this chapter may help explain the difficulties in establishing workplace cooperation and trust but it does not condemn practitioners to competitiveness and disputation. Fortunately the analysis also provides a way forward. It shows key features of the negotiation process that can be addressed to build trust and enable the parties to address and resolve their differences more constructively. This approach to trust offers a pragmatic strategy for those seeking to establish workable management-union relationships and effective conflict resolution procedures.

Features of Collaborative Management-Union Bargaining and Relationships

Industrial relations are normally characterised as being conflictual, if not adversarial, with examples of industrial action – strikes or lockouts – making the headlines and shaping attitudes and public policy. Against this background there has been regular advocacy of new negotiation approaches, particularly the mutual gains or interest-based bargaining approach in north America (see, for example, Kochan and Osterman 1994) and models of partnership in the UK (see Johnstone et al 2009, for a review). Europe, meanwhile is adapting its model of social dialogue to meet the challenge of increasing economic and financial stringency (Gray 2009; Munduate et al 2012; Euwema et al. 2015). The notions of partnership and social dialogue encompass more than negotiations across the table and should provide a more benign context within which managements and unions can operate. They do not, however, guarantee collaboration when the parties meet to negotiate, particularly in times of crisis for the organisation.

Table 5.1 outlines different aspects of how negotiating more cooperatively reflects the requirements of the core interest-based model. The need for trust is inferred in all three lists (see also Friedman 1993) particularly because the negotiators would be negotiating in a very unfamiliar and potentially risky way. The negotiators also need different skills if they are to move away from their traditional (and therefore comfortable) positional approach so prior awareness and skill development programs are essential prerequisites (Cutcher-Gershenfeld 1994; Heckscher 1993; Hunter and McKersie 1992; Susskind and Landry 1991). It was also quickly

Table 5.1 Some aspects of successful collaborative bargaining

Factors that facilitate integrative bargaining Walton and McKersie (1965)	Conditions for successful integrative (win-win) negotiation Lewicki et al. (2006)	Tenets of mutual gains bargaining Heckscher (1993)
Motivation	Some common objective or goal	Commitment to the creative process
Information and language	Faith in one’s problem solving ability	Shared ground rules of new process
Trust	Belief in the validity of one’s own position & the other’s perspective	Defer taking positions while exploring the facts
	Motivation and commitment to work together	Unprecedented degree of information
	Trust	Taking time to explore each other’s real interests
	Clear and accurate communication	Making space for creative invention
	An understanding of the dynamics of integrative negotiation	

realised that the need to change attitudes should extend to the constituents so that they too understand the new approach that their negotiators are following (Cutcher-Gershenfeld 1994; Friedman and Gal 1991; Heckscher and Hall 1994). Another critical element is the exchange of information with phrases such as 'fluid maximum information' (Paquet 1995), and 'unprecedented degree' of shared information' (Heckscher 1993). While emphasising the benefits of a collaborative approach there was an early recognition that some issues may remain to be resolved through more competitive negotiation, (Cutcher-Gershenfeld 1994; Mandelbaum 1989; Stepp et al 1998), though the list of unresolved issues should be smaller and be dealt with less contentiously.

The notions of partnership and social contract imply a broader relationship than a negotiation one across the table though it is a matter of emphasis. A partnership cannot work without negotiation; and an ongoing negotiation relationship is a form of partnership. As Walton and McKersie (1965) pointed out, when managements and unions meet to negotiate a new labor contract what they are doing is renegotiating the terms of their interdependence and interdependence is at the heart of any genuine partnership.

Notwithstanding the advocacy of improved workplace relations a review of reported cases (see Table 5.2) indicates the extent of the challenge that the parties face in establishing an enduring management-union relationship wherein workplace conflicts can be constructively managed. A further point that can be made about these case studies is that there were two common antecedent conditions that gave rise to the attempt to develop new collaborative forms of relationship and bargaining. Virtually every instance was provoked by either an economic threat to the organisation, such as a declining market share, or a history of seriously damaging negotiations (or both).

The Workplace Context for Negotiation

The negotiators in the reported cases were motivated to try a new approach and in most cases they had also been trained in the principles and practices of the interest-based bargaining. In these cases, the lack of trust-building collaborative negotiation can't easily be attributed to either a lack of motivation or of ability. This suggests that there are other structural reasons for the level of competitiveness that seems to inevitably impact upon the process.

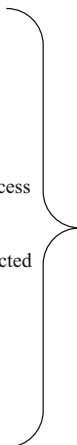
Much has been written on the theory and practice of negotiation by both academic researchers and practitioners. Some common characteristics emerge coupled with some underlying assumptions about the negotiation should work (see Table 5.3). First, negotiation involves an exchange of information. As a result of this exchange the parties are able to develop their agreement; the fuller the information exchange, the better the agreement. Second, negotiation is between two or more parties. Implicit here is that the parties are separate but individually coherent entities, such as two companies negotiating a supply contact or a number of departments in

Table 5.2 Examples of mutual gains bargaining

The case studies	Brief description
Mandelbaum (1989) Parallel integrative and traditional contract negotiations – public hospital (USA)	Cooperation on work organisation; tough bargaining on pay and other conditions
Ancona et al (1991) Three cases of contract negotiation (context not stated)	MGB process held in one, collapsed in two
Friedman and Gal (1991) Two regional contract negotiations in the same Telecommunications company (USA)	Both essentially deadline-oriented negotiations; one collaborative; one antagonistic, agreement rejected, strike
Bohlander and Campbell (1994) Establishing a new management-union partnership & contract – mining (USA)	Held to succeed, be a template
Post and Bennett (1994) Contract renegotiation – engineering company (USA)	Facilitated process; ‘excellent final results’; changed workplace, 18 months after the event
Korshak (1995) Contract renegotiations – industry level, hotels (USA)	Facilitated process; regarded as a good agreement, involved economic trade-off for security
Dennison et al (1997) Two cases of contract re-negotiation– academics (USA)	(i) Facilitated process; comprehensive strategic agreement, implementation issues, mediation (ii) Facilitated process to establish a first agreement.
Preuss and Frost (2003) City-wide hospitals management-union cooperation	A decade of cooperative negotiation but with increasing fragmentation and tension
^a McKersie et al (2004) Contract renegotiations, Kaiser, health (USA)	Successful labour contract – profit share etc
Caverley et al. (2006) Two cases of contract renegotiations- public sector: (i) social service; (ii) IT (Canada)	Facilitated processes; MGB ‘not universally used’
Bacon and Blyton (2007) Multi-department negotiations overwork reorganisation and de-manning – steel industry (UK)	Varied competitive & cooperative strategies
Garaudel et al (2008) Two cases of organizational restructuring- textiles; insurance (France)	Accommodative solutions, difficult but successful
^a McKersie et al (2008) Contract renegotiations, Kaiser Permanente (USA)	Collaboration on shared interests
Cutcher-Gershenfeld (2011) Major contract negotiations – car company (USA)	Restructured wages; efficiency; survival for both parties
Evans et al (2012) Two labor-management partnerships – engineering; airline (UK)	‘Cooperation’ but neither delivered mutual gains

^aSuccessive rounds of negotiation in the same organisation

Table 5.3 Some characteristics and assumptions about negotiation

<p>Information exchange</p> <ul style="list-style-type: none"> • That both parties have information about the context not known to the other, but will be willing to share. <p>The nature of the parties</p> <ul style="list-style-type: none"> • That negotiators are responsible agents for their constituents. • That the parties are separate and communicate through the negotiation process <p>The privacy of negotiation</p> <ul style="list-style-type: none"> • That the parties are pursuing their own interests though others may be affected by the outcome. <p>The strategic motivation of the parties</p> <ul style="list-style-type: none"> • That negotiators have alternatives to negotiation. • That both parties are motivated to achieve an agreement (provided it results in them being better off). 		<div style="border: 2px solid black; padding: 10px; width: fit-content; margin: auto;"> <p style="text-align: center; margin: 0;">COOPERATIVE NEGOTIATION</p> </div>
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a university deciding how to share the Faculty budget. Third, negotiation is essentially a private affair in that the parties set their own goals and pursue them. There is no obligation on them to take account of the impact on third parties (though for self-interested and ethical reasons they may choose to do so). Finally, negotiation involves the alternative of not negotiating in case of transactional negotiation. If you cannot get a good price from one supplier, there is another down the road that you can negotiate with.

When we consider the context of the workplace within which enterprise bargaining and other negotiations occur we find that these four core characteristics might not fully hold. Importantly, they do not apply equally to both parties. The implication of this asymmetry is that it shapes negotiators' behaviour more towards being competitive rather than to being cooperative (Table 5.4). If workplace negotiations are to be more constructive then the way the process is developed must address this inherent contextual nudge towards competitiveness that impacts upon the negotiators. Before exploring this further we will briefly examine each assumption as it applies to workplace negotiations and consider the impact of the workplace context on the behaviour of the negotiators. The asymmetry of the workplace context and its impact on negotiators' behaviour are summarised in Table 5.5.

Negotiation Involves the Parties Exchanging Information

The first assumption about how negotiations work relates to the parties' use of information. Research on negotiation (for example, Butler 1999; Thompson 1991) clearly shows that the negotiators achieve higher value outcomes if they exchange information and particularly information about their interests, the reasons behind

Table 5.4 The effects of asymmetry on negotiation

<p>Information exchange</p> <ul style="list-style-type: none"> • One side holds most of the information • Reluctance to share information <p>The nature of the parties</p> <ul style="list-style-type: none"> • One side’s constituency is more difficult to manage. • One side can communicate with the other side’s constituency, but not vice versa. <p>The privacy of negotiation</p> <ul style="list-style-type: none"> • Public pressure to settle is applied to one side more than to the other <p>The strategic motivation of the parties</p> <ul style="list-style-type: none"> • One side has the option to by-pass the negotiation. • One side’s core strategy may be to not negotiate at all. 		<div style="border: 2px solid black; padding: 10px; width: fit-content; margin: auto;"> <p>COMPETITIVE NEGOTIATION</p> </div>
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Table 5.5 Workplace asymmetry and its effects on negotiation

Assumptions of models of negotiation	The asymmetric context for workplace bargaining	The effect of the asymmetry on the negotiators’ behaviour
Information exchange That both parties have information about the context not known to the other, but will be willing to share.	Management typically has far more information about the context than the union or employees and often will be concerned to retain this information.	Given that management holds most of the pertinent information it has scope to be cooperative (or not). The union, with little new information to share, cannot reciprocate and so appears reactive and competitive.
The nature of the parties	Union negotiators are accountable to a larger and more diverse constituency than management negotiators.	The more diverse nature of the union constituency plus the clearer level of accountability will mean that union negotiators feel the constituency pressure more than management negotiators and so are more cautious and competitive (both in content and behaviour) in their reactions.
That negotiators are responsible agents for their constituents. That the parties are separate and communicate through the negotiation process.	Employees are constituents on the union side but the other party, management, also has a direct (employment) relationship with them. So management can communicate directly with its employees (the union negotiators’ constituency) whereas the union negotiators do not readily have an equivalent option.	Union negotiators can easily perceive that management actions to unilaterally inform employees of the progress of negotiations is an attempt to undermine their position vis a vis their membership, making them more defensive & competitive in their stance. The union negotiators do not have an equivalent reciprocal action and so can react only at the bargaining table itself.

(continued)

Table 5.5 (continued)

Assumptions of models of negotiation	The asymmetric context for workplace bargaining	The effect of the asymmetry on the negotiators' behaviour
The privacy of negotiation That the parties are pursuing their own interests though others may be affected by the outcome.	A presumption that industrial disputes will have an adverse effect on third parties and so striking workers should 'return to work and negotiate'.	If a negotiation goes public it can have unpredictable effects on the parties stance (i.e. either increased contention or conciliatoriness) depending on the weight of public opinion. Bringing externalities to the table is likely to induce competitive behaviour, particularly from the side under pressure.
The strategic motivation of the parties That negotiators have alternatives to negotiation.	Both parties have the alternatives of industrial action, arbitration etc. Management may have the alternative of recruiting new employees or of offering individual contracts to employees. The union has no equivalent alternatives.	If the effect of the legislative requirements on industrial action impact unevenly on the parties (e.g. it is easier to impose a lock out than it is to call a strike) then the party facing the most difficulties may react competitively (even though the intent of the provisions may have been to encourage concessionary behaviour). If management adopts or threatens to adopt these strategies, the union has no equivalent reciprocal action and so has to respond to this clear threat to its position in the negotiation process (and in the workplace) in other ways.
That both parties are motivated to achieve an agreement (provided it results in them being better off).	The core strategy of one party, management, may be to have nothing to do with the other party at all.	The union negotiators will react competitively – in behaviour at least – to any indications by management of a union avoidance strategy.

their position – the ‘why’ behind the ‘what’. Once each party understands the situation of the other, and their mutual context, then they can use this enhanced understanding to build new solutions rather than merely argue the merits of their respective positions. However, it is assumed that both parties have information that is not known to the other party and that each party is willing to share it.

When negotiations occur in the workplace context this is not normally the case. Rather than each party coming to the table with information that it can contribute to provide a better understanding of the situation and so form the foundation for a better solution, it is the management that typically has far more information. Management has knowledge of the financial, market and technical aspects of the operation and about the possible new technologies or business systems that might contribute to more productive outcomes. Furthermore, managers may be reluctant to share this because of the idea that ‘information is power’ and to share it weakens

one's bargaining position. (Although a widely held belief, there is little research support for the 'information is power' approach to negotiation.)

The practical consequence is that it is management who controls the flow of information and there is little information that the union negotiators can give in return. The significance of this imbalance is that it is difficult for there to be an information exchange. Reciprocity, the matching of one person's behaviour by another (Brett et al 1998; Putnam and Jones 1982) is one of the processes through which trust is developed; where the provision of information by one side can not easily be reciprocated by the other it is more difficult to build trust across the table. Even when management does release information this does not necessarily lead to a development of trust. It depends, in part, on the motive for sharing the information. We noted above that one of the prime antecedent conditions for attempts at collaborative bargaining is an economic threat to the organisation. If management releases data about rising costs or falling market share the motivation for sharing this could be to get the other party to accept management's offer rather than be an offer of trust.¹ In these situations the union negotiators will have little new information to share and so cannot reciprocate. As a result they appear to the management negotiators to be reactive, unhelpful and not bringing anything new to the table except to reiterate the membership's demands. Reciprocity being what it is in a negotiation, the management negotiators react to this apparent (and perhaps real) competitiveness and so the information becomes a negotiation weapon rather than a building block for cooperation.

Because management holds most of the pertinent information it has scope to be cooperative (or not). In this situation, actions speak louder than words. In the lead up to a major negotiation on pay and conditions an employer invested heavily in training for interest-based bargaining for its own negotiators and for the union delegates. However, once the negotiations commenced, the management negotiators refused to explain what they wanted to achieve out of the negotiations and how the general strategies of the organisation translated into interests and priorities for the current round of negotiations. According to one of the union negotiators, management insisted that it was up to the union to put its claim on the table first, that is, requiring the union to negotiate positionally. The negotiations failed to make progress for several months and eventually involved industrial action.

The offer of information is one of those situations in negotiation that calls for the exercise of trust (Fells 2012). The negotiator has to make a judgement: 'if I offer this piece of information can I trust the other negotiator not to use it against me?' If the intention is to build trust for a more collaborative negotiation: 'if I offer this piece of information can I trust that the other negotiator will reciprocate and reveal some information too?' A further occasion for trust in this situation lies on the other side

¹ Here we return to the question of the meaning of cooperation. When information is given in support of a position, the expected cooperation is that the other party makes a concession; when it is given as an offer of trust then the expected cooperation is that the other party will similarly offer some information that might put it at risk (eg that notwithstanding their big pay claim a lot of members are concerned for their jobs).

of the table where the negotiator has to decide: ‘can I trust this information that is being given to be true?’ It is known that negotiators rarely give false information but it is often incomplete or misleading. Clearly the slow and steady exchange of relevant information by both parties, building on the information provided by the other, will help the negotiators trust each other. As the negotiations progress this will probably have a pay-off in the other critical situation where trust is called for. This is the situation where both parties realise that mutual concessions must be made to reach a point of agreement but the risk is that if one party goes first, the other may not reciprocate, resulting in position and image loss for the first negotiator. If the negotiators have learned to trust each other in the exchange of information they will be more confident to constructively manage the concession making process.

Negotiation Is Between Separate But Individually Coherent Parties

Negotiation occurs between two (or more) parties and it is generally assumed that these parties are separate from each other. Further, it is assumed the company, the workforce, the environmental agency, government department or whatever party the negotiator is representing is assumed to be a cohesive entity, not often recognising (apart perhaps in the preparation phase) that is often quite complex. We examine both these assumptions in the context of the workplace where negotiators are normally acting on behalf of their respective constituencies.

The importance for trust in constituency negotiations is clear: ‘can I trust the negotiator on the other side of the table to properly reflect the events at the negotiation table and also to accurately report back the views of their constituency?’ If the behaviour of the negotiators is such that those on the other side of the table have their doubts then competitiveness rather than trust will develop in the negotiations.

It has long been recognized that the negotiators are more competitive when negotiating on behalf of others (Klimoski and Ash 1974; Mosterd and Rutte 2000) – they push harder for their demands if only because they have to report back to the person or people they are representing about how well (or not) they have done. This applies to the management negotiators reporting back to their board as much as to union negotiators reporting back to the workforce. Negotiators on both sides can use the ‘my hands are tied’ ploy as a reason for not agreeing to the other’s position.

The pressure of constituency is clearly felt in workplace negotiations (Walton and McKersie 1965; Warr 1973). However, the constituency that the union negotiator has to represent is normally a far larger and more diverse a constituency than the group to which the management negotiators report to. There may be more than one union involved and their officials may need to manage the differing priorities of their memberships. When there is only one union it may still have to reconcile different aspirations. For example, lower paid employees typically prefer a flat-rate

increase in pay whereas higher paid workers prefer percentage increases; shift workers would want improvements to their allowances, day workers would prefer a higher base rate. While differences may emerge within a management team, such as between human resources and finance, we cannot easily envisage a situation where the Human Resource Manager puts a proposed workplace agreement to a vote of all managers in the organisation, requiring 50% + 1 for it to be approved. The more diverse nature of the union constituency, combined with the clearer level of accountability means that union negotiators feel the constituency pressure more than management negotiators. As a result they will be more competitive in how they pursue issues and more cautious in considering innovative proposals.

The other assumption about the party structure of negotiation is that they are separate such as the two companies negotiating their potential joint venture. In the workplace it is different. One party – the workforce – is employed by the other. This means that while negotiations are taking place management has the right to communicate through newsletter, meetings etc. directly with its employees there is no equivalent opportunity for union or employee representatives to communicate directly with those managers not at the negotiating table.² Perhaps the only way they have to communicate to the senior executive might be through a placard demonstration outside the main entrance. Hardly a constructive or conciliatory form of communication!

Negotiation Is Essentially a Private Affair

Another assumption of negotiation is that the parties pursue their own interests. When negotiating to buy a house the buyer and seller do not have to take account of the effect of their settlement price on other houses in the street. Workplace negotiations can be very public and not only when the trains stop running due to a drivers' strike or the planes stop flying due to a management lock-out. Public commentary on a dispute will often include comments on the alleged adverse effects of any 'high' settlement on companies and on jobs elsewhere. This public dimension has the effect of making any compromise also more public which can lead to negotiator intransigence rather than cooperation. Despite this, managements or unions will often attempt to invoke public support for the position they have taken at the bargaining table. This may be more effective for public service employees such as nurses than for the more highly paid airline pilots but going public with a dispute is a risky strategy and normally requires an effective 'back channel' for negotiations to

²A distinguishing characteristic of some European models of industrial relations is the right of employees to have a representative at company board level. The provision of this right brings a greater degree of balance in that a representative of the union/employee negotiators does have direct access to senior management. They do not, however, have access to the management group as a whole to directly explain to them the benefits of the union's position in the same way that management has access to employees to explain the benefits of the company's position.

be resumed quietly away from the public view (Friedman 1994). Relying on a back channel requires trust, trust that may have been put to the test by some of the public commentary and actions by the parties. Third party involvement may be required to rebuild the negotiation but maintaining direct negotiation is preferable.

Negotiation Involves the Alternative of Not Negotiating

The final assumption about negotiation to consider is that we don't have to; when negotiating, we always have alternatives. This key point has been rightly popularised through Fisher and Ury's (1981) use of the term BATNA – the Best Alternative to a Negotiated Agreement (also see Lax and Sebenius 1985). If we cannot reach a good price with a car dealer, we can always go to a dealer down the road, just as the dealer can always start to negotiate with another potential customer. One party's alternatives may be better than the other's but they are always there.

In the workplace context the legal framework will typically place constraints and obligations on the parties, particularly on the extent to which they can engage in industrial action (strike or lockout). In any workplace negotiation, the parties have to accept the legal framework as a given; it has been established through a broader political process. However, each party typically thinks that the legislative framework offers more support to the other side while unfairly constraining their own ability to secure a reasonable outcome; their respective interpretations of the law will encourage, at best, resigned cooperation but often be another point of contention to argue about over the negotiation table. The legislation may also place an obligation on how the parties should negotiate with a requirement that they should bargain in good faith. However even this legislative prompt to negotiate cooperatively can be used competitively if either of the parties so wish. For example, if one party wants to delay a settlement it can lodge a complaint that the other party is not bargaining in good faith and so delay the negotiations while the complaint is being investigated.

When Walton and McKersie (1965) defined 'collective bargaining' as the management and unions renegotiating the terms of their interdependence this was a recognition of the fact that once the negotiations (with any associated disputation) are over, then employment relations would be resumed (but, probably, on new terms). Brett (2014) notes that in this interdependent situation, the BATNA of one party is largely shaped by what the other party can do to it, and this is reflected too in Chamberlain and Kuhn's (1965) perception of power in collective bargaining, namely the ability to impose economic and other costs on the other party and so induce them to concede. The legislative framework may determine how either party may retaliate to the actions of the other but the employer does have some significantly different options that are not open to the union side. The employer may recruit an alternative labor force (though often only with considerable legal ingenuity

to get around existing employment obligations³). Where individual rather than collective employment relations are the policy objective of government (as in Australia from 1996 to 2009) employment law may permit employers to offer employees individual employment contracts that take precedence over any collectively negotiated agreements. There is a clear asymmetry of alternatives on either side of the negotiating table. The interdependence that is part of the employment context means that a union has to reach an agreement with the employer, but the employer can potentially achieve its objectives without reaching agreement with the union. Even if these management options are only in the background, they incline union negotiators towards a more defensive and competitive response to any of management's substantive proposals.

This brings us to the final assumption about negotiation and what is needed for it to work, namely that both parties are motivated to reach an agreement. In some situations management may invoke an individual contract strategy simply as a threat to induce the union negotiators to be more conciliatory. However, it may be part of a longer-term union avoidance or marginalisation strategy. That is, management may not want to reach agreement at all and, indeed, may feel that to have a less than constructive negotiation may actually help its longer term goal of disconnecting the union from any employee support. It is not surprising if the union (perhaps counter-productively) reacts competitively to any indications by management that it has a union avoidance strategy in play. Trust is unlikely to emerge in such a situation.

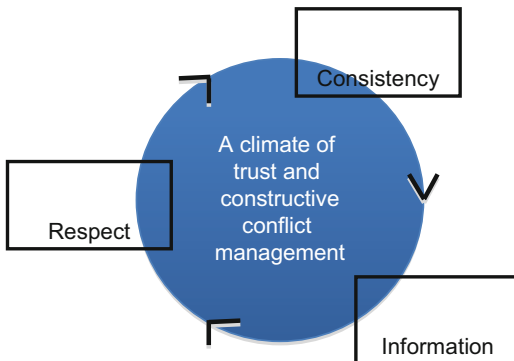
Trust and the Development of Constructive Negotiation and Conflict Management

We turn now to draw some practical implications from the asymmetric nature of the workplace context for the development of constructive negotiation and the trust that such negotiation requires. In doing so we must first recognise that some employers do not want to have to deal with unions in the belief that unions exist to get management to do things that they otherwise would not do (Hyman 1975). Indeed, much of labor law would not be necessary if past managements had wholeheartedly adopted a pluralist perspective and unions had responded in like manner. Other employers by choice or by legislative obligation do seek to develop negotiation relationships with unions and employee representatives. How, then, might the competitive influence of the workplace context be mitigated against or even overcome such that constructive relationships can be established?

Clearly trust is at the heart of the matter, but we have suggested that trust has to be earned through actions. We can identify three elements that would contribute towards a virtuous circle of trust building and constructive relationships (see Fig. 5.1).

³Such as declaring the existing company insolvent and establishing a new one, which then buys out the old one (cheaply because it is insolvent) but then recruits new employees. The lawyers who devised the scheme would then be retained to fight off any claims by ex-employees.

Fig. 5.1 The virtuous circle: a constructive cycle of workplace relations



The three main elements are showing respect to the other party and recognising its legitimacy; maintaining a consistency of approach, and engaging in the exchange of information. It is easy to envisage the outcome if the parties do not show each other respect, are inconsistent and withhold or misuse information. There will be a climate of mistrust and the way that conflicts are handled is then likely to exacerbate the situation further.

Showing Respect to the Other Party and Recognizing Its Legitimacy

For relationships to work they must be based on respect and legitimacy. To examine this aspect of workplace relations we must start with the last of the negotiation characteristics discussed earlier, namely the motivation of parties. If one party's core motivation is to not negotiate except when it has to then the other party will inevitably recognise this. It is very difficult to trust someone you believe really does not want to talk to you. Further, other actions by that party – and as we have shown, this is typically management because a union does not have an alternative not to reach agreement – are likely to be misinterpreted. For example, management may rightly seek to introduce teamwork as a way of improving productivity, but a suspicious workforce might resist this seeing it as a management ploy to change the allegiances of the employees.

Genuinely recognising and respecting the legitimacy of the other party can be both personal and organizational. At the interpersonal level it is demonstrated through open conduct during negotiation meetings such as not interrupting or not using derogatory terms to describe what the other negotiator has just said. At the organizational level – and here recognising the asymmetric obligation is important – it is demonstrated through management affording facilities to employee representatives, particularly time to consult with those they represent. This respect needs to be reciprocated and from the union side this will mainly

be at the interpersonal level but will also be shown, for example, in the way that union negotiators refer to the company when reporting back on negotiations and offers to their membership.

Maintaining a Consistency of Approach

The need for respect and legitimacy leads to another important point about developing trust and constructive relationships, namely the necessity for consistency. This can be demonstrated in a number of ways in the workplace. It is important for an organisation to have a consistent approach to resolving issues, and to always emphasise the need for a negotiated outcome. It would be inconsistent to try to establish a mutual gains approach to a forthcoming major pay negotiation if the company has consistently referred employee grievances to third party arbitration even if it was entitled to under the grievance procedure. If the union negotiators consistently challenge every interpretation by managers of the current agreement then they cannot expect anything other than a defensive attitude from the management negotiators when the agreement is due for renegotiation.

Engaging in the Exchange of Information

The third element of the virtuous circle is information exchange. As we have seen, management holds most of the information that is needed to build value-creating agreements and so the responsibility for building trust and cooperation in this respect lies with them. Providing a swath of information – usually bad sales or wage comparative data – just before a negotiation is due to start is not being cooperative, just the reverse. It signals to employees that management hadn't trusted them with any important information about business performance until that point, and is sharing it now only because they want the employees to moderate their wage demands.

Management needs to make a broader decision about the extent to which it is going to involve its workforce, and any workforce representatives, in the decision-making processes throughout the organisation. Cooperation reaps dividend and the investment in information sharing during the life of the agreement will pay off in the next major negotiation. This is no different from other areas of an organisation's operations. In the procurement area, for example, most companies rightly give emphasis to developing relationships with their suppliers and build value-adding partnerships by sharing information. The European model of social dialogue recognises the importance of information and the rights conferred on employees to have access to information provide a context for negotiations to progress beyond competitive bargaining into a more collaborative relationship (Bridgford and Stirling 1994).

Not all industrial relations systems provide these information rights and even where they exist, a preferred approach would be for management to develop its own open strategy rather than merely respond to employee requests. While the initial responsibility for information exchange lies with management, because it is they who have the information that needs to be shared, unions and worker representatives have an equal responsibility in how they receive and handle that information. Negotiation is two-sided; trust can be offered but if it is misused it may never be rebuilt (see Lewicki et al, Chap. 7 in this volume).

Trust and Constructive Conflict Management in the Construction Company

Returning to the case of the CEO and the Union Official we can find some reasons why they were able to trust each other's handshake in the context of an industry where competitive and even antagonistic relations between management and union are commonplace.

To recap the situation, the CEO had to trust that the Union Official would keep his word on pay rates when the next round of negotiations opened. We can add that the risk to the Union Official in shaking the CEO's hand was over the uncertainty of what the prevailing industry wage rates would be 6 months hence. He risked the company coming to the negotiation table pushing for a lower rate; he risked pressure from his members if they believed that their union should be getting them more.

This trust did not just happen and we can identify the three elements in the virtuous circle of respect/legitimacy, consistency, and information exchange. While not welcoming the union with open arms, the company puts no obstacles to its employees joining the union and is prepared to set work time aside for the union officials to meet with members. The consistency in its approach is maintained by making very clear to new site managers that the company's way of dealing with worker grievances and union representations is to find a solution that works, not stand on matters of managerial prerogative. It expects – and the union officials know this – that the officials will bring their members into line. This is the reciprocity that the union side delivers. The parties were consistent in the way they managed issues between them. When they meet the language between the negotiators on each side is not always polite – the description of a 'robust exchange' hardly does justice to it but the negotiators understand each other across the table. More importantly, each side has made it clear to the other that they want a negotiated solution to any problem, and do not want any issue to be escalated into external procedures (for example legal processes or industrial action). This mutual strategic motivation governs the way they handle individual grievances on site and the periodic company-wide pay negotiations. With regard to information, the management regularly updates employees and their union over the state of the company and future work flows. It does this consistently, not just when it wants the workers to moderate their pay claims. One of the union

officials states that he has no reason at all to disbelieve any of the information that the company provides him. With all three elements of the virtuous circle present, the key managers and union officials developed a level of trust between them, a trust that spread to on-site managers and the employees.

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