

The Complex Process of Workplace Bargaining

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Abstract: Analysis of a management-union negotiation suggests that the process of reaching agreement is a complex one. The paper examines how events at the negotiating table combined with those in the workplace to constantly reshape the agenda. In addition the analysis of the negotiation demonstrates a number of ways in which issues are explored and differences are overcome. Some implications for the conduct of negotiation and workplace relations are explored, in particular the need to view the workplace bargaining as being rather more than a process of consultation.

Introduction

The extensive literature on negotiation provides significant insights into the process of reaching agreement but a great deal of it is based upon laboratory research. This paper attempts to make a contribution by drawing upon case study material. The research on this occasion was made possible by the parties agreeing to the researcher being present at the negotiation sessions, and by their particularly frank discussions with the researcher as the negotiations progressed.

The employer in these negotiations was a new private hospital at Murdoch in Perth. The two unions involved were the Miscellaneous Workers' Union, which represented enrolled nurses, patient carers, canteen, security and other similar employees, and the Hospital Salaried Officers' Association representing the administrative and managerial positions in the hospital. (For a fuller description of the hospital and unions, see Fells, 1995.) The employer was usually represented in the negotiations by a recently appointed Chief Executive Officer (who chaired the meetings when he was present) together with a number of other managers from within the hospital and the employer association representative (designated 'management 1' in the transcript extracts later in the paper).

It was this representative and the CEO who conducted most of the negotiation. The Miscellaneous Workers' Union had two officials involved in the negotiations ('MWunion 1 and 2'), the Salaried Officers', just one (SOunion 1'). Although both unions had elected lay representatives at the meetings, the union officials did most of the negotiating. In addition to the formal meetings there was informal contact between the key negotiators, mainly to clarify issues, finalise the wording of clauses and establish agendas for particular meetings. The two unions started to negotiate in a single bargaining unit but later negotiated separately. This paper will focus on the negotiations involving the Miscellaneous Workers' Union and Figure 1 is an attempt to portray the pattern of the negotiations as the union and hospital moved to an agreement.

The opening phase of the negotiations: shaping up

Generating an agenda to work to

The first two-year enterprise agreement between management and the two unions was concluded before the hospital commenced operation and its main features were a system of 'annualised' hours, a new patient carer role, coupled with a need to examine the appropriateness of existing positions and to review the classification structures themselves, pay scales which were better than those contained in the industry award and a joint management-union monitoring committee to oversee the implementation of the agreement as the hospital became fully operational.

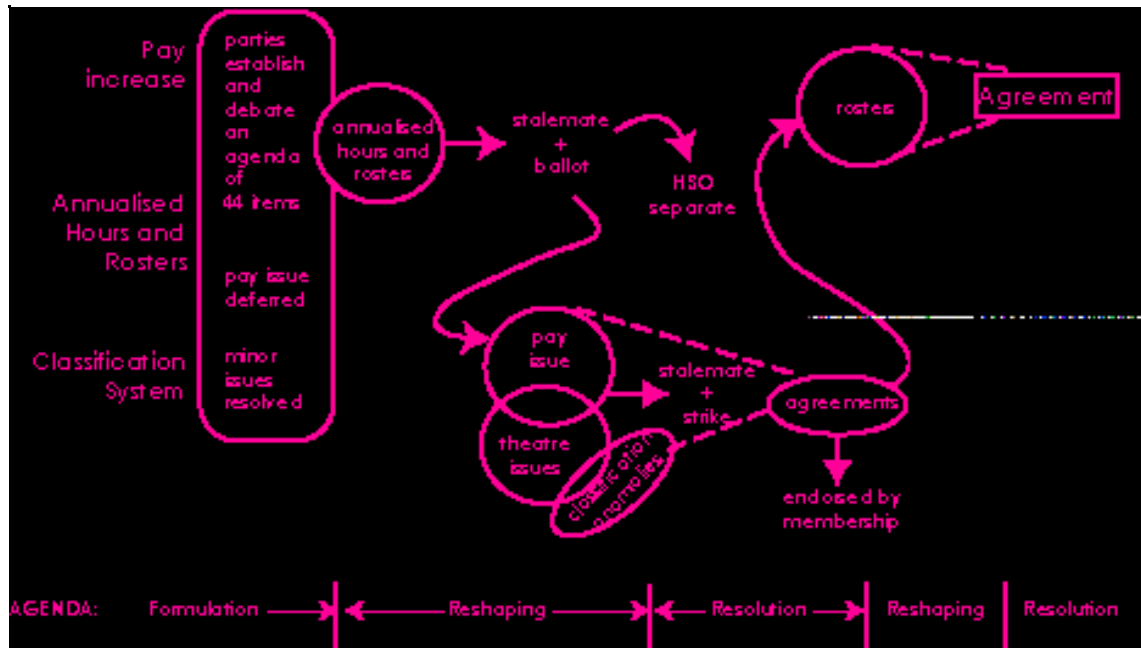


Figure 1: Negotiations between Murdoch Hospital and Miscellaneous Workers Union

When the parties sat down in June to renegotiate their enterprise agreement there were a number of issues to be addressed. Management recognised that it would have to increase pay to keep abreast of the marketplace; but in order to fund this increase, it needed to increase workplace flexibility. Essentially, this focused on relaxing some of the constraints which existed in the annualised hours and roster systems. For their part, the unions had canvassed their memberships and approached the negotiations with a list of grievances. Many of these arose out of difficulties with the actual operation of the annualised hours system, others arose out of the constant changes which had taken place as the hospital had become established. In addition, the unions were concerned that the classifications within the hospital had not been properly established and so there were a number of outstanding anomalies which needed rectifying. The net result of these was an opening position from the Miscellaneous Workers' Union that they wanted to abandon annualised hours and revert to the standard hours system which applied elsewhere in the industry. As one union negotiator stated: 'I have my members instructions; they would prefer to revert to the award. I've been instructed by my members to set a date and if agreement is not reached by then to revert to the award; they do not want to get stuck in negotiations which are going nowhere'.

It was management's aim to establish an agenda – 'a clear list of issues from all sides' – in part because they were concerned that the unions might raise new claims later in the negotiations. The unions found this difficult. While assuring management that they did not have any hidden agendas they felt they could not be confined to a set list of issues. They were still in the process of consulting members and genuine issues might be raised at any time. By the fourth meeting the combined agenda comprised 44 items. The negotiation sessions basically consisted of going through each item to clarify what the problem was and to explore what might be done next. In some instances, management agreed to provide more information, or 'to go away and look at it'; in others the unions agreed to propose new wordings for clauses in the agreement which were causing them difficulty.

Refocusing on annualised hours

As the discussions progressed, it became clear that many of the issues being raised were contingent upon the system of rostering and annualised hours so it was agreed to focus on that issue in meeting six. The union officials consulted with the membership and had then redrafted the four clauses in the original agreement which related to hours, overtime, annualised hours and rosters. Having heard the union position, the management team took an adjournment and when they

returned they went through each clause in turn giving their response. On some points management reiterated the *status quo*, others were agreed to in principle but alternative details were proposed. Management also restated the changes they wanted introduced. Just one point was agreed.

This meeting basically clarified the extent of the differences between the parties on the annualised hours issue. Since the union negotiators' attempts to so modify the system that it would appear acceptable did not seem to have succeeded, the issue was put to a membership ballot. The result was that over 80 per cent preferred that the system remained but with little change or no change, while only 18 per cent wanted it abandoned. There was virtually no support for management's proposed changes.

Workplace dynamics as an element in management-union negotiations

As will be shown below the ballot represented a major turning point in the negotiations. In a broader sense, this development reveals the important dynamics of management-union negotiation, dynamics which extend beyond intra-organisational bargaining as envisaged by Walton and McKersie (1965) and the models of developing a co-operative orientation between the parties (Heckscher, 1993; Susskind and Landry, 1991). Although there had been several meetings before the ballot was conducted, the Murdoch negotiations were still at an early stage and so it could be anticipated that there would not be much change in the constituency position. However, while the issues were being sharpened up through the discussions around the negotiating table the workplace context itself had changed, thereby reshaping employee attitudes towards the annualised hours system. The efforts of the human resources department and line managers to ensure that the administrative side of the annualised hours system was working properly (that variations in hours were being recorded accurately, that perceived discrepancies in pay were investigated and so on) had had an effect. Notwithstanding the fact that a fundamental issue of concern relating to employees being 'asked' to stay behind or go home early when they really did not want to still remained, the better management of the system's administration changed the climate from one of on-going grievance to one of (resigned) acceptance.

These events provide an indication of the dynamics involved in making progress in a negotiation. The discussion around the table brought clarity to the issues and to the differences between the parties. Further discussion was deemed pointless; the negotiations needed input from the workplace. In this respect the deadlock was a positive event, one which was almost stage-managed by the negotiators. Had the feeling of the union members been unchanged, the deadlocked position at the bargaining table would have become a deadlock between the parties. However, the mood **had** changed and as a consequence, the negotiations were able to progress. The combination of the negotiations themselves reaching a clear deadlock and the constituency position having changed provided the negotiators on both sides with a new agenda on which to bargain.

The second phase: what price annualised hours?

It was now early in September, three months into the negotiations. The ballot results were presented formally at the next meeting (the seventh) and it was clear that the agenda had changed.

The ballot had, in effect, turned the negotiation agenda upside down. Up to that point, the issue of wages was going to be dealt with last, after all other issues had been resolved, as this would have given management the basis for knowing how much it could afford to offer. Now, with the hours system apparently being maintained, the main issue was the pay increase and the remainder of the meeting was concerned with each side drawing out the other's position on wages. Both parties had anticipated this development and so were prepared.

The union officials expressed the view that they should resolve the large issues rather than the minor ones and the CEO responded with a summary of the options. This then led to the unions introducing the issue of the wage increase.

CEO: 'But you did put changes you would not expect us to accept. So where are we? Do you want us to pursue the issues you put to us [on annualised hours] — which would mean that we would want changes too or have us both

- withdrawing both sides from their positions and stay with annualised hours so as to get it ratified?
- SOunion 1: 'The easy answer is in the wage increase, the members feel that they would want a substantial wage increase. The hospital is now running, they have put in a huge effort to make it work ; they have a heavy workload; the hospital wants to be the best; it should pay staff accordingly and so they want to see what they [the hospital] will offer.'
- CEO: 'What are you talking about when you say substantial? 20 per cent? 30 per cent?'
- MWunion 1: 'You know what is in your budget, you know what you can afford.'
- CEO: 'But we have heard it all before, what do you mean?'
- SOunion 1: 'The teachers are rejecting 15 per cent. Do you consider that substantial?'
- CEO: 'Yes, **very** substantial.'
- SOunion 1: 'We have gone back to members, we have asked the membership, not put a recommendation, and the figure which came back is \$70 per week.'

After some further general discussion about wage trends, the CEO asks the other union official what her union's position on wages was:

- CEO: (to MWunion 1) 'What's your 'substantial?'
- MWunion 1: 'We agree with the [Salaried Officers]' – \$70
- CEO: 'We can't consider coming anywhere near that figure; that's our position at the moment. I don't believe you believe I would come out with that figure.'

The union negotiators justified their claim on the grounds that this was the sort of amount other employers were willing to pay, leading to the following:

- SOunion 1: '... if it's too substantial we would be interested in hearing the employers' position.'
- CEO: 'We will need to go away and calculate what it means to us and come back with a position which is affordable to our side. I don't believe you expect me to say anything else this morning.'
- MWunion 1: 'Is it worth continuing? If that's the figure we are looking for I suggest we go back to the agreement because we won't budge. \$70 for keeping annualised hours as is.'
- management 1: 'There is already an element in there but we are not going to keep extending annualised hours. We are not going to keep paying again for the same thing, \$70 is not realistic.'
- MWunion 1: 'Do we have to keep trading off for the next 30 years?'
- management 1: '\$70 is way out of the ball park.'
- MWunion 1: 'We believe that you have a lot more flexibility than other hospitals.'
- management 1: 'I'm just commenting on the figure of \$70'
... we fully recognise that but \$70 is another story.'
- MWunion 1: 'We will perhaps adjourn until you come back with a figure.'
- management 2: 'To maintain the status quo?'
- management: 1: 'This is a wage increase for nothing, but we don't accept that; its the quantum of the figure that is the difficulty.'
- MWunion 1: 'Give us a figure on the basis of no change that we could take that back.'
- CEO: The sort of figure the hospital is looking at for the status quo is 8 per cent over 2 years; 4 per cent now and 4 per cent in 12 months time.'
- union 3: 'What's the life of the document?'
- CEO: 'Two years.'
- MWunion 1: 'That would not be acceptable to us, are you coming back to us with another figure?'
- CEO: 'No. You should take that.'
- SOunion 1: 'From what is going on elsewhere, this 8 per cent, we could not take that back.'
- management 1: 'Its preservation of the status quo.'
- CEO: 'What are we paying for?'

- MWunion 1: 'For keeping annualised hours. Members will never agree to extend their flexibility.'
- CEO: 'If you want to pursue negotiating the agreement to see how we can increase flexibility to increase the offer we are quite prepared to do that. We don't want to be doing that without changes elsewhere.'
- MWunion 1: 'Most hospitals are not even wanting to go half as far as here. Everybody co-operated, they were finding it hard.
- ...
- 4 per cent now and 4 per cent would not be acceptable. 8 per cent now I could take back; it's unrealistic.'
- management 1: The average of enterprise bargaining increases are all around that mark. It's nothing out of the ordinary.'

During these exchanges, the management negotiators delayed putting their position until they had demonstrated that the unions' claim (which approximates to an increase of 17.5 per cent) was unacceptable. Following further discussion, one of the union officials made a concession in indicating she could take back the management offer if it was all paid in one instalment. There was then some discussion over details and then one of the union officials said that there had to have been increases in productivity since the hospital had opened and 'maybe that is something we could look at'. The management negotiator responded that 'we would be happy to look at that', and there was some brief discussion as to where they might find appropriate productivity measures before the meeting was brought to a close.

While the situation on wages was reasonably clear, this was not the case on the question of what was going to happen with regard to annualised hours. From the union perspective, it was understood that the system would be unchanged and some of the management comments seemed to confirm this. However, as the CEO noted in outlining the options, if one side wanted change then the other would too, and later in the negotiations issues relating to the administration of the annualised hours system **were** raised and changes **were** agreed. This provided a justification for management to re-introduce the changes it wanted in the closing stages of the negotiation, much to the discomfiture of the union negotiator (see below). The seeds of this forthcoming incident were sown in this seventh meeting.

The following meeting opened with the hospital negotiators reiterating their 4 per cent and 4 per cent offer. In fact they had considered repackaging it to 5 per cent and 3 per cent, but had decided to hold to their original position. The unions had had meetings of their members at which the 4 and 4 offer was rejected outright. Management brought out information on pay increases elsewhere which matched their offer, while the union negotiators provided other information which supported their claim. The stalemate was broken by a suggestion that they look at the issue of productivity. There followed a general discussion of productivity issues and of how the staff felt that they were working, harder but the issues of pay and annualised hours kept resurfacing. As one union negotiator commented, 'It realistically just boils down to the fact that the members are not happy with your offer'. Eventually the frustration with the lack of progress surfaced and it appeared that the meeting was going to draw to a close, when one of the union negotiators indicated that they wanted a meeting to look specifically at issues relating to staff in the theatres.

'Theatre' was one of the issues raised at the start of the previous meeting which the union said needed to be addressed but only now did the negotiators get back to it. Essentially, the annualised hours system had the greatest impact in the theatre and there were a number of other problems with working the rosters, so the discontent was high and consequently the members were putting pressure on the union negotiators. The officials were responding to this pressure; in their view, if they could get these issues fixed and satisfy that group of members, then it would be easier to get acceptance of management's offer on wages. Overtime, public holidays, on-call allowances and the anaesthetist technician's rate of pay were listed as the issues which needed to be addressed. The first three were on the union list of issues which had been submitted for the third meeting; however this was the first time that the issue of anaesthetists had been mentioned.

Over the next three meetings some progress was made. Essentially the pattern of interaction was

that the union negotiators put up the arguments in support of their position and the hospital negotiators responded. The negotiations were principally straight-forward 'debate, offer and response' interchanges, essentially distributive in nature. The issue of payment to anaesthetic technicians was rather different. The union position was that some of enrolled nurses were doing the work equivalent of technicians and should be paid accordingly. The hospital position was that the technicians had skill certificates and that is why they had the higher rate. It was an argument around two principles — pay for work done as opposed to additional recognition for additional skills. Consistent with its position of principle, the hospital offered to pay an allowance for any nurses who had the certificate, but this was not acceptable to the union. Within this debate, two of the negotiators started to build a bridge of common ground:

- management 2: 'We must continue to recognise the qualification. I can see where you are coming from on the pay equity side ...'
- MWunion 1: [interrupting] 'There's a bit of room to move.'
- management 2: 'But I'm opposed to that, we must recognise an incentive for training.'
- MWunion 1: 'What about building an incentive into the technician's scale?'
- management 3: 'The enrolled nurse's scale?'
- MWunion 1: 'Another choice is to see if they will look at those rates, there are increments, for example, if no certificate, then level 1 and 2; if with a certificate, then 1 ,2, 3 or 4.'
- management 4: 'What will happen is that if you made that distinction then they would not touch the equipment [i.e. those on levels 1 and 2 would not do any of the anaesthetist technician's work]. Some work has to be done to get the knowledge.'
- management 2: 'What [union 1] is saying is why can't we build in recognition for that [the increased work]; I've no problem with that but still feel there should be recognition for gaining extra qualifications.'
- CEO: 'We have recognised that by paying them at level 3; we would be happy to help them get the certificate but it makes a mockery of the whole structure not to recognise the training.'
- MWunion 1: 'But I've just said an option for a certificate is though 1 to 4 and no certificate 1 to 2. What **would** be a mockery is if two people are doing the same job but get different pay.'

These exchanges are an example of how an offer gets put on the table. The union negotiators had thought about this option prior to the meeting. This is an indication of unilateral rather than joint problem solving (Fells, 1986). It then became a question of debating the issue for a while to see if there was any flexibility in management's position and when it was clear that there was very little movement, the union proposal was fed into the discussion. No agreements were reached; the proposal was something which both parties could now think about further prior to the next meeting.

After some further inconclusive discussion, management agreed to look at the anaesthetic technicians issue again. The notion of utilising increments became the basis of the settlement, but not until many other things had happened first. The Miscellaneous Workers' Union formally notified the Industrial Relations Commission of the likelihood of industrial action so as to protect any such action. The negotiators met again but simply restated their positions; there was very little discussion. The only proposal was from the union negotiators who sought to make use of the fact that the Salaried Officers' were not expected to complete their classification exercise for about six weeks and would not be signing any pay agreement until then. It was suggested that the hospital and Miscellaneous Workers' Union work solidly on their own classification structure in that time; the hope from the union side being that enough members would envisage having a pay increase through reclassification to make the 4%+4% offer look acceptable. Although the hospital had been working on the classifications and had presented an initial document it was not prepared to rush it through at this stage. The meeting which had lasted just 40 minutes, ended in deadlock.

The nature of the deadlock and the difficulties in bargaining integratively
This period in the negotiations saw the parties focus on the issues which they thought needed to be

addressed in order to reach an agreement — essentially the pay offer and what might make the offer seem more acceptable to members. The hospital negotiators felt that they had made all the concessions they needed to, that their offer was fair, and that their position would be endorsed should it be put to arbitration. They believed that the union would not want the issue to go to arbitration, and in this they judged correctly. The union officials were facing strong membership pressure which appeared to be building up the longer the negotiations progressed. They knew that if they put the offer to the membership it would be rejected, and this would leave them in a difficult position. Arbitration was not a good option; industrial action was being increasingly talked about but it would be problematic and certainly not a preferred option. Hence it was the union side which kept trying to find ways to bridge the gap to find a package which they thought might make the pay offer look acceptable to the membership.

In this context there were two attempts by the union negotiators to find a way through the impasse — firstly the possibility of productivity payments, secondly the classification structure. Both of these issues might be regarded as joint gain or integrative, and might provide a path for co-operation and 'mutual gain'. Arguably, the failure of the parties to explore these issues and develop a resolution around them could be seen as a foregone opportunity, an example of leaving 'value on the table' and (as will be seen below) leaving no option other than hard and costly distributive bargaining. However, these negotiations show that the emergence and handling of issues must be seen in context. The classification issue was one which was on the parties' agenda from the outset; it was a hang-over from the first agreement. There was no dispute that the classification structure needed to be reviewed and some work had been undertaken. The productivity issue was different in that it was raised during the course of the negotiation. Both proposals fell by the wayside because they were brought to the bargaining table at a relatively late stage in the negotiations as attempted compromises on the pay issue, not as issues in their own right. The relatively short discussion on the two issues reflected the fact that neither side was prepared to step back from the differences between them and establish what would be a major new agenda item.

Throughout these negotiations the agenda had been reshaped as the parties sought to define and then resolve their differences. These two issues were occasions when the parties chose **not** to reshape. Why was this so? Management felt that its offer was a good one and that the membership would accept it. The union had been dealing with the specific grievances and anomalies; these were the issues of importance to members, not the broader ones of classification structures and performance measures. Irrespective of the mutual benefits which might be obtained from pursuing those broader issues, it was the specific issues and those alone which needed to be resolved.

This suggests a number of points about the process of finding solutions to overcome a deadlock in a negotiation. Firstly, negotiators are likely to experience difficulty in creating broad integrative agendas in the context of detailed negotiation. 'Integrative' bargaining in this context is more of the type demonstrated by the exchanges over the anaesthetic technicians, a creative compromise within the existing framework rather than a wholly new solution. Secondly, and again in relation to integrative bargaining, the Murdoch negotiations would suggest that integrative issues must be raised and endorsed as such early in the negotiations in order to generate a negotiating life of their own. In the Australian context, negotiators tend to 'work to the document' which narrows the focus to specific issues. This tendency, which was made stronger in the Murdoch case by the intensity of feeling over the grievances over the implementation of the first agreement, may work counter to the development of integrative agenda items. Thirdly, the case study reinforces the importance of management of the constituency in this regard, arising out of the difficulties which a constituency has in embracing a major shift in agenda (Ancona *et al.*, 1991). The focus of enterprise bargaining is on the workplace and as a union seeks membership involvement to establish and then support a bargaining position it is inevitable that the membership will raise issues of immediate concern. If these are not seen to be addressed through the negotiation process then it is not easy to for employees to take on board the longer-term 'integrative' issues.

The third phase: a sudden stoppage, and an agreement almost

In the face of a deadlock, the parties have a number of options. They can concede, do nothing, try to

engage in some form of creative problem-solving, or 'up the anti' by contending through applying more pressure. Management was prepared to do nothing, mainly because they believed in the worth of their offer. The Miscellaneous Workers' Union consulted with their membership leading up to a members' meeting at which the hospital's final offer was put, and rejected. The hospital improved its offer to 5%+3%, but this was not enough and another members' meeting led to an immediate 24 hour strike.

Negotiations over the following two days brought the parties closer to a resolution. There were concessions on both sides on the pay issue. For its part the hospital offered to backdate the first increase and shorten the duration of the agreement. In money terms the offer was \$20.50 and \$12.50. The union members endorsed a new claim of \$40, down from the earlier \$70 and at a meeting on the second day the union negotiators indicated they would be prepared to accept a phased-in amount. Once this proposal had been put, the negotiators agreed to adjourn; but as everyone was getting up to leave, one of the union negotiators commented, 'I went through my notes of the meetings last night; they were strong on 5 and 5. It was put up at our meeting.' The two sides met again shortly afterward and management opened with an improved offer of 5%+5% across a two-year agreement. It was agreed that they should commit to starting to negotiate the next agreement before this new one expired, that they should monitor the agreement and that the monitoring committee could look at the issue of productivity to get it ready for the next agreement. The new offer was accepted at a hastily arranged members' meeting and all that was left to do was to write up all the specific changes into the new agreement and to start paying the new rates of pay.

Interaction away from the table and at it

The major element in this period of negotiation was the direct involvement of the union membership through the work stoppage by members of the Miscellaneous Workers' Union. The earlier direct involvement had been through the ballot. On that occasion, the involvement had led to a re-casting of the agenda of differences; the deadlock around the bargaining table had been overcome by the constituency group redefining the key issues for the negotiators to work on. In this instance, the membership involvement was again instrumental in breaking a deadlock, but this time by the negotiators reducing their differences rather than redefining them. The impending work stoppage induced a concession-making strategy from management and then, once the stoppage had occurred negotiators on both sides realised that further concessions were going to be necessary.

However, those concessions have to take place around the negotiating table. The negotiators have to find ways of translating the external dynamics into a point of agreement. Rarely does it involve total capitulation by one side, so it is incumbent upon both sides to work carefully to an agreed position. The exploration of flexibility has to be carefully handled. From the dialogue it can be seen that the union negotiator was indicating how management might shape a new offer to make it more acceptable, and the management negotiator was making sure he understood what was being said. The final comment, made by the second union negotiator as everyone was leaving the table, in fact became the key to the solution on the issue of pay in that it indicated in firm figures what **would** be an acceptable offer. The management negotiators then knew if they offered 5 per cent and 5 per cent they would not be drawn into making any further concessions.

The fourth phase: the end game to agreement, tying up some very loose ends

When one of the Miscellaneous Workers' Union officials turned up for the next meeting she thought she was going to be meeting with management and the Salaried Officers' official to tidy up the document. However, the Salaried Officers' negotiators had already had their meeting with management and Miscellaneous Workers' Union official was confronted by just three of the management negotiating team, including the employer association representative. He stated that there were two issues to be resolved relating to rosters within the annualised hours system — issues which were on the management list tabled in meeting two back in July (it was now mid-November) but which the union negotiator thought had been dropped as a consequence of the ballot and the decision to focus on the pay issue. The management position completely restructured the agenda and no progress was made. A further meeting was held and at this meeting, the responses from management were increasingly final, 'We've reached the bottom line. From now all you are going to get is a series of 'no's'. 'There is absolutely no way we are going to pay.' The union negotiators could see that management was not going to take the issues back off the agenda. Having gone to the membership with a final offer they were now having to go back with something less favourable. Eventually they agreed; a membership meeting was called and the agreement was endorsed, thus bringing the negotiations to an end.

Some aspects of the nature of workplace negotiations

The story of the second Murdoch enterprise negotiations makes it clear that the process of reaching an agreement was a complex one. Although the negotiations are unique, a number of issues can be drawn from the Murdoch experience which give broader insights into the process of reaching agreement. Several have already been raised: the importance of the workplace itself; the significance of deadlocks in progressing the negotiation; the difficulties in developing integrative solutions and the need for careful management of areas of flexibility. Issues such as these cover the full range of the negotiation process, from structural features to how to manage one's words. This final section of the paper will draw some of these points together by considering the broad characteristics of the negotiation process.

Negotiation as a process of discovery and reshaping

Negotiation is a process through which parties who have seemingly incompatible objectives resolve

their differences (see, for example, Lewicki *et al.*, 1994; Pruitt and Rubin, 1986; Sutcliffe and Callus, 1994). This perspective on negotiation presumes that the parties are aware of – or at least can quickly identify – what their differences are and that they can then work out that they are better off negotiating with each other to find a solution than trying to get what they want in some other way. By resolving their differences the negotiators can achieve an outcome which is preferable to leaving those differences still outstanding. Even where the parties take the approach of trying to explore their respective interests (Fisher and Ury, 1981) the same elements of negotiation apply – essentially there has to be a degree of difference which then has to be overcome. This view of negotiation has a sense of rationality – first sort out what the differences are and then resolve them. The major focus in the literature has been on the second of these two processes, the **resolution** of differences. The Murdoch negotiations draw attention to the first, namely the manner in which negotiation is a process of **discovering** the differences and **reshaping** them en route to an agreement.

In the Murdoch negotiations the parties, and particularly management, sought to establish their differences as early as possible. From the management point of view there were tactical considerations: they did not want to be faced with a never-ending list of claims, but in addition, it made sense to work to a list of issues. The unions, organisationally, had some difficulties as they did not want to be tied to a set list, should their members raise new issues at a later stage. As has been shown the list got up to 44 items at one point, but what is more significant is that some of the issues raised at the outset were not those seen to be crucial in the end.

A number of factors contributed to the constant discovery issues. Firstly, as issues get raised they are rarely clear cut or isolated; others issues arise on the back of them. For example, when the anaesthetic technicians issue became a focus of attention it was realised that some staff also had certificates relating to their work and so that then needed to be addressed. Another example was when the examination of the classifications raised the issue of individual contracts and the application of the award. These issues become issues only because other issues have become the subject of negotiation. While it might seem like end-game tactics, this process of discovery of issues is an inevitable consequence of trying to resolve issues out of a complex environment such as a workplace. Neither of the two issues used as examples here appeared on the list of 44.

Secondly, as the parties go through their agenda, it becomes clear that some issues are going to be more contentious than others. As a result of going through each item of the agenda a number of times it became clear to the negotiators that progress could only be made if they focused on all the difficulties associated with the annualised hours system. In a sense, the negotiators realised that this was the real issue between them at that stage in the negotiations and this discovery came from the negotiations themselves, for there was no signalling in the initial discussions that the annualised hours issue was to receive priority. (The only indication of managing the agenda in this regard was the joint agreement to leave the pay issue until last which, as it turned out, did not happen.) A similar process took place after the ballot when a cluster of issues relating to the theatre then became important in an attempt to address the pay issue.

If negotiation is a process which involves an element of discovery, as the case study suggests, then it is not surprising that process of progressive scaling down is an inadequate description of how the differences are resolved. The agenda of differences **does** get scaled down and this happens in two ways. Firstly, the agenda itself is scaled down by issues dropping off the agenda as they are agreed or withdrawn. Secondly, the differences within individual issues get scaled down through one or both parties making concessions, as happened with respect to a number of issues, such as long service leave and the pay increase. In the former example, the process was straightforward: an initial claim, resistance to it, moderation of the claim and then agreement. However, in order to get to the pay issue (and many of the others), the whole agenda was reshaped, firstly into the annualised hours issue, then the pay and theatre issues, then the classification anomalies crept in, and finally the rosters issue resurfaced as central to an agreement being reached. Consequently, in the Miscellaneous Workers' Union negotiations in particular, the agenda underwent significant reshaping; at certain stages, it was as if the negotiation took a sideways step and started again (Figure 1). The Salaried Officers' negotiations were more straightforward, in part because there were fewer contentious issues, but in both negotiations issues emerged during the negotiations

themselves (the classification anomalies and contract issues) which reshaped the agendas. Both negotiations involved an initial period of formulating the agenda of differences, then combinations of reshaping the agenda and resolution of it. For this reason, it is suggested that negotiation is a process of discovering and reshaping differences as well as resolving them.

Bargaining or consultation?

The Department of Industrial Relations' survey data on enterprise bargaining (DIR, 1996) does not indicate which party it is that brings particular issues to the negotiating table. However, it is more likely that it is the employer who comes to the table with a change agenda, while the employees bring an agenda designed to address their grievances and concerns. This would set up an agenda of workplace reform on the one hand, pay and conditions on the other. In this regard, the negotiators acting on behalf of the employees are likely to focus on the existing agreement and on how particular clauses might be changed to address the employees' concerns. The Murdoch negotiations suggests that unless specific grievances are addressed they will dominate, and the negotiations will not progress. Once the agenda is structured in this way it would appear to be difficult to introduce broader, potentially integrative issues. This points to the need to establish these issues while the agenda is being formulated and to ensure they remain focal though any subsequent reshaping of the agenda.

The discussion of the agreement-making process in the DIR Annual Report (DIR, 1996: Chapter 3) portrays the process as being a management-directed process of consultation with employees. The material contained in that chapter presents three dimensions to the agreement-making process: firstly, the negotiation process, by which is meant the level of negotiation and the parties involved; secondly, management's consultation of employees; and thirdly, industrial action associated with bargaining. From this it would appear that there is no examination of processes of negotiation such as are described in this paper. To view bargaining only in terms of industrial action and then to make a distinction (and implied contrast) between 'bargaining/industrial action' on the one hand and 'management consultation' on the other appears to be a restrictive categorisation of the processes which are actually used in reaching an agreement.

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