Construction Partnering: Can These Protocols Build a Stronger Labor-Management Community?

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Introduction

In an expansive marketplace where large organizations in the construction, manufacturing, service and union industries are facing increased global competition, collaborative labor relations are essential to maximizing efficiency and productivity. It is for this reason that developing collaboration between labor and management is highly researched and consulted by academics and professionals throughout the world. Although various models of collaboration have been developed, none have been found to clearly overcome that insidious conflict and paradigm of "Labor vs. Management."

The challenges faced by the construction industry and manufacturing/service industries are very similar. Both types of industries can be highly complex, involve multiple entities and therefore multiple agendas and interests and both have to be efficient producing and delivering products

and services in a timely manner with as little defect as possible. For some reason, however, neither academics nor professional consultants have researched the protocols developed in construction partnering to see if the labor-management community can learn some lessons on how to better collaborate.

The purpose of this paper is to provide academics and consultants (mediators/facilitators) an additional perspective for designing, developing and implementing the best possible collaborative labor-management relationship model. This paper will provide a model by which the roles in the construction industry parallel and match the roles of management and labor in the manufacturing/service industry. Then five specific protocols in construction partnering will be reviewed and considered for their applicability and potential benefit to the labor-management community. Throughout, the effect upon the role of the mediator / facilitator will be discussed.

Roles of Construction Industry Parallel Roles of Manufacturing/Service Industry

In construction the partnering participants are divided into the following groups:

- Owner – The actual owner of the project. This may also include financial backers, investors or owners of condominium shares
- Design Team – The chief, or primary architectural organization. May also include civil, structural and hydraulic engineers, geologist, chemists, and environmental experts.
- General Contractor – The organization with primary responsibility for direction and supervision of the project. This may also include a project engineer, construction manager or job superintendent.
- Sub-Contractors – Individual organization with direct responsibility for the demolition and removal of existing structures and infrastructure on the construction site, new construction, re-construction, installation, re-installation, and overall completion of the work as assigned by the General Contractor.
- Others – Ancillary organizations and potential partnering participants may include representatives

from financial organizations with an interest in project completion. Various city, county, state or federal agencies, who as a matter of public policy will have an ongoing voice in the decisions associated with the project. Local public safety organizations such as police, fire, traffic, highway and building and safety departments.

While the titles of requisite players may differ from those in construction, many of their individual roles are similar. Consider the following matrix:

Construction Title	Management	Labor
Owner	CEO, COO, CFO, VP of HR	International President / AFL-CIO
General Contractor	Chief Negotiator	Chief Negotiator
Design Team	Negotiation Study Group (survey team and consultants)	Negotiation Study Group (survey team and consultants)
Sub Contractors	Balance of Negotiation Committee	Balance of Negotiation Committee

Others	Consultants (retirement, EEO, law, accounting, merger and acquisitions experts)	Consultants (retirement, EEO, law, accounting, merger and acquisitions experts). State, National or International representatives, special interest stakeholders and consultants.

As suggested earlier, the composition of the Labor / Management Partnering model ultimately will closely resemble the typical construction workgroup in a partnering session.

Five Construction Partnering Protocols & Building a Stronger Labor Management Community

There are various protocols in construction partnering that can be considered applicable to labor relations. In this paper five specific protocols will be discussed as well as their potential application and benefits upon labor relations. They are as follows: invitation, interview and analysis, mission and charter, conflict resolution system design, and problem resolution to completion and agreement.

While each of these protocols has different functions, the outcome of each carries a common thread through the tapestry; better interpersonal relationships with improved throughput and output.

Protocol 1: Invitation

In the construction setting, the bidding process determines who will be providing professional services and materials. Often the Request for Proposal or Request for Bid will inform potential bidders that, 'This is a partnered project. If you are selected for this project, your firm's participation and attendance are mandatory. Understand that your firm will be required to attend monthly workshops throughout this project. Your firm will also be required to attend and participate in a 2 or 3 day partnering training

session shortly after the bidding process is completed and bids have been awarded.' While this precedent condition rankles some, it also informs all who are bidding of the expectations placed on them as a part of the selective bidding system.

Selection into this process ultimately contains a certain amount of 'self-selection'. The parties who may be suited and interested in a 'partnered' form of collective bargaining or problem solving, have to have an understanding that there is a mutual benefit and gain in using this process. If the partnered approach is either mandatory or coerced, the outcome will be less than satisfactory. Parties who engage themselves in this process must also be able to stay committed to the partnered process.

Potential Implications & Benefits to the Labor Management Community

Potential participants may have come to the realization that previous negotiation methods have ultimately proved unsuccessful. That even though bargaining gains and loses may have occurred and seen as a negotiated benefit; the

long range costs of outcome dissatisfaction may have over ridden any short term gains. In this circumstance, a realization may induce parties to consider any other form of negotiation or problem solving, instead of the traditional distributive negotiation protocols. Should an interest surface, the role of mediator / facilitator should be that of process advocate or coach to encourage parties to engage the process.

One participant may realize that past practices have not ultimately proved successful; thus asking the mediator / facilitator to intervene or invite the other parties to consider another form of negotiation or problem solving. In this instant case, the role of mediator / facilitator becomes one of educator and process solicitor to the party who is uninformed or resistant to engage in process changes.

In a tradition-based collective bargaining environment, development of the Invitation is often the most difficult: Getting the right people in the right room. The extension of an invitation to participate in the partnering process must be extended openly, while at the same time convey that everyone involved in the collective bargaining process or

problem-solving exercise, is expected to attend and participate.

While there are no specific, hard rules about inclusion or exclusion within the traditional labor / management community; there are clear recommendations from the dispute resolution community. Exclusion from invitation to participate is fraught with difficulty and may produce a dramatic and devastating series of unintended consequences. From a partnering perspective, the better course of action is to consider extending an invitation to all who have the inherent ability to impact, delay or derail the collective bargaining process from beginning to end. This same general criteria also applies to labor management problem-solving groups.

Open and frank conversations must be held between the mediator / facilitator and the potential parties to decide who should be invited and by whom.

Once parties have been identified, or have self-selected, a clear and concise discussion of the process must be started with all who are, or may be engaged or affected by this methodology. This task usually falls to the

mediator/facilitator. The form of this information sharing to the parties may be verbal, written or electronic. The initial goal in this selection process is the dissemination of the process differences and similarities to traditional labor management problem solving.

While the process may initially appear to the parties to be strange, this realization is simply a manifestation of a different approach to problem solving.

Conversely, when non-interested employees or managers are compelled to attend and participate, the outcomes are clearly predictable. Some who are not eager to participate may exhibit passive-aggressive behaviors. Others may simply shut down and avoid the entire process. Finally, the most destructive non-interested member of a partnering workgroup is the individual who goes 'subterranean' quietly sabotaging any progress that is being made. This sabotage may take on the form of breaking confidentiality with the opposite members of the workgroup, discussing potential solutions and settlements before the workgroup has had the opportunity to finalize the terms and conditions of an agreement. When this circumstance happens, constituent memberships bring increased pressure on the workgroup to

repair the formative and tentative agreement. This action can be very destructive to the partnering process, creating a hostile environment in which the highest and best possible outcomes become unobtainable.

Logistically, if the wrong parties are selected or invited to participate, the probability of a favorable outcome is reduced. How are 'correct' members assigned or invited to participate? Most likely, they are individuals who have shown a willingness to serve on the partnering team. They also may have had painful experiences from previous traditional bargaining or problem solving, in which the end result was far less than satisfactory. Often, individuals who gravitate toward a 'better way' to conduct business are fully exposed to partnering will become strong advocates for the process.

Overall, labor and management committees are much more defined "pre-selected" then they are in the construction industry. A mediator/ facilitator often times does not have the luxury of "self-selection" and can easily find themselves with some committee members that are the wrong members. In this case the following protocol of interview

and analysis is critical in trying to transform critics and saboteurs into advocates.

Protocol 2: Interview and Analysis

The most significant difference between Construction Partnering and Labor Management Partnering is the interview and analysis process.

Interviews and analysis is crucial in construction. The mediator / facilitator quickly develops a deep and steeped understanding of the issues, interests and underlying drivers controlling the dynamics associated with a construction project. Using the same interview protocol in a labor / management setting affords the mediator / facilitator provides a similar understanding prior to the actual negotiation or problem solving.

Typically, in construction, most decisions are made on a power-based model. The most unfortunate consequence of power based problem-solving is that the 'power-less' are not empowered to offer opinions, nor to argue positions. Typically, this situation affects the sub contractor to the greatest extent. The prevalent feeling held by many sub

contractors is this: "If I complain or make noise, I won't be invited back to bid on the General Contractor's next project." This feeling is so perverse that many sub contractors will offer no opinion in weekly construction or planning meetings. Thus, the interview / analysis process creates a safe environment for the 'power-less' to offer opinions and differing perspectives. It is not unusual for the comments from the Owner, General Contractor or Design Team to remain basically the same in the interview and in an open forum. However, the sub contractors' comments usually are very different in the interview as opposed to an open setting.

Any and all individuals who have the potential to delay, obstruct or stop the project should be interviewed. In every case, these interviews should be accomplished well in advance of the initial phase of the project. Specifically, this protocol suggests that the interviews be completed prior to the initial construction, or ceremonial 'spade of dirt' being turned over.

Potential Implications & Benefits to the Labor Management Community

The most significant – thought by some – and different aspect of labor / management partnering protocols is the interview. Interviews, whether in traditional or interest based negotiations, are not normally conducted by the mediator / facilitator. However, this protocol requires full, in-depth, comprehensive interviews of every participant associated with the upcoming negotiation or problem-solving exercise. As is the case with construction protocols, every entity that has the potential to delay, obstruct or stop the forward progress of the pending negotiations or problem-solving must be interviewed.

As is the case with construction, all participants in the labor / management model are interviewed, including those members of each negotiation committee who traditionally never speak at the table or to the mediator / facilitator in caucus.

The primary purpose of the interview and analysis is tri-fold:

- Gathering of information that might not surface throughout a traditional or interest-based negotiation or problem-solving process.

- Development of a growing connection between the mediator / facilitator and the participants, on an individual basis.

- Development of a deeper understanding on the part of the mediator / facilitator about the subtle dynamics which are at play. These underlying drivers often control the process and ultimately, the outcome in a negotiation or problem-solving exercise.

From a process standpoint, the mediator / facilitator is best suited to make the arrangements for interview appointments, as this allow him/her another opportunity to discuss the upcoming negotiations on an individual basis.

After the interviews have been concluded, all the subjective and objective data that has been gathered needs to be compiled and then analyzed. Others may suggest this analysis be more correctly called a negotiation or problem-

solving evaluation. Regardless of title, the initial process is simple: Conversation. Interview. Analysis.

Typically, the process manager should carefully consider what has been revealed in the interviews, both on an individual or collective basis. Thoughtful consideration should be given to indications of power imbalances, distributive vs. collaborative comments. A consistent indicator of the ultimate outcome and success or failure of a pending project often is the categorization and classification of revealed information into three buckets: past, present and future.

- Past Bucket

Participants who are primarily focused on the past and past relationships, especially those which were destructive and unrewarding, are prime candidates for process failure. Routinely embedded in their historical perspective are the incessant needs to correct previous wrongs, hurts and relationship damage. A strong indicator of the rear-vision focus are gratuitous comments such as, "Last time was the last time" or "He/She/They always get their way" or "It really doesn't matter if we have a partnered project or

not… they only pay lip service to what we are trying to do; then go ahead and do what they want." This type of typical dialogue often comes from those with the least amount of referential power.

- Present Bucket

Participants who are primarily focused on the present often don't care about relationships; past, present or future. The primary concern of the 'present focused' individual is the job, project, negotiation or problem-solving task. Their concerns about outcomes today and in the near future. They tend to be focused on the necessities of this project, while at the same time, looking for new opportunities yet to be presented to them.

- Future Bucket

Participants who are primarily focused on the future have a component for relationship concerns as well as production concerns. They understand that future relationships impact future projects. The invitation to participate, bid or perform on future projects often is the byproduct of good

relationships, which can be expected in the future. The future focused participant in the interview process understands that trust is essential in current and future professional relationships. This is true in any context: Business, construction, labor management negotiations of problem solving. Typically, the questions posited in this protocol should be open ended, rhetorical and non-threatening.

It is the prerogative of the mediator / facilitator to determine the level of clarification needed for each interviewee. One can take time during the interview to discuss and explain partnering and possibly correct past negative experiences, incorrect assumptions, fears and concerns. Also, a mediator / facilitator can take advantage of the protocol and try to provide a future perspective to an interviewee that maybe wasn't considered previously; in effect attempting to transform past and present thinking employees into future thinking employees.

Protocol 3: Charter Statement, Mission Statement and Ground Rules

Complimentary socialization between and among the parties in the construction- partnering model is essential. In response, a charter statement, mission statement and ground rules are developed as the first items on the agenda; specifically, from the first meeting. Although these processes are formal social contracts, they all rely on an informal social contract that binds every individual involved in the project – from the owners to the sub-contractors.

Typically, the Charter Statement identifies the general nature of what the project is, who is involved and what are the project-specific goals. The Mission Statement addresses the entire project covering several common-thread bullet points. These points usually revolve around safety, on time, on budget, no lawsuits, and no withdrawal from the group or process. Ground rules on the other hand revolve around personal behavior, conduct in meetings and respect for others. These statements or rules are recorded and mutually agreed upon by both sides. Often, participants of either construction or labor management bargaining or problem-solving partnered project will jointly sign their Charter / Mission Statement and then prominently display the signed document in a public place, i.e., construction

shack or trailer, in a covered case over the main entrance to the job site. Further, partners will include the Charter or Mission Statement on every document faxed between parties during the project; a reminder of what they all agreed to.

As these three components of partnering are raised, considered and adopted, the community-not-at-the-table will realize that everyone's issues are represented and that all individual and collective interests are being considered as well.

Embedded in these guidelines is an informal social contract that is an implicit reminder or ability to gently enforce these commitments and ground rules. This enforcement may come as a request from any of the parties, any of the workers, the mediator / facilitator or any combination therein. Specifically, when various behaviors surface, cessation and restriction of these 'prohibited behaviors' ultimately will enhance the overall outcome of the negotiations or problem solving.

Some mediator/facilitators use humor and mirth to keep these social contracts in force. This also tends to break the mounting tension and allow partnering workshop

participants to see, through humor, how their intransigent and positional behaviors are counter productive.

Potential Implications & Benefits to the Labor-Management Community

Charter:

While not as essential as the creation of ground rules and a mission statement, a charter does identify the general nature of what the project is, who is involved and what the project-specific goals are.

In the collective bargaining arena, a charter might include the following phrases:

- We intend to create the best and most fair collective bargaining agreement in our industry.
- We know that for this agreement to be satisfactory, it must be fair and equitable to each partnering participant, our constituents, colleagues, managers and staff.

- We intend that this new agreement contain and be recognized as the latest and finest thinking in our industry.

Mission Statement

Often times, the first cooperative endeavor may be the creation of a common statement of the group's collective goals. The creation process also models cooperative behavior and allows the participants the experience of cooperative thinking. It does not seem to be beneficial to simply put up a set of mission statement components and ask the group to adopt each or all from the list. There is measurable benefit in having the participants craft their own statement.

In the collective bargaining arena, a charter might include the following phrases:

- We are dedicated to the development, design and delivery of the finest (project item or goal) within the next XX (days weeks or months)
- We expect to complete this partnered project (or negotiation) by XX/XX/XXXX. As we draw

closer to that completion date, we will work harder to meet this obligation

- It is our intention to create cutting-edge solutions to long-standing problems which plague our industry
- We honor each member of the partnering workshop and realize their view, opinion and suggestion is just as valid as any other
- We understand that differences of opinion do exist and will continue to occur from time to time. When these differences create enough friction that the project or negotiation begins to slow, we will call upon an outside, neutral third party for assistance. Their services will be used until the dispute has been resolved

We understand that each participants is a valued member of this team. We also understand that each participant will have differing ideas, goals, delivery ability and settlement authority.

Ground Rules or Social Contract:

The initial creation of ground rules is essential for situations that will become self-evident at subsequent meetings. It is much easier to establish ground rules at the outset, when times are quiet, a palpable enthusiasm exists, and the participants are eager to move forward. Compelling process control is available to the mediator / facilitator by group think and reflection on what the ground rules state and contain. This task of process control is much more difficult if the mediator / facilitator is forced to attempt to establish rules of conduct during a heated battle between the parties.

In the collective bargaining arena, Ground Rules might include the following phrases:

- No unnecessary delays
- No theatrical acts or statements
- No personal attacks
- No intentional conversations, contact or reporting to any media outlet, including television, radio, newspaper, periodical. All media activity will be handled by XXX.
- All cell phones, pagers, PDA's and Web Browsers should be silenced and turned to stun

- Meetings begin at 9:00 AM SHARP and end at 4:00 PM
- A year-long project calendar has been established. All participants will extend themselves to attend EVERY meeting
- If any individual misses more than 15% of the meetings, they will submit their resignation from the committee
- If unable to attend, it is each individual's responsibility to alert the entire list of participants
- If unable to attend, it is the individual's responsibility to find a suitable alternate or substitute
- When an individual senses that his/her authority limit has been reached, he/she will advise the workshop participants that it will be necessary for him/her to contact someone with higher authority

The focus on social contracts in construction partnering is that each member of the project makes a personal commitment to every other member of the project to abide by the rules and regulations agreed upon in the initial meetings. The

commitment is more personal than a ground rule it's at the level of a handshake as compared to the level of a contract.

Protocol 4: Conflict Resolution System Design

Once the interview and analysis is completed, the mediator / facilitator should prepare himself or herself for the next periodic stage: the design of a conflict resolution system.

While this at times, sounds like an oxymoron, conflicts and their resolution respond very well to a thoughtful system design approach. Embedded in this concept are several necessary and fundamental requirements:

- Determination of an overall goal for the negotiations or problem solving. Necessary to this objective are the following components:
    1. Ground Rules
    2. Development of a Charter
    3. Development of a Mission Statement

- Determination of direction and depth the negotiations or problem-solving will go. Necessary to this objective are the following components:
  1. Clear establishment of primary issues
  2. Clear establishment of secondary and tertiary issues

- Development of an array of potential options. Necessary to this objective are the following components:
  1. Consider using technology to enhance communication, brainstorming and process
  2. Consider survey or solicitation from stake holders, not at the table
  3. Consider research into current models used by competitors, colleagues, academia, government and private sector entities
  4. Consider use of outside consultancy group for option generation

- Thoughtful and programmatic sort, rank and elimination of potentially unsuccessful options. Necessary to this objective are the following components:

1. Consensus determination by all partnering workshop participants
2. Accelerated consensus by all partnering workshop participants
3. Solicitation of an electronic bidding or voting system only available to selected partnering constituents and stake holders
4. Solicitation of an electronic bidding or voting system, available to all partnering constituents and stake holders

The determination of the overall goal in construction partnering is project completion. Therefore the conflict resolution is designed accordingly.

Potential Implications & Benefits to the Labor Management Community

Grievance procedures in the manufacturing / service industries do not have escalation clauses. The result is a bottleneck of unresolved disagreements. It is common in many organizations for a pending grievance to remain unresolved for years. Even after having been heard in

front of an arbitrator, parties are fortunate if a decision is rendered within a few months.

Unresolved disagreements are progressive in that if they are not solved, they become worse. Labor vs. management positions are taken and collateral issues become symbolic of the continuous struggle between the parties to dominate the other. As a result, the focus shifts from a straight-line view of efficiency and productivity to a tangential issue of personality and power.

Protocol 5: Problem resolution to completion and agreement: Resolution, Negotiation and Problem-solving

After the interview, analysis, mission statement and conflict management system design are completed, the actual, hard work of negotiation facilitation and mediation begin in earnest. The mediator / facilitator becomes more fully engaged with the parties in several roles. These roles can be any one or several of the following:

- Counselor
- Neutral

- Advisor
- Sounding Board
- "Supposal" generator
- Conduit for suggestions and proposals
- Facilitator
- Negotiation Doctor
- Confidante
- Coach
- Cheer Leader
- Mediation Advocate
- Deliverer of good news
- Deliverer of bad news
- Investigator of facts
- Time-limit enforcer
- Meeting arranger
- Full-time Process Advocate

While fully engaged in these shifting roles, the mediator is constantly being observed and rated on his/her neutrality, bias and process manager. Likewise, the mediator is also looking at the group, watching for an unlimited number of indicators of process breakdown, positional bargaining, deadlock, contingent bargaining ("if

you do this, I'll do that"), power imbalances, lack of process or content sophistication, inability to make a deal, identification of incorrect ineffective or inappropriate people attending the meeting. If any of these resident components are not noticed, the process may be so seriously flawed that it will likewise fail.

In every negotiation or problem-solving meeting, various styles of negotiation tactic, strategy or methodology will be present. In nearly all cases, even in the most collaborative bargaining session, certain parts will become very traditional. This is particularly true in the case of a collaborative negotiation around the issues of compensation, benefits and economics.

Several distinct differences exist, which are indicators whether a negotiation is traditional or collaborative.

Characteristics of Traditional Bargaining

1. All attention, focus and assumptions are about the "Fixed Pie," created by the parties' *assumptions* that the Pie is fixed
2. Bargaining "success" is determined by which negotiator gets a bigger share of the Fixed Pie

3. It is assumed that "my share" plus "your share," together, equal the whole Fixed Pie
4. Negotiators understand that they are competing with each other by means of aggressive positions, deceitfully stated, although they do not necessarily see anything wrong with this. It's just "how the game is played"
5. Relationships are built on mistrust, not trust. However, trust about "*process*" (the rules of the particular negotiation game being played) may be just as important to the negotiators as the outcome of the negotiation
6. To make demands and react to others' demands credibly, negotiators often buy-in to the assumptions and expectations that seem to support those demands.
7. Each demand or concession is interpreted through the parties' own personal filters.
8. The deal is made only after a series of concessions. Parties resist making concessions because each concession represents a loss of credibility and requires a re-formulation of assumptions, expectations and intentions, on both process and substance.
9. As each concession is made, its size and timing usually are related to the prior concession. Each

concession is smaller than the previous concession. If the portion of the Fixed Pie left to be divided is greater than the sum of the two previous concessions, it is unlikely agreement will be reached.

10. The first legitimate and reasonable concession controls the size and scope of subsequent concessions. After the first few moves, the ultimate outcome is fairly predictable.
11. Once begun, the game must be played out to its predictable conclusion or the parties risk "remorse."
12. Distributive champions add a geometrically greater risk of breakdown or miscommunication, because the series of deceitful statements and concessions is progressive, as each participant strains communication through his or her own personal filter.

Characteristics of Collaborative Bargaining

1. All attention, focus and assumptions are on increasing the boundaries of the "known world," which are never fixed. Give up your mental image of the "Fixed Pie."
2. Bargaining is multi-dimensional--about ways of expanding the boundaries of the "known world":
   - Horizontal between parties with similar needs
   - Diagonal between parties with divergent needs

- Horizontal between parties with incompatible needs
- Vertical between parties of varying power and authority
- Circular between parties with differing constituencies, but similar needs
- Lateral between parties with similar constituencies but differing needs

3. A "gain" for one party does not necessarily equal a "loss" for another party. It is possible for the sum total of the parties' collective gains and losses to exceed the total of their individual gains and losses.
4. Trust is essential to establish and sustain a collaborative negotiation. Bargaining behavior is understood by the negotiators to be cooperative, based on shared expectations, openly stated. "Trust" does not necessarily mean "I like you." Trust in the *process* (as well as in the other party) becomes the primary energizer of the negotiation. If trust is betrayed, the negotiation is difficult, if not impossible to re-start
5. If needs are properly expressed *and* properly understood, allowances and concessions are more comfortable, because they come from a perspective of

trust and confidence in the *process* as well as the other party

6. Concessions tend to create tension; allowances tend to ease tension. Allowances are recognized, affirmed and honored when considering concessions
7. The outcome is viewed as created, rather than inevitable. Fear of exploitation is reduced
8. If needs are understood, acknowledged and satisfied, the likelihood of "remorse" is diminished
9. If collaborative champions participate, they can add geometrically to the knowledge of the known world, act as coaches and help keep the negotiation on track. It is possible to be a collaborative champion on behalf of a distributive client
10. Most collaborative negotiations will contain some distributive moments. If the parties understand the "game," this will be understood as inevitable and not destroy trust

In addition to the above, another set of dynamics exists, which will materially affect the negotiation or problem-solving outcome in either traditional or collaborative bargaining or problem solving. These characteristics should be noted and addressed early in the conflict

resolution process. Failure to do so, will ultimately and negatively impact the potential success of the negotiation or problem-solving exercise.

Issues that Influence Process – during the mediation:

- Desire to Reach Resolution
- Power Balances and Imbalances
- Levels and Direction of Negotiations
- Nature of Issues to be Negotiated
- Levels of Trust and Distrust
- Parties' Settlement Authority
- Mediator's Exercise of Process
- Authority
- Importance of Past or Future Relationships
- Number of Interested Parties
- Complexity of Dispute
- Parties' Negotiation Ability
- Witnesses, Friends and Experts
- Ramifications of Settlement Failure
- Availability or Lack of Resources
- Parties Communication Ability
- Best Alternative To a Negotiated Agreement (BATNA)

- Timing of Mediator's Entry
- Openness of Parties to Assistance

While these characteristics will affect the outcome, and should not be ignored, they are only indicators to which the mediator / facilitator should become very sensitive. The presence of any, or all, of these indicators does not mean the negotiation or problem-solving process is destined to failure: presence only means that detailed attention by the mediator / facilitator is required, necessary and most likely very beneficial to an improved outcome.

Many construction-partnering agreements contain Escalation Clauses. These clauses create a form of grievance procedure where disagreements are handled initially at the lowest level but then have the potential of escalating through the ranks on both sides of labor and management to top management. The International President from the union and the owner of the project may be called upon to solve a disagreement that cannot be agreed upon by their underlings. This process creates a great deal of motivation to solve disagreements at the lowest level possible.

Solving problems, therefore, is part of the job description for both management and labor.

If a problem cannot be solved, a construction arbitrator can be called upon for assistance. The unique attribute to construction arbitrators is that they show up to the worksite often times within 24 hours of being notified of the complaint and make an actual decision on the day of their arrival. In other words, within 24 hours, a disagreement will be solved and the parties are able to return to focusing on the actual project, not which side is right and which side is wrong.

Potential Implications & Benefits to the Labor Management Community

Again, common sense dictates that grievance arbitration need not take months and especially not years. The grievance procedure does not have to accommodate activities that are not conducive to project success. The grievance procedure can be designed to quickly and efficiently resolve conflict so that relationships and productivity are maintained.

Conclusion

The discussion on construction-partnering protocol raises some compelling issues. The invitation and interview protocol marks a dramatic difference between industries. The construction industry has the luxury of starting completely over every time a new project is bid. They don't have to fire unwanted employees they simple don't rehire them. As a result, the construction industry has a very powerful level of accountability. It requires participants at every level to perform and collaborate or risk not being rehired.

Although it seems to be very difficult to parallel this level of accountability in the manufacturing/service industries, common sense dictates that it doesn't have to be that difficult, maybe accountability is the key to productivity. How can the accountability managed in the construction industry be held to the manufacturing / service industries? What if every employee in a company was fired at the end of every quarter? How different would that organization become? What new or different roles

would management and labor have to adopt in order to continue employed? Would the paradigm of "Labor vs. Management" continue or would it shift to a more collaborative "Labor & Management?"

The protocol on charter statement, mission statement and ground rules raises the issue of personal commitment. The manufacturing / service industries do not appear to work on the personal level that is worked in construction partnering. The paradigm of management vs. labor limits the social contract. No matter how well two people work together and how similar their objectives, boss and employee are always aware of each other's roles. Although construction partnering does not make this paradigm disappear, it does place an emphasis on the attitude that "we are all employees" and that "we have more in common than we have differences." The labor community cannot further personalize the relationship between labor and management as long as the adversarial paradigm is in place.

Finally, the protocols on conflict resolution system and actual problem resolution to completion highlight the necessity for conflict resolution to be in line with project success and to be quick and efficient like a

surgical strike. Arbitration decisions, contract interpretation, and all other supervisor – employee conflicts fall within the paradigm of labor vs. management that is counterproductive to companies producing and employees getting paid. In other words, conflict resolution systems, like major industries, must also be streamlined to be efficient and cost effective to produce results; results being an actual resolution of the issue. A conflict resolution process that is not quick and efficient is an injustice to both the company and the employees because it detracts from productivity. It is productivity that allows the company to continue profiting and the employees to continue earning wages.

Overall, construction partnering has compelling protocols that can help academics and professionals design, develop and implement a stronger more collaborative labor-management community. Through the consideration of alternative protocols, the labor management community can reexamine some of the actual pillars of its foundation that have become so accepted that they no longer are challenged. Does labor and management have to be adversarial to co-exist? Can labor unions redefine themselves as non-adversarial without disappearing? Can labor unions develop

a reputation of adding value to the company as well as to their members? Why can't grievance procedures be quick and efficient? Can they be better designed to resolve disputes within a day rather than within months or years?

In order for industry to survive global competition corporations and unions must work together to challenge the traditional labor vs. management model. As global competition expands and the United States competes with the labor market of other countries, either through the exportation of jobs or pro-management legislation, labor union membership will continue to diminish. In order for the union industry to survive, therefore, unions must redefine themselves and add value not just to the worker but also to the bottom line of the organization. The paradigm of labor vs. management does not add value; it is wasteful and self-destructive for both industry and labor. Through collaboration and a paradigm shift to labor and management, industry and labor can succeed together and survive through the next century.