Agency in the Context of Labor Management

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In his chapter, "Agency in the Context of Labor Negotiations," McKersie provides some useful examples of agency issues and best practices in labor management relations. Through this presentation, he hopes to provide useful insights for other agency-assisted negotiations. In my response to his chapter, I outline what I see as the most valuable contributions he provides and suggest areas in which the study of agency in labor-management contexts could provide further understanding and direction for negotiations in general. McKersie presents a number of important features of the agent role in labor management negotiations. Below, I highlight five of the features introduced by McKersie and present further questions and challenges in each area.

Both management negotiators and union agents are hired on a relatively long-term basis. This has a number of consequences for incentives. McKersie argues that the desire to avoid the sanction of removal provides "potent incentives" for agents to work in the best interests of the principal. In contrast, I assert that this long-term role will increase the agents'
manipulation of the perceptions of the principals but will not necessarily forward the interests of the principals in the negotiations. As McKersie states, “When, as is usually the case, negotiations at the main table cannot be observed by constituents, then the chief negotiators need to report back and provide a picture of how negotiations are unfolding” (p. 189). Because the principals are not present in the bulk of the negotiations, the agent wanting to keep his or her position must become adept at “spin,” choosing comparisons and process stories so that the principals believe the agent is working in their best interest. This works not to align incentives but rather to give the perception of aligned incentives.

The agents are negotiating both a labor contract (i.e., the substantive issues of management rights vs. union and/or employee rights) and a social contract (i.e., the day-to-day working relationship between represented employees and management). Getting a good deal on one may not be synonymous with getting a good deal on the other. In positional bargaining, the two may even be negatively correlated, such that the better the substantive deal, the worse the relations will be in practice. McKersie argues that changing to interest-based bargaining will bring the labor contract and the social contract more in line with one another. This seems to evade the reality of contract negotiations specifically and many other agent-agent negotiations more generally: Regardless of the negotiation approach, there is inevitably a tension between a short-term, contract orientation and a long-term, relational orientation. It is the agents who play out this tension in their negotiations at and away from the bargaining table, and the principals are only peripherally involved in the decision regarding the balance between these orientations.

Often, there is no positive bargaining zone at the onset of the negotiation. The job of the agent then becomes a dual one of managing the agent-agent negotiation process to increase the likelihood that some agreement is possible and managing the agent-principal negotiation process to lower the expectations of the principal. Although McKersie does not mention it, a critical companion to a negative bargaining zone is the absence of viable alternatives. Unlike many other agent-assisted negotiations, in labor-management negotiations the alternative of walking away from the table and moving easily into a better deal with another partner is almost never available. Some labor-management negotia-
tions do result in management essentially choosing another partner through lockouts and replacement workers. Two prominent examples are the Detroit newspaper strikes in the mid-1990s and the Hormel strike in the mid-1980s. Even in these situations, management’s choice to go with the alternative was made long after the negotiation began and was not seen as an immediate alternative to a negotiated settlement with the union. The alternatives in practice are essentially to settle now or keep on negotiating. In a context in which the parties must eventually settle, a negative bargaining zone is something of a fiction.

The cultural orientations of the two agents differ greatly. How different are they, really? “Management” and “labor” differ, but it does not necessarily follow that the cultural orientation of the two agents will differ in the same degree. In many cases, the perception of difference may be the result of partisanship rather than fact. Although local union representatives may be newly off the line and inexperienced in business and negotiations, high-level union representatives are as business-oriented as their counterparts on the management side. One of the surprises that always awaits me when I teach at Harvard’s Trade Union Program, an executive education program for union representatives, is how similar those students are to my Harvard MBAs—savvy regarding economic issues, interested in adaptation in a rapidly changing technological environment, and up to date on the latest management fads and practices. This is not to say that the perception of differences isn’t a powerful force in the negotiations—McKersie argues cogently that it is—but it is critical to understand that these are perceived rather than actual differences. These perceptions are likely to be held more strongly by the principals who are removed from the negotiation process than by the agents who are regularly interacting with one another.

The agents are the principals in a real sense. The chief negotiator often acts as an agent for management at the bargaining table, and the labor relations manager acts as the principal working out the day-to-day implementation of and adherence to the contract. Similarly, the union representative must negotiate the agreement and then live by it. This ties closely with the fact that these agents are negotiating both a substantive contract and a social contract. McKersie presents the paradox of agents as principals but does not consider the effects of this unique aspect of labor-management negotiations. To gain some insights into the effects
of the dual agent/principal role played by labor relations manager and union reps, consider the following scenario. L. Paulsen negotiates contracts for management once every four years. In the intervening periods, it is Paulsen’s job to ensure that relations between management and workers “on the line” are sufficiently harmonious that the work of the organization gets done without major or frequent upset. Grievances by represented employees and difficulties or complaints of supervisors or managers make Paulsen’s job tougher and more negatively visible to those at the top of the organization. F. Hernandez is in a similar position with represented employees—the more harmonious the relationships between workers and their direct supervisors, the easier is Hernandez’s job.

This is not to say that both of them will not conjure up grievances as the time for renegotiation grows closer, but that is the beginning step of the actual negotiation, and it is disconnected from the day-to-day management of the contract. When, in this scenario, the principals prefer clauses in the contract that will make day-to-day management more difficult, there is great disutility to both agents. Given the long term of the agent’s placement in the position, the lack of transparency in the negotiation process itself, and the possibility for the agents to present their own versions of the outcome and the comparisons, agents are unlikely to bargain in a way that benefits the other principals at a high cost to themselves as principals.

Incentives of principals and agents are imperfectly aligned in most agent negotiations, but this is exacerbated in labor-management negotiations because the incentives for the agents are largely disconnected from those of their principals. It is this point, one that McKersie leaves unmentioned, that I turn to next.

**A CRITICAL ISSUE: ALIGNMENT OF INCENTIVES**

McKersie provides some useful insights into the use of agents in the labor-management process, but he is fairly silent on one issue that I see as critical in defining the roles of agents in this context: The incentives of the agents and the principals are largely not aligned. McKersie talks briefly of the role conflict experienced by the agents, but this conflict is portrayed at an elusive, psychological level. The crux of the problem
is not ambiguous role conflict but explicit discrepancies between the incentives of the agents and those of the principals. This is a critical issue in labor-management contexts and one that ties study in this area to the study of agency in a broader arena.

McKersie explains that the agents are often negotiating within a long-term relationship with the other agent and with their managers and employees. Their incentives lie in (1) making sure they keep their jobs, (2) making sure their jobs are not too onerous, (3) maintaining a positive working relationship with the other agent, and (4) maintaining a positive reputation as a skilled and principled negotiator. Of these, only (1) is closely associated with the preferences of the principal. In the long run, (3) and (4) may also be in the best interest of the principal, but this is seldom the perspective taken by management in any single contract negotiation.

Integrally connected with the issue of incentives is the relationship between the agents. McKersie writes of "the labor-management relationship" and states that top management is generally more concerned with costs and productivity, while the agents are more concerned with relational issues. This relationship is only one part of a parallel set of ties—that between labor and management, and that between the agents on the two sides. Whereas the former is a formal relationship between organizational entities, the latter is an informal relationship between two people. When McKersie speaks of trust, rapport, and mutual understanding, he is speaking of mechanisms that occur at the interpersonal, rather than the interorganizational, level. It is the personal relationship that strongly affects the incentives of the agents, but this relationship is largely neglected in the research on labor-management negotiation. This is an obvious area for future research, for it is from this level that we can begin to draw generalizable lessons from agency in the labor-management arena to that in other arenas.

The issue of incentives based on relational issues has a number of interesting aspects. First, these incentives affect the entire process of negotiations. For example, consider the difference between the current norms for negotiations in the private sector and those in the public sector. The incentives of the agents do not differ dramatically across public and private sectors, but the alignment between the incentives of the agents and those of the principals does. In the public sector, the incentives of the agent and the principal are much more closely
aligned, in that long-term relations with employees are critical. In the private sector, the short-term profit incentive of management creates a disjunction between the long-term, relational and reputational incentives of the agent and the short-term, monetary incentives of the principals. It is not surprising, given these differences, that the public sector is the clear leader in interest-based bargaining, whereas the majority of contract negotiations in the private sector continue in the mode of positional bargaining. This suggests that we could fruitfully look at the alignment of principal-agent incentives when making predictions about the type of negotiation and outcome that will occur. Similarly, understanding the alignment may allow us to make prescriptions for how to move effectively to a more interest-based approach in the private sector.

Second, the presence of varying relationships between agents of management and labor makes the labor-management sector an ideal one in which to study the effects of long-term relationships in bargaining. The age and tenor of the relationship between the negotiating agents can be treated as a variable predicting the match between management’s initial stated preferences and clauses in the final contract, controlling for industry and company specifics. Rapport and trust can be measured as procedural variables arising out of the relationship and influencing the final outcome.

Studying the effects of personal relationships in the context of labor-management negotiations would allow us to overcome the shortcomings of nearly all existing studies investigating the effects of personal relationships on bargaining processes and outcomes. The weakest of these studies manipulate the relationship, telling people to imagine they are friends or colleagues, or have some sort of relationship, with the other party. The best of them use a subject with prior actual personal relationships and take some measure of this relationship as the independent variable. These studies usually fall short on three dimensions: (1) The negotiation is completely outside the normal experience of the related dyad (e.g., two classmates are negotiating the sale of a fictitious house); (2) even if the scenario is a reasonable one for the dyad to engage in (e.g., splitting $20), there is no expectation that a similar negotiation or problem will arise for the dyad to solve in the future; and (3) the only actual incentive is relational—the monetary or reputational stakes are relatively inconsequential when compared to maintenance of an actual relationship. It is difficult to
assess how to generalize the findings from these studies to real-world negotiations between people with personal relationships. Exploring the impact of personal relationships between agents in the labor-management context would present other questions of generalizability that would need to be addressed but would allow us to study the phenomenon in an arena where the issues are real and repeated, and the monetary and reputational incentives are as weighty as the relational incentives.