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INTEREST-BASED NEGOTIATIONS AT KAISER PERMANENTE

In 1997 Kaiser Permanente (KP) and a coalition of 26 local unions representing nearly 70,000 Kaiser employees created what is now the nation's largest and most ambitious labor-management partnership. In 2000, the parties faced the major challenge of negotiating their first labor agreement under the new Partnership. They designed and implemented what is also the largest and most complex interest-based negotiations (IBN) process carried out to date in the field of labor-management relations. We describe this case here, both to provide an historical account of the process and to explore the lessons that might be learned from how these parties addressed a series of generic challenges encountered when introducing IBN principles into collective bargaining.

Interest-Based Negotiations in Labor-Management Relations

Collective bargaining negotiations have a long and rich institutional history and set of traditions that need to be taken into account when adapting the principles of IBN (Fisher and Ury, 1981). Collective bargaining negotiations normally include issues that cover the full spectrum, from highly distributive issues such as wages and employment security to highly integrative topics such as safety and health or work organization design (Walton and McKersie, 1965). There are usually multiple internal interests within management and labor organizations that require significant intraorganizational bargaining, especially when bargaining covers multiple worksites and/or multiple unions with leaders held accountable to separate constituencies. Finally, the continuous nature of labor relations produces strong links that carry over and ingrain attitudes and trust levels from prior negotiations, and day-to-day interactions that occur between rounds of formal talks. More often than not, the tensions in American labor relations, historically and currently, have produced a low-trust relationship between labor and management. All these features suggest there are potential payoffs to the use of interest-based principles, but significant risks are also present in designing and conducting these negotiations if these payoffs are to be realized and if the process is to be replicated and sustained.

Interest-based negotiation principles are taking on growing importance in labor-management relations. Two national surveys conducted by the Federal Mediation and Conciliation Service (FMCS) in the 1990s documented that more than 75% of union negotiators and more than 65% of management negotiators are aware of IBN, and with approximately 55% of both groups having used it in some form in one or more negotiations. But the evidence also indicates that it is not universally successful in this negotiating environment. Of negotiators experienced with IBN, approximately 71% of management negotiators rate it good, very good or excellent and approximately 54% of union negotiators give it similarly high ratings. Interestingly, there is an almost exact reverse pattern with traditional approaches to negotiations -- with 74% of union negotiators and 52% of management negotiators rating traditional bargaining good, very good or excellent. Also, about twenty percent of negotiators indicated that they experienced some type of backlash from the use of this process from their union or management constituents or principals. Yet, approximately twenty percent of negotiators indicated that they used IBN without advance notice to their constituents (Cutcher-Gershenfeld and Kochan, 2002). Thus, it is clear that IBN is now an important part of the American labor relations landscape but it is a part of this landscape that is still very much a subject of debate.

Despite its growing importance, we have only a small number of in-depth case studies of how interest-based principles are adapted to this complex institutional context (Ury, Brett, and Goldberg, 1982; Hunter and McKersie, 1992; Friedman, 1994; Kochan and Eaton, 1996; and Eaton and Kochan, 1996). Moreover, these cases indicate that adapting these principles to collective bargaining raises a number of generic challenges. As we will see, the KP experience casts these challenges in sharp relief and offers at least one example of how they might be addressed creatively.

The Historical and Institutional Setting

Kaiser Permanente is America's leading not-for-profit health maintenance organization (HMO) and hospital and health care delivery system. Nationwide it serves 8.6 million members across 10 states and the District of Columbia; fully 80% of its operations are still in California, where it began.

In 1933, Henry Kaiser asked Dr. Sidney Garfield to provide health care to the 6,500 workers and their families engaged in building the Grand Coulee Dam. Together they created the nation's first pre-paid group health care practice and insurance program. Then, during World War II, Kaiser and Garfield, together with the unions representing blue-collar workers, formed an association to provide health care to Kaiser's expanding steel and shipbuilding businesses in California. Shortly after the war, the plan gradually expanded, in large part by adding other union health plans to its customer (they call their customers "members") base. Union pension funds helped provide Kaiser with money to build the first Kaiser-owned hospital.

KP is split into a partnership between two organizations: (1) Kaiser Foundation Health Plan and Hospitals, and (2) the Permanente Medical Groups. The latter is composed of physicians and related health care providers; the former, as the name suggests, is made up of the health maintenance organization (HMO) insurance plan, and the 29 medical centers and other health care facilities owned by KP. The various medical groups operate as for-profit organizations contracting services solely to Kaiser Foundation Health Plans and hospitals; at the same time, Kaiser Foundation Health Plan and Hospitals retains its not-for-profit status.

KP workers (including nurses, technical workers, service and maintenance, and many clerical workers) were unionized shortly after Henry Kaiser created the non-profit organization during WWII, and unions continue to represent most eligible workforce members. Today KP employs approximately 120,000 workers, of whom about 90,000 are eligible for union representation and 85,000 are represented by (while 75,000 are members of) one of seven different national or international unions and one local independent union.

Since KP's operations are highly decentralized, so too has been collective bargaining. Traditionally, bargaining has taken place separately with more than 30 different local unions and over 50 bargaining units, governed by separate contracts with different expiration dates.

Motivating Forces and Internal Debates

KP was founded in partnership together with labor and over the years, management worked to develop positive relationships with the unions representing its workforce. While labor-management relations have had their ups and downs over the years, they have been mostly positive during KP's 50-year history. Part of the reason for this was that until the 1980s, KP could use some cost-plus pricing, thereby passing on the costs of improvements in its labor contracts to its customers. Unions outside of KP also found KP attractive as a service provider for their members, and negotiated KP health options into many contracts. It was one of the lowest-cost health care providers during that period, and as an innovative HMO it focused on preventive services at reasonable premiums, thereby serving working families especially well.

However, in the late 1980s and early 1990s, KP began experiencing severe competitive challenges in its markets, particularly from for-profit health care providers aggressively seeking to increase market share. KP also decided on an expansion strategy around the country, including in predominantly non-union areas such as Atlanta and North Carolina. With these new pressures management implemented a tougher labor relations strategy that produced a series of layoffs, strikes, collective bargaining concessions, perceived 'deskilling,' and an increasingly demoralized workforce. "This is not the Kaiser we came to work for" was a comment often heard from front-line workers.

One union activist, Kathy Schmidt (who was at the time president of the Oregon Federation of Nurses and Health Professionals, American Federation of Teachers) remembers those days, after concession bargaining had reduced or frozen wage and benefit packages for thousands of union members:

> *We formed a coalition to keep from getting killed in bargaining. We didn't even know the P-word [Partnership]. We came together for bargaining expertise. They (management) brought in these McKinsey people, who were going to close all the hospitals, seven in California alone, take out the integrated care system, and maintain their competitive position by lowering their labor costs. A round of bargaining started in 1994-5 that was just brutal—we intercepted some business plans and faxes and emails – they were just going to kill us. After that round of*

bargaining, we said 'never again', and we started building a corporate campaign[1] capacity to bring them to their knees in bargaining. Then we realized, here is the most unionized system in the country, why don't we try to help them? We learned more about trying to have a partnership.

By 1995 a crisis was building. The largest single national union at KP, the Service Employees International Union (SEIU), convened all its local unions with KP union members to discuss strategy. "What was happening was contrary to how we wanted to build relationships and build the industry," recalled Margaret Peisert, then an SEIU researcher and now assistant director of the Coalition of Kaiser-Permanente Unions (CKPU). SEIU then turned to the Industrial Union Department (IUD) at the AFL-CIO and asked its staff to call a meeting of all the unions representing workers at KP. KP nurses, represented by the American Federation of Teachers (AFT), joined the SEIU in this request. The IUD had many years of experience in coordinating bargaining efforts, and so Peter diCicco, then President of the IUD, welcomed the opportunity to address the critical problems at Kaiser. Peter was widely respected by his union peers for his thirty years of experience in negotiations with General Electric as Business Agent of the International Electrical Workers' Local representing GE workers in Lynn, Massachusetts as well as his success in leading coalition bargaining for the AFL-CIO's Industrial Union Department. Peter diCicco describes how they got started:

> *We took our normal approach. We called an initial meeting of all principal unions. More than 100 people attended. We knew from experience that we had to get all the unions on board with a clear strategy for how to deal with Kaiser. It became evident, given the negative attitude of the public toward strikes in health care, we had to consider other options-- and so we began looking at other means to achieve bargaining strength—corporate campaigns and such. I went to the international unions for a supplemental budget to fund the corporate campaign. They accepted the supplemental budget and we staffed up and started the corporate campaign—a successful one.*
>
> *But it became clear to us if we proceeded with the campaign, we would lose control of all this. The government might step in and we would all lose… [So]…I went to the international union presidents and told them these guys [Kaiser] are not the worst of employers we deal with, and we might do permanent damage to them and to our 65,000 union members if we mount an all-out corporate campaign or use the information we amassed for short-term advantage or leverage. Was there an alternative? How could we work to improve quality without damaging the already stellar quality reputation?*

Then diCicco continues:

> *My background was in Lynn where we had started a Quality of Work Life (QWL) process. So we had some options. Perhaps we could use our bargaining strength at the table or offer them the option of a partnership approach with Kaiser.*
>
> *We had John Sweeney, President of the AFL-CIO, make an overture to David Lawrence, KP's CEO and that started the process. It took Kaiser six months to consider the idea. The Board of Directors discussed it at length. Fortunately, the former chair of Northwest Power and Gas was on the board, and he had had a very positive experience with a labor-management partnership in his company. After consulting with him and*

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[1] A corporate campaign is a coordinated research and public disclosure initiative undertaken by unions to bring public attention to a company in an effort to change the company's labor relations practices.

other board members Lawrence came back to Sweeney and said, "Let's explore this idea."

We asked John Wells, Director of the Federal Mediation and Conciliation Service (FMCS) to convene a meeting of top executives and labor leaders in Dallas. We went to that meeting ready to blast KP for its behavior. At the top of our list was patient care—that's where the frustration was the greatest among our members. But Lawrence started with a statement that disarmed us. He said all the things we were prepared to say. It was clear that there was almost total alignment of objectives. So from that point it was just a matter of walking through the steps.

Dr. David Lawrence, former CEO of the Kaiser Foundation Health Plans and Hospitals, describes the inception of the national Partnership from his perspective:

At some point Al Bolden [a labor relations official at KP] and Pete talked about the need to get together and try something different. And I was willing to try anything at that point because it was clear that the path we were on…was a dead end. We were going to be facing labor strife in every corner of our organization. We had 54 labor contracts, 36 unions, and if they go south on us -- at the same time we were in a fair amount of conflict between the Medical Groups and the Health Plan -- what I saw was an organization that was starting to balkanize in very serious ways. A lot of this was being driven by external things; a lot of it was being driven by changes we were trying to make in the organizations at a strategic level.

I agreed … that we would meet with labor representatives privately at Dallas-Ft. Worth airport. It was almost a make-or-break meeting. What I remember thinking about at that meeting was: We've got nothing to lose being forthcoming about what I believed needed to happen in terms of the relationships…[and] about the kind of collaboration that I think is required to deliver modern medical care in all of its complexity. We had nothing to lose in acknowledging the fact that there are no answers to these things; they grow out of the collective effort of teams of people who are working on specific areas of medical care delivery in terms of how you best organize.

So I said these things. Peter (diCicco) said I took away all of his thunder because he was prepared to say all of those things. And it turned out that there was almost a revelatory session....

One of the first things the parties did after agreeing to pursue more collaborative strategies was to look for a consulting firm with significant experience in facilitating labor-management partnerships. After interviewing a number of candidates, they chose the Washington D.C.-based firm Restructuring Associates, Incorporated (RAI), founded by Tom Schneider. Facilitator and consultant John Stepp led RAI's efforts. Stepp brought a wide range of experiences to the process, as a former mediator with FMCS, and a former Deputy Under Secretary of Labor and head of the Department's Bureau of Labor-management Relations and Cooperative Programs. He is a national expert on how to design and sustain labor-management partnerships. Schneider and Stepp gradually brought in a number of other facilitation experts from RAI to work on the project.

"Walking through the steps" to produce a real Partnership agreement was actually an intensive negotiation and problem-solving process that took most of 1996 and into 1997, led by senior KP executives and union leaders, with significant assistance from RAI's John Stepp and Tom Schneider. The toughest issues involved employment security, union security, and the scope of shared decision making. An approach to shared decision making was proposed by RAI using a continuum ranging from at one end, unilateral decision-making with management informing union leaders of actions to be taken, to full participation and consensus decision-making at the other end. Union security was addressed in an agreement providing for management neutrality and card check procedures for any future organizing of nurses and other bargaining unit staff (but not for physicians). KP agreed to recognize requests for union representation with a majority showing of support but without an election in new locations. This was significant because at that time, 10,000 union-eligible employees were not organized into unions.

Employment security proved to be the toughest issue. The language finally agreed to by the parties stated that one Partnership Agreement goal was to "provide Kaiser Permanente employees with the maximum possible employment and income security within Kaiser Permanente and/or the health care field." This was later to require additional clarification, but it was an essential element of the initial agreement. "People felt it was fundamental," says Peisert. "You couldn't ask people to step up to the plate, change the way they were doing things, get involved in joint decision making, redesigning work, and figuring out new ways of delivering services, or finding efficiencies, if they were going to be putting themselves or a coworker out of a job."

Once the labor and management leaders agreed on the key provisions of the Partnership, it was submitted to a vote of the membership of the 26 unions. Before this vote, however, an intensive process of education of the front line workers and union members took place. Most union members had never heard of a labor-management partnership, nor did they have any idea how it would affect their interests. The unions held a national teleconference to brief local and regional union leaders, and produced videos describing the Partnership that featured AFL-CIO President John Sweeney describing his vision for what a partnership of this size and scope could mean for the future of labor relations in America and for the labor movement. The Partnership was approved by 92% of the local union members voting, with high turnout. The only major union choosing not to join the Partnership was the California Nurses Association (CNA) representing approximately 8,000 nurses; the leaders of CNA, which is not an AFL-CIO union, chose to withdraw from discussions before the Partnership was negotiated in final form, in part because of ongoing disputes with Kaiser Permanente. Hawaii had a pre-existing partnership program of its own that included labor and management and so did not join formally.[2] A group of pharmacy technologists, and two nurses' units in Oregon and Ohio initially chose not to join, but some have since voted to do so.

Appendix A lists the key provisions in the agreement signed by the parties in October 1997. A reading of these provisions illustrates the breadth and extent of the Partnership. Its six objectives address the key jointly held concerns for improving the quality of health care, expanding KP membership and market share, improving its performance, securing employment security, making KP a better place to work, and involving employees and union leaders in decision making.

The Labor-Management Partnership structure at the time of the 2000 negotiations is depicted in Appendix B. The top two dotted boxes represent the two separate governing bodies for KP and the unions: the Kaiser Permanente Partnership Group (KPPG) and the Coalition of Kaiser Permanente Unions (CKPU), respectively. Dr. Jay Crosson is the co-chair of KPPG, elected by the medical groups, and its other co-chair is the President of Kaiser Foundation Health Plans and Hospitals. The Senior VP for Workforce Development serves as a member of the KPPG. While no union representatives are formally part of the KPPG, CKPU leader Peter diCicco has been attending these meetings as an observer. The KPPG meets monthly.

The National Labor-Management Partnership Strategy Group (known as the Strategy Group) is the top governing body for the labor Partnership, co-chaired by the VP for Workforce Development (formerly Leslie Margolin) and CKPU Executive Director Peter diCicco. A staff organization, the Office of Labor-Management Partnership (OLMP) reports to the co-chairs. The National Partnership Council meets several times a year and brings together approximately fifty union and management leaders to share reports and to enhance coordination.

This setup means that in effect there are two, possibly three, complex partnerships at KP. One is between Kaiser Foundation Health Plan and Permanente Medical Groups that have their separate histories and governance structures: the Hospital and Health Plan side and the medical practice side, or Permanente Medical Groups. The second Partnership is between the KPPG, representing the two parts of KP and the Coalition of KP Unions.

The Coalition of Kaiser Unions can be thought of as a third partnership, given its *modus operandi*, with a steering committee and decision making procedures that bring the leaders of the unions into a process of establishing strategy and resolving inter union issues.

Interest-Based Negotiations at KP

Overview and Chronology

After the Partnership Agreement was signed, the parties made a decision to keep the Partnership activities separate from collective bargaining. Union leaders felt that to do otherwise would risk losing local union support for Partnership activities. This has been a standard, widely accepted tenet for starting joint, labor-management efforts. It is common to begin with a principle or

[2] See the 12/28/99 report, "Understanding Kaiser Permanente: Hawaii's Success," issued by KP's internal Consulting Services unit, which documents some of the positive aspects of the partnership between management, physicians, and employees in Hawaii.

written rule that essentially says, "none of the changes that will be implemented will infringe or modify terms and conditions of existing collective bargaining agreements." This helps gain support of both management and labor leaders who are skeptical of joint efforts and fear those efforts will erode hard-won gains or managerial control. Yet, as RAI consultants pointed out, the dilemma that all partnerships face at some point is that if they want to tackle the critical issues facing the business and the workforce, they have to find an appropriate and effective way of integrating their joint efforts with the collective bargaining process and the provisions of their labor agreements. This is often the first test of a partnership. Those who can incorporate collective bargaining in a way that gains the support of elected union officials with bargaining responsibilities and key managers who control bargaining strategy and decision making within management, are able to move the joint effort to the next phase in the change process.

How could this be done? Since the various local unions had gained experience working together in negotiating the initial Partnership agreement, their inclination was to propose that everyone negotiate together and create a single national agreement with supplements that dealt with specific local issues. (Such agreements are common, for instance, in the automobile industry.) But KP officials were strongly opposed to this, fearing that a single common contract deadline would greatly increase union bargaining power by threatening a system-wide work stoppage. The reality, however, was that management found itself always in negotiations with the prospect of more and more "leapfrogging." Given the coalescing of the union coalition it was conceivable that the risk of a national strike at some point in the future was very real. The question, therefore, was: Could some new approach be developed that would address the need for more coordination that either avoided a common expiration date for all contracts or addressed management's concerns in other ways?

A joint task force was created to explore this question. The initial idea proposed by the task force was to negotiate a single national master agreement. When this idea was first presented to the KPPG in 1999, it was rejected. At least one physician leader felt the basic 'groundwork' had not been laid with top leaders. Others said the rejection was primarily out of concern that units located in labor market areas outside of California would be unable to pay higher "national" rates, as well as a fear that negotiating a master agreement would create considerable vulnerability to a system-wide strike. Since existing local agreements had different expiration dates, management felt safeguarded from the possibility of a major strike across the system. However, many in the task force were surprised by the rejection, since most if not all KPPG members had appointed representatives to be part of the task force, and their representatives in turn had been part of creating the proposal.

The rejection of this proposal created a crisis that could easily have led to the demise of the Partnership. Dr. Jay Crosson, Executive Director of the Permanente Federation, took the lead in re-starting the discussion at the KPPG. As well, David Lawrence urged the KPPG to continue working to resolve the differences so that the Partnership would not fail. Due to his extensive experience with a variety of labor-management relationships and structures William Hobgood, then Senior Vice President of People for United Airlines, was invited to meet with the KPPG. He was asked to discuss the advantages and disadvantages of combining operational decisions with a variety of negotiation structures. Facilitator John Stepp then worked with Crosson, Margolin, and other KPPG leaders, as well as with the union leadership, to fashion an alternative approach with various "gates" that the parties would move through before negotiating a national agreement. Either side could exit the process as it passed through these gates if they felt it was not moving in a constructive fashion.

In view of the primary reason for the initial rejection of the national contract idea, an important "gate" was agreement in principle that local labor market rates would continue to govern. Another critical step involved training of potential participants who would be involved in national and local negotiations in the concepts and skills of Interest Based Negotiations (IBN). Another key "gate" was that either party could pull out of the process at any point. (As it turned out, neither party found it necessary to exercise this option.) The task force eventually came back with a revised proposal that called for the following: extensive use of IBN problem-solving principles and the necessary training to prepare the parties for this very complicated process, a single integrated national negotiation that would allow local agreements to retain their respective deadlines (thereby addressing one of management's fears of a common expiration date), and a series of decentralized task forces that would focus on particular issues.

The KPPG and the leaders of the union coalition approved this revised proposal in February 2000. The actual negotiations structure and process will be described shortly. To summarize, it is sufficient to say that these negotiations will be recorded as the largest and most innovative and successful experiment with interest-based negotiations processes conducted to date in U.S. labor-management relations. They involved nearly 400 union and management representatives and more than twenty neutral facilitators. The negotiations included eight international unions with 25 locals.

Seven bargaining task groups (s) were established to address (1) wages, (2) benefits, (3) work-life balance, (4) performance and workforce development, (5) quality and service, (6) employee health and safety, and (7) work organization and innovation. Each group engaged in an interest-based process of joint study, problem solving, and negotiations. These task groups reported their recommendations to a centralized Common Issues Committee (CIC) co-chaired by diCicco and Margolin. Facilitators from RAI and FMCS assisted each of the groups. In addition to negotiating a national agreement, new local agreements would be bargained, even though most were not approaching their expiration dates. The CIC sorted through the recommendations of the BTGs and identified those that needed to be forwarded to local tables and those that applied uniformly across the system and therefore needed to be negotiated centrally by the CIC.

Figure 1 lists the chronology of key steps in the negotiation process. Between May and July 2000, the parties worked on these issues within the BTGs sub-groups. They met for several days at a time and then disbanded to consult constituents. When a group reached consensus, it presented its recommendations to the CIC. The national committee, in turn, passed on these recommendation to local unit bargaining committees for them to adapt and fine-tune the recommendations to fit specific local conditions.

Initially the CIC in adopting specific rules for the timetable of the process had posited that negotiations should be concluded by September 1 with the package then recommended to the various memberships for ratification - and local bargaining needed to mesh with this schedule. Issues had to be sent down to local bargaining teams. A big task was separating local bargaining versus national bargaining issues. Dealing with this took time. The economics and the wage subjects took longer and some subjects required more data and research. As a result the parties needed several weeks beyond the September 1 target to reach final agreement.

The final stages of the process were characterized by a number of twists and turns (not revealed by the chronology). With the September 1 target in mind the CIC in mid August entered into what turned out to be a nine day marathon session to resolve all of the outstanding issues, if only in principle so that local negotiations could proceed to the finish line. As September 1 approached and it became clear that the task of codifying the results of the marathon session was not finished, several of the large unions “pulled the plug” and said that they would not proceed with their local negotiations until they received appropriate guidance from the CIC (especially with respect to the resolution of money items).

Consequently, the CIC found it necessary to reconvene in early September. Whereas the makeup of the CIC for the marathon session in August had numbered around 40, the participants in early September numbered about ten. This “end game” phase resembled traditional bargaining in some respects, with some representatives, to use the vernacular, “shaking the trees one more time.” The pace intensified with 20-hour-a-day sessions. After six of these long sessions, agreement was reached on all but a few agenda items, thereby providing the guidance that several local unions needed. Completing the task at the local level required another week. Thus, it was late September when the agreements were submitted to the members for ratification.

Figure 1. Chronology of the Negotiations Process

March 2000	• Management and unions separately solicit proposed issues from their constituencies.

April 2000	• Local unions and 300-member Union Bargaining Council approve process. • Common Issues Committee members go through training. • Management and unions separately, and jointly through the Common Issues Committee, determine there are sufficient common issues with potential for agreement.
Early May 2000	• Common Issues Committee charters Bargaining Task Groups.
May-June 2000	• Bargaining Task Groups undergo training, meet to identify issues, mutual and separate interests, develop options and recommendations.
Early July 2000	• Bargaining task Groups present options and recommendations to the Common Issues Committee. • Common Issues Committee determines there are sufficient common issues with potential for agreement, triggering additional local bargaining by all 25 local unions.
July-August 2000	• Common Issues Committee determines guidelines for which issues are to be negotiated nationally or locally; • Common Issues Committee bargains national issues while local unions and local management negotiate local issues.
Late August 2000	• Framework for a national agreement is tentatively agreed to by the Common Issues Committee, approved by KP's senior management, and endorsed by the 300-member Union Bargaining Council. • Additional guidelines for local bargaining are released to local unions and local management.
September-October 2000	• Tentative national agreement and tentative local agreements submitted to membership of the 25 local unions for ratification. Agreement ratified by 90% majority.

The substantive terms of the national agreement included a five-year contract with across-the-board wage increases between 4% and 6% for each of the five years of the agreement (RNs received higher increases than others because of labor shortages and a provision for regional adjustments), and numerous specific changes in practices designed to redesign and improve business systems, quality of patient care, and work processes. Kaiser agreed to recognize requests for union representation with a majority showing of support but without an election in new locations. Further, employment security was pledged—not simple job security but retraining and redeploying of workers if it proved necessary. The Partnership agreement also created a new trust fund partially financed at six cents per hour (with an annual escalator) from employee wages after the first year to support training and other efforts needed to diffuse the Partnership throughout the organization.

One of the substantive terms in the agreement was a provision for performance sharing. The document specifically states, "performance sharing is intended to recognize that, through the Labor-Management Partnership, employees and their unions have a greater opportunity to impact organizational performance and employees should, therefore, have a greater opportunity to share in any performance gains... Performance targets will be set by Region and may be based on quality, service, financial performance or other mutually acceptable factors." If targets are met, performance sharing is based on the following schedule:

Year 3 - 1% payout at target to be paid out in First Quarter 2003, based on 2002 performance
Year 4 - 2% payout at target to be paid out in First Quarter 2004, based on 2003 performance
Year 5 - 3% payout at target to be paid out in First Quarter 2005, based on 2004 performance

Compared to other collective bargaining contracts, the 38-page agreement is quite brief. What is different is the innovative nature of its content. Appendix C details several sections of the agreement that deal with such subjects as: joint determination of staffing, a commitment to working flexibly (at the same time preserving seniority and union jurisdiction), open communication about important corporate transactions (including restructuring and union mergers), institution of non-punitive corrective action procedures, and provision for parents and parents-in-law to purchase health plan coverage.

In return, KP gained five years of labor peace—a major achievement given the record of numerous strikes during the preceding decade. Also, the promise of new HMO members was a significant gain. Here, union leaders of the Partnership would promote KP as an "HMO of choice" to their affiliates. And of course, the most innovative opportunity was the improvement of patient care and the ability to deliver it in a more participatory, cost-effective manner as a result of the joint activities fostered by the Partnership. Dr. Lawrence summarized this agreement:

> *The obvious benefits to both parties, in my mind, first of all have to do with the value of stability, in economic terms and dislocation terms, for individuals and for entities. We have created a framework that allows for productive relationships and labor-management peace and stability for a period of time. So we're not rehashing conditions of work, conditions of employment, economics, every period. That has enormous benefit to the labor members because there is a certainty now, there is predictability. And it has great benefit to us. The cost of instability is high for both parties, I think. And it has economic implications; it has reputational implications.*
>
> *That's what labor-management relations do now. Labor dumps all over the company that employs them. And the company craps all over the union and tells the world what lousy, unproductive people they are. And the consumer sitting out there says, "What in the world is going on with this organization in the long run? "*

What about the cost to grow the Partnership? During the first year of the contract it was estimated that the target commitment to augment worker training (up to 40 hours per individual), plus added staff both on the management side and union personnel who would receive their regular pay while performing Partnership duties, would amount to approximately $12 million per year. On an ongoing basis, the employee contribution to the trust fund would generate approximately $6 million per year, meaning that after the first year, labor and management would move toward a sharing of the costs of the Partnership.

The Heart of the Negotiations: The Bargaining Task Groups

The selection of members for the BTGs was done carefully, and individuals were recruited who were already champions of the Partnership or who might be converted as a result of participating in the intense process of negotiations. In addition, some individuals with content expertise were also brought on board.

Most of the important issues were tackled (except for the negotiations over money) within the seven BTGs. Consider the experience of one sub-group within the BTG which tackled the subject of performance and measurement. This group consisted of twelve people and included a person from operations at one of the hospitals, a vice president from one of the nursing unions, and other management and union leaders with direct experience with and responsibility for the issues within this group's mandate. The schedule involved meeting for long hours for three consecutive days every other week. During the interlude, members of the committee reflected on what had happened, consulted with constituents, and accomplished behind-the-scenes liaison work that was necessary. Guidelines from the CIC urged the BTGs not to propose specific language but to develop guidelines and statements embodying concepts and principles.

The BTGs were staffed with two facilitators, one from FMCS and the other from RAI. They intervened, especially when the parties got stuck, by asking them to go back to the fundamentals of IBN: identify interests (not positions) and generate new options. The facilitators with the help of the Partnership's internal consultants also managed various lists (on flip charts), prepared notes, and during the intervening night after each day's session produced a summary to help launch the next morning's session.

Members of the CIC, except for Margolin and diCiccio, were assigned to each BTG. Their role was stated as follows: "They are not to be co-chairs; they will play a leadership role and model the IBN principles and behavior; they will help keep the BTG on task and on target; and they will serve as the eyes and ears of the CIC."

By early July 2000, the BTGs had finished their work and were ready to report back to the CIC. Approximately 300 people from the BTGs assembled in one room. Two members of KPPG participated in parts of the meeting. Each BTG presented its work. The scene was incredibly energizing, according to one individual; everyone came away from the session on a real "high."

To underscore the historical significance of the "reporting out" session, Leslie Margolin noted that the room in which the session was being held was the same place where the major world powers agreed to form the United Nations at the end of World War II. To ceremonialize the work of the BTGs, each member was given a certificate signed by the Secretary of Labor, Alexis Herman.

By September, the national and local agreements were ready to be presented and voted on by both KP management and rank-and-file members of the participating local unions. The approval process alone was a logistical marvel, and the national agreement and local contracts were ratified by substantial margins.

<u>Local Bargaining</u>

Local bargaining did not commence until August after enough progress had been made in the work of the BTGs and the CIC was able to forward subjects with its recommendations to the teams that had been assembled to conduct local bargaining. Consider this item from the minutes of the CIC regarding the timing for local negotiations:

> Locals will not have guidance on the specific economic parameters of bargaining until late in the process. It is hoped that the CIC will have a good sense of the issues that will be referred to the local after the upcoming meetings in Chicago. Concern was expressed that unless locals have early information on what will be handled by the CIC and what is appropriate for local negotiations, they may spend time working on issues that they will not resolve or not begin to work soon enough on difficult issues that will be referred to them.

For many of the small unions, local bargaining was not that different from previous rounds since they always followed the pattern set by the larger unions. But for large unions, having the money items negotiated centrally by the CIC was a major change. However, since early in the negotiations, management at the national level had agreed to put a significant sum of money on the table, local union leadership knew that ratification was highly likely, and they could turn their attention to how to allocate these funds and to tackling important non-monetary issues.

Considerable effort was made by leaders on both sides to establish a context for local negotiations that would encourage the use of the new process, rather than reverting to the well traveled road of adversarial bargaining. Consider this excerpt from discussions that took place within the CIC, as local bargaining was about to commence:

> The unions expect that as many as 90% of the union BTG participants will be involved in local bargaining; they will bring an understanding of the overall common issues bargaining process and the interest based approach. However, the union believes that many of the management representatives in local bargaining will not have been exposed to the Partnership and are used to a very traditional approach to bargaining. The concern was also expressed that some participants on both sides may not be supportive of the common issues bargaining process or the interest based approach. It was agreed that both the unions and management needed to communicate to their local bargaining representatives the expectation that their process should be

> consistent with the spirit of the Partnership. Rigid adherence to the interest based process is not required. Concerns regarding possible problems in local negotiations should be referred to Leslie and Peter.

We will use the experience of one large local to illustrate how the process unfolded at the 26 local bargaining tables. Here are some of the highlights.

Each side was allowed to have a traditional opening statement, but instead of presenting demands, they were asked by the facilitators to identify issues. Approximately 50-60 items were earmarked for further attention. The lead negotiators then put the issues into four separate "baskets," with volunteers assigned to the respective sub-groups. On the union side, 50 or 60 people (many of them stewards) were at the opening session and available for assignment. However, on the management side only five or six were in attendance, and as a result many other managers had to be recruited to join the sub-groups.

To enable the facilitators to keep track of what was happening, each sub-group met on a specific day, different from the others. In other words, each sub-group only met one day a week, usually for twelve hours. The parties agreed on a timetable of six weeks to negotiate the local agreement. As it turned out, local bargaining took longer because progress at the national level fell behind schedule. Indeed, as we discuss below, there was considerable moving of issues back and forth between the local and the national levels.

Of the 50-60 issues, only a half-dozen could not be resolved by the consensus method. One major substantive issue had to do with the allocation of equity adjustments. Management members wanted the monies applied to classifications that were hard to fill in order to be competitive in the local labor market. The union, on the other hand, wanted to reduce some regional differences within the local between rural and urban areas. In the end most of the money allocated for equity adjustments was used to lessen these geographical differentials.

Coordination

No short description or analysis can do justice to the tremendous coordination challenge that existed. With seven BTGs and 26 local negotiations, the CIC had a major task to keep everything synchronized. The Committee co-chairs, Leslie Margolin and Peter diCicco, were complemented by 30 to 40 key union and management officials. Senior mediators facilitated them, John Stepp from RAI and Barbara Pickett from FMCS. These individuals met regularly and would review each evening reports from the various BTGs.

At the informal level, diCicco worked closely with a core union leadership group consisting of presidents of the large locals. He consulted with them regularly, usually over dinner. Backing this group was the union steering committee, consisting of all the presidents of the local union.

The full complement of the CIC met regularly, and a review of the flip charts (now archived) reveals a highly systematic effort to keep track of all the issues under discussion. However, the CIC was at times overwhelmed by many of the recommendations that came to them. There were conflicts because many of the unions believed their joint recommendations should have been agreed to and automatically adopted. And of course management often came with the orientation, *"We have spent a lot of time and money, and worked on a lot of conflicting priorities, and we can't possibly do all these things at once."* As one management official expressed it:

> *So there were probably many differences in terms of expectations. But they got worked out as a result of a lot of hard work. Even today, I'm not sure how we did this mammoth amount of work within the CIC and then to distill it all down.*

From the outset the CIC assured the BTGs that their proposals would be seriously considered. When the seven BTGs reported out to the CIC, almost 400 items were placed on the table for consideration. Many items were readily agreed to at the main table but many had to be sent back for further work. The RAI consultants recommended a system of "baskets" to guide the task. In the first basket were placed those issues that needed to be settled before the master contract could be signed, what were referred to as the nationally mandated issues. In the second basket were items that were not mandated but could be negotiated at local discretion, and the third basket contained subjects for which CIC did not hold views about how the subjects should be resolved.

The dynamic nature of the process and the lack of linearity are captured in the words of one of the facilitators:

> *I find it hard to convey the energy that was involved in executing this national agreement. The internal negotiations within the union and management caucuses were incredibly dynamic and time consuming. Then the local negotiations once they started were eventful and exhausting and at the end delayed agreement at the main table. Reaching agreement on the basic economic package required a nine-day marathon session. And just when we thought we had reached agreement it was necessary to resume national negotiations to resolve outstanding issues. What I would call last minute "theatrics" had us breaking out the champagne and shaking hands three separate times.*

Addressing Generic Challenges in the Negotiation Process

In this section, the focus is on how the parties addressed a series of issues and choices that face all labor negotiations. While the actions taken in these national negotiations should not be viewed as a model, nevertheless the choices made by the parties are particularly salient in a situation as new and complex as this one. While we are not advocating that either KP union and management leaders or other parties should necessarily replicate the actions taken here in future negotiations, the way these generic issues were addressed is worth reviewing when designing future IBN processes—at KP and elsewhere.

Establishing Buy-In

The use of IBN principles represents a profound shift in how collective bargaining occurs. It changes the dynamics of the process and especially, relations with the negotiators' constituents and principals. Therefore, a critical step when preparing for interest-based bargaining is to involve and educate the full range of people who will participate in direct negotiations and/or in approving the agreement. Care is needed to assure that all parties both buy into the process and understand how it will change their roles. Consider this quote from a management official:

> *What is key to doing this [IBN] well? It does not work as well without the people who are affected being in the room. I was the ultimate decision maker for many issues. If I had not been there, I would not have felt or seen the passion, the hundreds of ideas, I would not have felt the hurt. It was important for me to be there and to feel and see this.*

In this case, the buy-in process required reaching agreement on the new structure for negotiations and overcoming skepticism on the part of many local union leaders and management representatives that IBN principles would work. For management, the key issue was concern about the need to maintain the flexibility to pay local labor market rates as well as the possibility of a system-wide strike. Constructing a national negotiation structure without a strike deadline met this concern. For union leaders, agreeing to negotiate without such a deadline left the role of the strike threat ambiguous at best. For them the key question, therefore, came down to whether the IBN principles would provide the information needed and the ability to address their members' critical concerns.

In the literature on negotiations, the concept of BATNA (best alternative to a negotiated agreement) is key to understanding the tradeoffs facing each side. In the case of the national negotiations between KP and the coalition of unions, each side had as their BATNA the option to withdraw from the negotiations and return to the established schedule for bargaining the several scores of collective bargaining agreements. When the parties started the negotiations for the national contract in March 2000, only two agreements had expired. So, for most of the unions as well as for management, a return to the status quo ante was a serious alternative if things did not go well with the experiment.

A decisive factor in gaining initial buy-in from union leaders was the credibility that Peter diCicco brought to the process. He had led the effort to bring together the union coalition at KP and consequently was in a position to guide the crucial pre bargaining phase. diCicco's balancing act required him to convince the presidents of the local unions that they would do as well or better in national negotiations than holding to the status quo, but in making this pitch he could not allow expectations to develop that would be difficult to fulfill in the upcoming negotiations. In diCicco's words:

> *Early on I held several two-day meetings with all of the union presidents – a group that you could call my steering committee. When the discussion turned to the key subject of wage increases, I heard "a large increase – like 10%". Now there was no way that we would be able to settle at that level, so my response was: "Let's get realistic". While they would never tell me what their bottom line was, I knew the nurses were counting on at least 5% and the other groups 3-4%. While I did not have any assurance at that point from management about wage increases, I was pretty sure come the final push we would all be in the same "ballpark".*

Role of Key Leaders

It is clear that diCicco's leadership was instrumental in managing the many pressures that could easily have brought matters to an impasse. As negotiations progressed, several presidents of the large locals thought they could do just as well by going back to the format of separate negotiations. And in fact some leaders played "hardball" toward the end of bargaining and threatened to pull out of the effort to reach a national agreement. As one observer stated the challenge:

> *If we had not had the three years of experience with the coalition working together under Pete's leadership, we never would have reached agreement. Pete had the confidence of this large group of individualists and he knew how to keep them focused on the objective of reaching a master agreement. He knew how to spell out the advantages of working together and when a leader went the other way ("let's shake the trees and see if we can get something better"), Pete stepped back and let some of the other leaders who were committed to going forward apply a little collegial arm-twisting.*

Similarly, on the management side it was critical to have a leader who had the respect of the line executives and physicians within the Kaiser Health Care and Hospital and the Permanente groups. Leslie Margolin provided this leadership. She brought experience as a lawyer and line manager to the negotiations as well as the authority associated with being a member of the top management committee (the KPPG). Margolin was just as instrumental on the management side of the table in bringing about agreement as diCicco was for labor; in fact, they worked closely as a team to guide an extraordinarily complicated process. Significantly, she was frequently asked to attend union caucus meetings to explain management proposals and to answer questions. The important bridge role that Margolin played is captured in this quote:

> *Leslie's leadership was instrumental on both sides of the table. She enjoyed complete trust with the union leadership and when she said that management had "emptied its pockets" they believed her. In many ways her toughest job was keeping her management colleagues on the same page. Often when she would return from a union meeting, she would find her teammates embroiled in tense discussion and in the process of backing away from positions that they had put on the table. For example, toward the end of negotiations the legal office came back to the management team and said that the commitment that had been made to transmit COPE funds could not be done. As soon as Leslie went to the union with this change it opened the door for some union presidents to*

press anew for agenda items that had been dropped. She really had her work cut out for her in managing closure and achieving consensus on the part of the management group.

While diCicco did not attend management meetings, on several occasions he held off-the-record conversations with several key decision makers.

Third-party leadership was also critical in making the negotiations successful. A key factor in the success of these negotiations was the facilitation by John Stepp and his colleagues from RAI as well as assistance from FMCS staff. The key facilitators knew the parties well and were able to provide on-the-spot training as well as help the parties stay focused on a mutual interest agenda, using interest-based problem-solving techniques. Many union and management leaders praised the RAI consultants for the multiple roles that they played during the course of the negotiations. Aside from the expected help in keeping the process on track, in some of the local negotiations the neutrals actually put language on paper to expedite closure once the parties had reached agreement in principle.

<u>Membership on the Committees, Ground Rules, and Logistics</u>

Staffing the committees involved recruiting representatives from all sectors. Identifying the appropriate leadership on the union side was straightforward: the individuals were those who held office and for the most part had participated in previous negotiations (at the local level). On the management side the decision was made to designate a number of operating heads, in addition to the human resource and labor relations professionals. For example, key operations leaders for both southern and northern California Permanente Medical Groups were actively involved in the negotiations. As one union participant observed: "The level of people that management sent to the BTGs was really impressive."

In addition to a commitment to follow the principles of IBN, an important ground rule for both sides was the option to pull out of the process at any time. As it turned out, this option was never exercised.

Turning to logistics, the mammoth size of the undertaking is captured by two quotes:

> *We had only three to four weeks to get hotels and everything for the first meeting (kickoff on April 16, 2000). Normally it would take four to six months to put together arrangements for 300 people. We only had four to six weeks. And then we had meetings, one after another. I was working 100 hours a week.* (from a management official)

> *The meetings were held in hotels in Oakland, Los Angeles, and Chicago. The places just pulsated with activity. We tied up all the conference rooms in these hotels for the meetings of the BTGs as well as for caucuses. The schedule was very intensive, with many meetings, lots of dinner meetings as well. There was a lot of air travel and schedules kept getting revised many, many times.* (from an FMCS official)

Training

RAI had developed a systematic way of presenting the concepts and skills necessary for IBN, and early in the KP Partnership journey; extensive training took place in this approach to problem solving and negotiations. Over 400 individuals who would be involved in local bargaining, the BTGs, and the CIC, were trained by RAI in the principles and tools of IBN. Their pedagogy drew its inspiration from the work of Fisher and Ury (1982). These authors believed the traditional approach to negotiations suffered from (1) too much focus on people, i.e., fixing blame; (2) the taking of positions because solutions were advanced early in the discussions; (3) limited opportunity for generating alternatives, and; (4) heavy reliance on power.

As taught and refined at KP, IBN involved five steps: (1) defining the problem, (2) determining interests, (3) developing options (often using the technique of brainstorming), (4) agreeing on criteria, and (5) selecting a solution. Training of the participants who would be involved in the negotiations was conducted by RAI and FMCS, and took place over a three-day period in early May 2000. The following captures the flavor of the training sessions:

> *During the training, people were excited yet apprehensive. They did not know what to expect. A lot of questions came from the audience. People wanted to know what was going to happen to the issues after the national negotiations — when would local bargaining teams get underway? What would be their input? What would be the ratification process? There were loads of questions. Every question was answered by Leslie Margolin and Peter diCicco. There was very good, open communication at these meetings, and a very positive atmosphere.* (trainer)

Exploration

According to Judith Saunders, Director of National Labor Relations the idea was not to have proposals and counter-proposals:

> *We did not want to approach these negotiations in a traditional manner, where each side submits 100 proposals directing the discussion to singular solutions. Alternatively, we jointly identified and agreed to broad subject matters, and structured joint teams around each subject. The teams were charged with identifying the issues related to their topic and in an interest-based manner, recommending solutions that met the interests of both sides.*

The emphasis was on generating as many ideas as possible and keeping the exploration away from positions, as the following quote illustrates:

> *Our approach was that there would be no proposals. We just had subject matters, and asked the teams together to identify the key issues and the interests we needed to work on. This was very different from traditional bargaining where we would start with 150 issues.* (management official).

All the participants had been trained in the methodology of brainstorming. Interestingly, the management members of the BTGs swung into the procedure differently than their union counterparts. As one person reflected on the process: *"The union folks had more difficulty expressing interests and offered short sentences, while management tended to talk in paragraphs."*

An effective exploration process requires the availability of substantial information. And the BTGs were well supplied with this resource. As one participant made the point: *"We had "tons" of information at our disposal."*

The work of the BTGs was thorough, with flip charts covering all the walls of the meeting rooms. Typically they listed data needs as well as options to be considered.

> *What was important about the process was the concerns that were reflected on the walls (flip charts). So we did not have minutes. We did not want to have a process where people could at some point look back at some minutes and say, "You said so-and-so, and here are my notes to prove it.* (management official)

One union official agreed about this process, *"By design, not being on the record, people could speak more easily, openly, and candidly, and explore more adventurously, without worrying about being quoted or called to task by some after the fact."*

<u>Decision Criteria</u>

One of the challenges in IBN, especially if many options are developed, is how to converge and reach agreement. Here is an observation on this challenge:

> *A key is for the group to establish priorities. And the groups did agree on what were the important standards. For example, staffing was important to the union. Performance was important to the company. Flexibility was also important to the company. So we knew that there were certain things, i.e., certain outcomes that were important to each side. That helped us focus on "how do we shape a contract that we are sure includes these important things?"* (management official)

An important innovation that RAI brought to the effective pursuit of IBN was the notion that at the critical stage of focusing on agreement the parties needed to identify their "make or break" agenda items. In their experience, RAI consultants have found that bargainers find it difficult to agree on general standards or criteria for settlement. Rather, the parties are asked to identify the agenda items that must be resolved before agreement can be reached. Ultimately, it is against this list of "must" items that any tentative agreement must be evaluated.

<u>Mediation and Facilitation</u>

The principles guiding labor mediators have been well established over the years and require a mix of passive and facilitative skills. These range from setting agendas and clarifying issues, to highly active efforts such as making substantive suggestions for compromises, urging parties to move off fixed positions, and at the right time convincing each party that the best settlement offers are on the table (Stevens, 1963; Simkin, 1972; Kochan and Jick, 1978; Kolb, 1983). Facilitating IBN requires learning and then using new skills suited to the more problem-solving mode of interaction.

Yet, like the negotiators themselves, a skilled labor mediator/facilitator must be able to mix these different approaches to their role as the process unfolds and as the situation requires. The parties recognized this:

> *To do this process, you need a knowledgeable facilitator who knows when to challenge, when to allow people to go off process, when to keep them on process. It is not easy, and it takes constant skills of facilitation, reminding people that " that was a position," or "that was an interest", or "are we coming up with solutions that are meeting everyone's interests?" And if someone didn't like a particular solution, are they taking responsibility for finding another solution? Individuals who serve as facilitators need to be thoroughly knowledgeable about the interest-based process in order to be able to do all of this.* (management official)

In an interview, one facilitator described the importance of being able to mix interest-based facilitation with more conventional mediation processes:

> *Initially, this facilitator split management and the union into two groups to determine their interests. On the union side, he found a real reluctance to reveal their interests, for fear this would make them seem weak. Since there were some problems of distrust between the negotiator for the company and the staff representative for the union, who both told stories about each other, this facilitator conducted shuttle diplomacy.*

<u>The Role of Caucuses</u>

The model of interest-based bargaining that is taught in seminars discourages caucuses. However, in this negotiation the parties held different views. The unions wanted to have caucuses so they could talk amongst themselves and iron out differences across coalition members. Management found they needed to talk amongst themselves as well. Given the size and complexity of the organization, many diverse interests were present, for instance, the medical centers from different regions that needed to work things out in private. Issues and solutions differed across KP and representatives necessarily wanted to thrash these out away from the main table.

<u>Communication With Constituents</u>

In traditional bargaining, the union reports regularly in some detail to its members, and often middle management hears sooner what is going on in negotiations via this route than from official communications.

> *Early on it seemed like the union was out in front because they are accustomed to communicating and keeping their constituencies totally informed. So we had to revamp and create additional ground rules so that putting information on the union hotline was matched with management's hotline.* (FMCS official)

In general, the parties worked hard to coordinate their communications both to the large group involved in the negotiations as well as to principals and constituents. At the conclusion of each session, a report was prepared that kept everybody "on the same page." For another view about the communication challenge, consider the following:

> *With IBN, the theory is to do joint communications. However, our unions felt that in the history of bargaining, they don't trust management in negotiations; they trust their own union negotiators. So they thought it was extremely important to keep that connection with their workforce. About three-quarters of the way through the process, we did do one or two joint pieces. But most of the communications were separate. But the language, while it might be a little different, the messages were the same, and we both knew and concurred with each other's messages that were going out. So messages were going out simultaneously but with different wording for different audiences.*
> (management official)

While the leaders did not communicate all the details of developments in negotiations, they communicated in general terms so people were kept abreast but in ways that did not allow unreasonable expectations to develop.

<u>Resolving Distributive Issues: The Question of Money</u>

The question that is most frequently asked about IBN is whether it can apply to the negotiation of money items. Or stated in the language of negotiations theory: Are there some distributive issues that are difficult to deal with through IBN and therefore must be handled in a more traditional manner? The skepticism goes to the point that there are only so many dollars to spend, so how can the parties generate different options and maximize joint gains with respect to economic issues. Aren't these matters "win-lose" in nature?

In this negotiation the first cut at the issue of wage increases took place within the BTG charged with this agenda item. The participants agreed on the guideline that KP should pay "darn good wages." Ultimately, the resolution of the wage increase issue had to be settled at the main table (the CIC), and at a critical stage the union representatives accepted the reality (and the assertion) that management had "cleaned out its pockets" and that there was no more money to spend. This statement was accepted as credible when it came from Leslie Margolin, KP's chief negotiator because she had built a high level of trust with her union counterparts. Still several union leaders wanted to, as they put it, "shake the trees" to test this statement. It took considerable arm-twisting within the union team to blunt the use of this tactic. Likewise, Margolin had to deter her management colleagues from making new demands or backtracking on prior agreements.

Once both sides realized that the best financial offer was on the table and acceptable, they could focus on the question of how to maximize value, devising the best allocations for the distribution of the available resources. Consider one aspect of this:

> *We decided to allocate one piece of money at the discretion of each region and for each individual union in that region. For example, they got across-the-board increases,*

> *and a pot that they could use for equity, reclassifications, and shift differentials, whatever. That process took quite a while, but it worked.* (management official)

Meeting the Challenges

The culmination of the ambitious and complex process of negotiating the first national agreement came in October 2000 when the various locals ratified their respective agreements and the national agreement by an unprecedented 92%.

The Office of the Labor-Management Partnership (OLMP) summarized the biggest challenges that were faced during negotiation of the national agreement. The answer is instructive:

- size and complexity: managing the complexity of the Partnership (8 national unions with 25 locals and 33 contracts, five regions, the duality of Kaiser Hospital and Health Plan and Permanente Medical Groups, 400 facilities across the country, 300 participants in the BTG process and 70,000 represented employees)
- diverse cultures: company culture of regional autonomy and union culture of separate negotiations and working separately based on specific kinds of work responsibilities, roles, and skills
- time pressures: insufficient time allocated for a new process
- access: need for quick access to reliable data
- availability: availability of tools and processes to keep all constituents informed and bought in
- communication: consistently communicating the details of the final package to avoid multiple interpretations

Not all of these challenges were handled as well as the parties would have liked and several learnings have been identified and will be highlighted shortly. Nevertheless, by any standard the result is truly impressive. Indeed, the accomplishment of KP and the unions in executing this national negotiation has caught the attention of the national AFL-CIO. As one official put it, "It makes me quite open to looking at this approach [IBN]." And from the perspective of an experienced observer:

> *I have never seen anything like what took place in these interest-based negotiations. I have done a lot of multi-union/employer bargaining in every industry. And before the Partnership, I had seen considerable adversarial bargaining in this relationship. I commend the parties for taking on this challenge and for focusing on a new process. Kaiser has spent a lot of money, and the impact of this on the larger health care industry could be substantial.*
>
> *The agreement is an incredible document in terms of principles, structure, and the framework it has provided for the implementation of the Partnership. This is an amazing result that they have produced.* (mediator)

In addition to the items agreed upon, the work of the BTGs set the stage for tackling unfinished business during the life of the five-year agreement as well as a starting point for the next negotiations. Consider the following:

> *I would fully expect that in the next contract negotiations, instead of getting brand new Bargaining Task Groups with seven new subjects, that we would go to the earlier set and realize "how far we have come" in terms of recommendations that were put in place. This should be the priority for the next contract, rather than starting all over again? We don't want to lose sight of much of the work that the Bargaining Task Groups put in place as we move forward, and as we need to begin to develop other recommendations.* (management official)

Capitalizing on the camaraderie and cohesiveness of the participants as a team of committed champions has not yet been realized to the fullest extent. Some of the work of the BTGs has been carried over directly into ongoing projects. For example, the emphasis on safety in the first year of the agreement has drawn heavily on the work of the BTG charged with this important subject. On the other hand, workforce planning has not moved beyond the discussion stage reached during the 2000 negotiations.

Putting Interest-Based Negotiations in Perspective

What were the factors that made it work? Again, it is instructive to cite the answer offered by OLMP:

- existing relationships built up over the years (people liked each other)
- during up front training many learned that they were on the same page
- deciding up front that the outcomes had to be better than prior negotiations
- people at the table could make decisions
- broad participation created champions and momentum to succeed
- focused leadership from CIC and Margolin and diCicco
- allowing the process to stop if not working, but knowing the consequences of stopping
- facilitation that kept a focus on interests and not positions
- a deadline

The parties have committed themselves to engage in a thorough review of the challenges and strengths of the 2000 negotiations in order to solidify learnings that will be useful for the next round of national bargaining.

Effective leadership was an indispensable element in the successful national negotiations. We have stressed the key roles that Peter diCicco, Leslie Margolin, and John Stepp played, not simply to note their contributions but to emphasize the importance of having skilled, highly credible leaders who are sensitive to internal constituency needs and yet willing and able to negotiate in ways that allow bilateral negotiations to move forward. Moreover, the negotiators needed to be seen as willing and able individuals who could mix IBN and more traditional negotiation processes and tactics as necessary.

Margolin's and diCicco's reputations as hard bargainers were essential to the credibility and trust they enjoyed with their respective constituents. Margolin could adopt a forcing strategy when necessary and it would be received without engendering a negative pushback. Towards the end of the process (when impasses tend to develop), Margolin delivered the following message at a meeting of CIC:

> *The timeline is driven by the need for me to present the final package to the Board on September 13. I need to be able to tell the Board that all local tables have reached agreement, that the union bargaining committees are prepared to recommend ratification to their members, and that ratification is highly likely. <u>If I cannot report this status to the Board, they may decide to redirect funding to other projects. (underlining added for emphasis)</u>*

Trust is often mentioned as a key element in explaining why some negotiators are able to work productively to reach effective agreements. Margolin and diCicco had worked closely together since 1998, soon after the signing of the first phase of the Partnership and as a result they had developed a close working relationship. This working rapport carried over to the extent that Margolin could attend union caucus meetings and provide credible input regarding management's proposals.

Margolin and diCicco must be seen as skilled leaders of their own respective organizations. In fact, their success in negotiating the first national agreement in large part was the fruition of a much longer journey in developing alignment across the disparate elements within their respective domains. On the union side, diCicco had been able to weld together 26 separate unions into a working coalition, a remarkable accomplishment given the diverse locations, sizes, and approaches to collective bargaining. On the management side, developing consensus was just as challenging, as witnessed by the initial turndown of the proposal by the KPPG to engage in national bargaining.

As we noted in the discussion of the bargaining process, internal divisions surfaced at several points and led to mini crises. Without the investment in internal organizational development that diCicco and Margolin had fostered, the national negotiations might never have gotten over these rough spots.

The expertise present in the consultants from RAI and the mediators from FMCS also represented substantial human capital. Starting with the training sessions and running through the signing of the agreements, the role of facilitation was crucial in helping the parties move away from their accustomed approach (adversarial) and in making effective use of the principles and practices of IBN. A member of a BTG put it this way in a debriefing session following negotiations:

> *The facilitators kept the process going. We all put on our traditional masks at the outset – the facilitators helped us to put them on the table and get to work. As it was a*

new process the facilitators helped tremendously. We would have had a much more difficult time if we did not have the facilitators who understood the process.

Another important resource that enabled the BTGs to tackle a wide range of subjects was the presence of line managers who could speak to the operational feasibility of the options under consideration. In traditional negotiations, the management contingent usually consists of labor relations specialists and other staff with expertise in fringe benefits and other "bread and butter" subjects. By contrast, in this negotiation middle managers with significant organizational responsibilities brought important knowledge and credibility to the process.

Another key factor in the success of these negotiations was the "without prejudice" nature of the undertaking. Each side could opt out and return to the existing schedule for negotiating the many contracts. This fallback induced those with doubts to try the interest-based approach for, as one put it, "What do we have to lose?" Of course, once into the process it was not easy to terminate the effort. Hundreds of participants had invested countless hours, and as bargaining proceeded and momentum developed, most wanted to go the full route.

Most negotiations work against a deadline that serves to motivate the parties to seek closure. In the case of these negotiations, the deadline (with the attendant pressures to settle) had to be created. When the architects of the process met in March, they set as a target for reaching agreement, the first of September. While the process went beyond this date by several weeks, this target date motivated the parties and helped with the task of coordinating all of the different elements of the negotiations.

In establishing the timeline for the process, ample time was allocated early on for training of all participants in the concepts and skills of IBN. This preparation was important for giving everyone a thorough grounding in the theory and practice of what for many was a very different approach to bargaining. This baseline of training gave the facilitators a reference point for their interventions into the process. So, for example, when a group would get stuck, the advice from the third parties would be, "Let's go back and reexamine, interests, options, etc."

The schedule also allowed sufficient time for exhaustive examination of the issues. In reviewing the raw data from the process (flip charts and notes from various meetings), one is struck by the thoroughness with which the participants tackled their assignments. The detail is truly amazing. It is also clear from the debrief notes that some thought that the process went "painfully slow" but as one participant observed: *"While we used a lot of time on the process, it did serve as a good clearing house for us to look at all facets of the issues."*

Of course too much detail can prove to be a problem, so when the CIC received almost 400 recommendations from the BTGs, a minor crisis followed. But this is where the creativity of the leadership group, with help from the consultants, established procedures for prioritizing the processing task.

Beyond sheer hard work, the parties formulated creative solutions to some of the toughest process dilemmas. Take one area, communications: the parties struck a fine balance between the ideal of joint communications and the political reality that some communications needed to be "in house." And these communications were sufficiently detailed (as much so on the union side as for management) to inform the constituents but framed in a way to avoid creating unrealistic expectations.

Lessons for the Future

Looking ahead to the next national negotiations in 2005, participants in the 2000 round who have been interviewed would like to see more middle management and doctors involved. Several commented along these lines:

> *We need to involve more local middle managers. Their involvement would make it easier to take back the recommendations. The unions represented front-line workers, whereas managers involved were at the regional or higher level.*

And with respect to the doctors: *"Physicians weren't here. Participants need to include the physicians – they're needed as part of the Partnership."*

The question was asked of OLMP: "When you do national negotiations again, what are the learnings from 2000 that should be highlighted?" The response:

- earlier training for the participants
- develop further the agreement tracking tools
- finalize agreements in writing
- better cross communication among the BTGs and clearer definition of the scope for each BTG
- avoid late night sessions and expect and plan for a more humanely balanced and healthy process
- involve the full CIC in final negotiations

Related to the last point, some wonder if Margolin and diCicco perhaps played too large a role, to the detriment of providing learning opportunities for others on their teams. But realistically, their direct involvement was essential given the divisions on both sides. And the coordination challenge of keeping the work of the BTGs and local negotiations connected with the CIC required strong leadership at the top. Moreover, at several stages the process became "tense and ugly" (to quote the phrase used by one facilitator), and it is doubtful whether the negotiations could have gone forward without the guidance of these two individuals.

The biggest task, and one that will have a major influence on the 2005 negotiations, is the development of robust measures for the costs and benefits of the Partnership and its review by a joint labor-management resource team.

Concluding Thoughts

In summary, what are the highlights of this negotiation story? The parties trained and engaged over 400 management and union leaders in joint problem-solving processes that focused on seven key economic and organizational areas, producing an agreement that enhanced the economic and employment security of the workforce. They established a framework for sharing rewards from future performance improvements, and positioned the parties to implement the partnership principles into ongoing operations over the five-year term of the agreement. These negotiations stand as one of the signal accomplishments of the partnership to date. They are also likely to be recorded by future historians as one of the most significant breakthrough negotiations in U.S. labor relations of our time.

In analyzing the history of these negotiations, it is difficult to capture the extent of the hard work, talent, and leadership of the officials on both sides and the key roles played by the facilitators. This combination of skilled people, resolute determination, and opportunity created the new five-year agreement.

The parties are now involved in implementing the agreement and putting into practice the concepts and skills that served them well in negotiating the national agreement. Of course the good experience of the 2000 negotiations may raise expectations that day-to-day dealings will be transformed and that the principles of IBN will be very much in evidence in ongoing decision making and interactions.

Several months after the completion of the negotiations the participants were put through a debrief and this comment is on point: *"I experienced something when I went back to work. The skill of listening isn't there, so I felt frustrated. I feel this process (IBN) needs to be taken out broadly. "*

Clearly, key turning points are ahead for the Partnership. When the chief bargainers change in the future, how will their successors establish the kind of trust that diCicco and Margolin earned, as well as a working relationship with their counterparts? What if the negotiations in five years occur in a different economic climate, where mutual interests may be much harder to find than in the first agreement? What if negotiations with the one major non-participating union, the California Nurses Association, go badly in 2002? How will the union partners react? Will the Partnership succeed in delivering performance-based pay that is self-funded? How will the requirement for each participant to contribute 6-9 cents per hour to the costs of the Partnership affect morale, commitment, and a sense of ownership? In 2005, will management and labor leaders have the same clear picture of their adversarial past that motivated them to find a better way to bargain in 2000? Or will this be a distant memory not shared personally by those who will shape the new negotiations? If so, will they need a visible reminder of what the alternative would look like? And finally, will the partnership enable Kaiser to provide market-leading quality and affordable health care that will meet the long-run interests of all the key stakeholders?

The future is difficult to predict but we believe that researchers and practitioners, especially labor and management negotiators, can learn a great deal from studying the groundbreaking negotiations of 2000.

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Appendix A

Kaiser Permanente National Labor-Management Partnership Agreement (Excerpts)

PURPOSE

Improve the quality of health care for Kaiser Permanente members and the communities we serve.

Assist Kaiser Permanente in achieving and maintaining market leading competitive performance.

Make Kaiser Permanente a better place to work.

Expand Kaiser Permanente's members in current and new markets, including designation as a provider of choice for all labor organizations in the areas we serve.

Provide Kaiser Permanente employees with the maximum possible employment and income security within Kaiser Permanente and/or the health care field.

Involve employees and their unions in decisions.

PROCESS AND STRUCTURE

Senior Partnership Committee: Executive level of KP Executives and Union Leaders to establish targets, goals, timelines and to discuss strategic issues, and to oversee implementation and review of the process.

The parties recognize and agree to hold proprietary information in strict confidence and agree information obtained in the course of the Partnership will not be used to the detriment of the other partner.

The parties will jointly select a third party consultant to assist the Partnership.

Each business unit participating will establish a Partnership Steering Committee with equal numbers of members from the unions and the company.

Kaiser Permanente will bear the costs of administering the Partnership. Union officials who are not Kaiser Permanente employees will be responsible for their own costs.

DECISION MAKING AND SCOPE

Decision-making will vary from situation to situation but should be governed by two criteria: (1) The degree to which the parties' constituent or institutional interests are likely to be affected by the decisions; (2) The level of expertise or added value the parties can bring to bear on the decision to be made.

If either party's vital interests are likely to be affected by the decision, consensus should be used. If constituent or institutional interests are even marginally affected, consultant should precede a final decision.

If one party has little, if any interest in the outcome, and no particular expertise on an issue to be decided, informing is adequate.

In the absence of consensus, mandatory bargaining subjects will be resolved in accordance with contractual and legal rights On non-mandatory and non-contractual subjects, management reserves the sole responsibility and right for the final decision.

The scope of the Partnership should be broad and should include: strategic initiatives; quality; member and employee satisfaction; business planning; and business unit employment issues.

EMPLOYMENT AND UNION SECURITY

The Parties acknowledge a mutual obligation and intention to maximize employment security for Kaiser Permanente employees. We recognize that that there could be circumstances when such a commitment cannot be achieved. In such cases, the Partnership will make use of attrition, growth of the business, aggressive job matching, short-term training efforts and other mechanisms agree upon by the Partnership participants. There will be no loss of employment to any employee because of participation in a Partnership program or worksite.

The parties believe that Kaiser Permanente employees should exercise free choice and decide for themselves whether or not they wish to be represented by a labor organization. Where a signatory union becomes involved in organizing Kaiser Permanente employees, the employer will maintain a strictly neutral position.

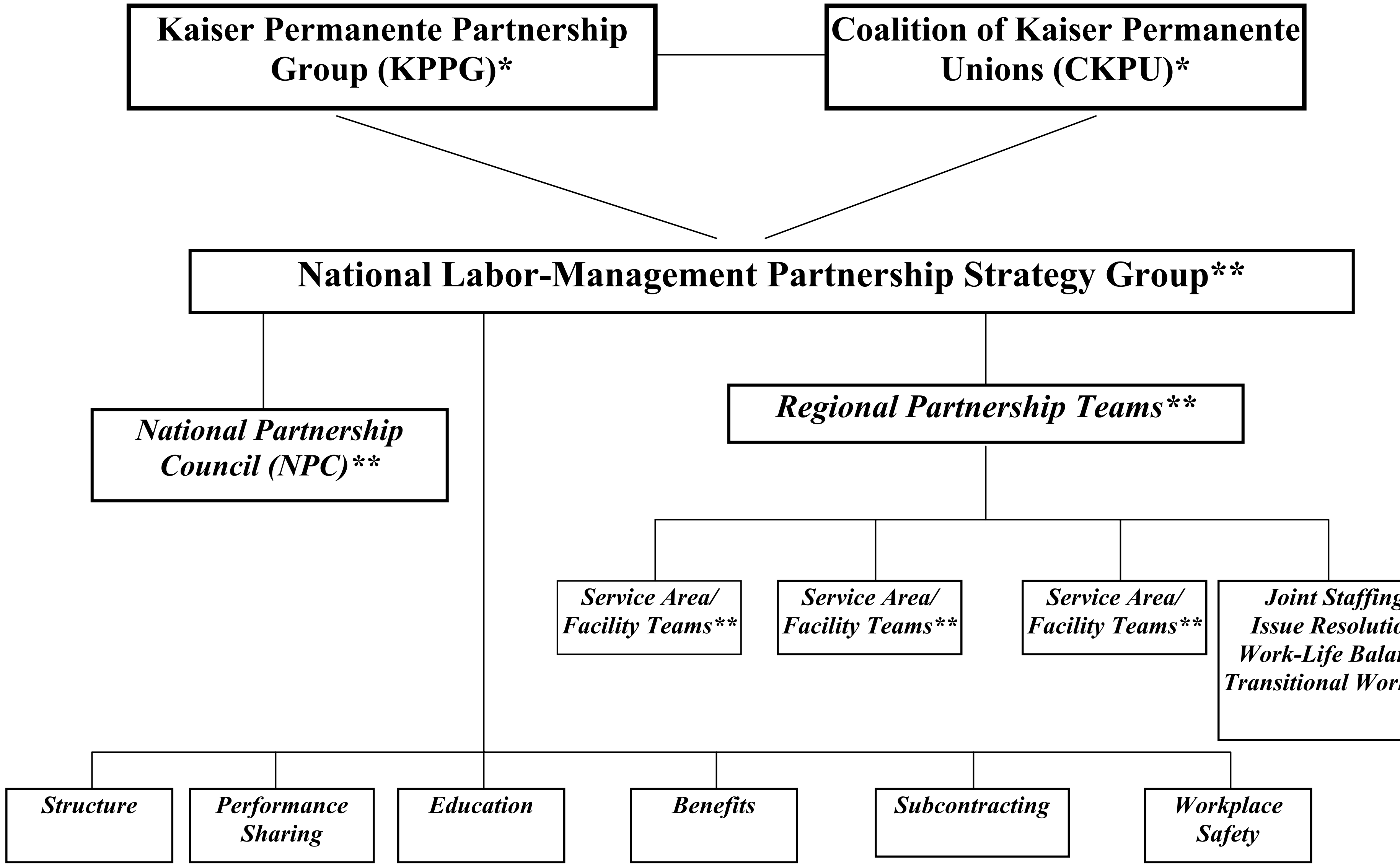
MARKETING COOPERATION

All parties will make their best efforts, as opportunities arise to market Kaiser Permanente to new groups and individuals and to increase Kaiser Permanente's penetration in existing groups.

APPENDIX B

ORGANIZATION CHART FOR THE PARTNERSHIP

Joint LMP Contractual Committees



**   Independent Governance Bodies*
***   Joint LMP Contractual Committee/Team*
**** Functional Responsibility*

APPENDIX C

Excerpts from the Agreement and Other Documents