

# **An Examination of Alberta Construction Industry Collective Bargaining**

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## **Introduction**

Alberta construction industry collective bargaining between the Building Trades Unions and the Registered Employers' Organizations, in 2010/2011 and in 2014/2015, used an interest based bargaining approach to great effect. This article will review some of the unique features of construction legislation in Alberta, the events which lead to the adoption of the interest based style of bargaining, the process used and will compare the 2010/2011 round of bargaining with the most recent 2014/2015 round of collective bargaining.

## **The Legislation**

Under Alberta's Labour Relations Code employers can form a Registered Employers' Organization (REO). This allows a group of employers to bargain together with the trade unions in the province. The trade unions cannot bargain with employers separately but must bargain with the REO. Negotiations are conducted province wide, trade by trade and the Labour Relations Board has the power to decide which trade unions and registered employers organizations to group together in respect to a consolidation order. Initially there were three such groups of trade unions in the General Construction Sector. Similar trades that formed a community were grouped together. The first group of trades were those which put up the envelope of a structure or project, the second group of trades handled the systems within the structure or project and the third group of trades were responsible for the decorating and finishing of a structure or project. Later four groups of trades were established through the agreement of the unions and the employers, based on prior bargaining experience. These four groups from the perspective of the unions enabled them to exercise their prerogative to strike.

The legislation sets the bargaining cycle with expiry date at April 30<sup>th</sup> in each odd numbered year. The term of the agreement is therefore a minimum of two years. For a strike to occur, 60% of the unsettled trades in the consolidated group, must apply for a strike vote. Then for a strike vote to carry, 60% of the voting employees overall of the unsettled trade unions in the group must be in favour of strike action and a simple majority of employees voting in 60% of the unsettled trade unions in the group, must support strike action. There is a similar and parallel process for lockouts. This double majority test ensures the desire for a strike has to have broad approval. The legislation also states that once 75% of the trades in the sector, such as the General Construction Sector, have settled and have ratified agreements in place, the remaining disputes can be referred to arbitration which is called a Construction Industry Dispute Resolution Tribunal (CIDRT). The appointment of a CIDRT has the effect of terminating any strike or lockout or preventing one from occurring.

## Background

In the years leading up to 2010 the Alberta Building Trades and the construction contractors, in the words of Herb Holmes, a negotiator with the Construction Labour Relations Association, "...had a history of animosity." It took two years from 2003 to 2005 to conclude the round of bargaining with agreements to 2007. In the view of Warren Fraleigh, former Business Manager of the Boilermakers and current Executive Director of the Building Trades, raises were insignificant, in the 1.5% to 2% range. "It was tough bargaining. The trades settled independently in order to get to the 75% of the trades to prevent a strike by those who did not settle. There wasn't much real bargaining going on," he said.

Mr. Fraleigh explained that in the 2007 round of bargaining, the Building Trades wanted, "...to push the envelope. We brought the employer to the precipice of a strike to maximize our leverage. We needed to position ourselves to legally go out on strike. We took things to the edge." At that time, individual trades negotiated with the Registered Employers' Organizations (REO's) at separate tables. Many unions were unhappy with negotiations and showed their displeasure by taking strike votes. The Carpenters for example, gave the employer 72 hours strike notice on a Friday and walked off the job on the following Monday. In the meantime the Labourers settled, resulting in the 75% figure being achieved for the General Construction Sector. No one could have predicted such illegal action. Workers from many trades walked off the job. There was chaos. Picket lines were set up at the various projects such as the Petro Canada Refinery site in Edmonton. The Labour Relations Board issued back to work orders but many workers ignored these and continued to stay off the job. "You need to have a plan to draw back from a strike, but there wasn't one," stated Mr. Fraleigh. Bruce Moffatt, the Operating Engineers' Business Manager described the 2007 round of negotiations as "...a disaster, a wreck."

The unsettled trades were referred to Construction Industry Dispute Resolution Tribunals (interest arbitration). The Carpenters and Pipefitters agreements were settled in this fashion. The overall settlement was a wage increase of 22% (24.4% compounded) over four years (6%, 5%, 6% and 5% respectively)

"The unions were pissed off at how difficult it was to get to be in a legal strike position under the Labour Relations Code because of the double majority and the 75% rule," Mr. Fraleigh explained. The Boilermakers, Electricians, Carpenters and the Pipefitters challenged the legality of the Code saying it violated the Charter of Rights and Freedoms. The Charter challenge went on for a year and a half.

The 2003-2005 round of negotiations resulted in marginal increases for the unions, but were fair in the eyes of the contractors, given the state of the economy at the time. The contractors did not want to price themselves out of the market. The 2007 round gave the unionized employees a 24.4% wage increase over four years. At the time, the economy was strong and growing, inflation was on the rise and contractors and unions were having difficulty finding workers to fill jobs.

The economic downturn of 2008-2009 caused both the unions and the contractors and owners to reflect on the negotiated settlements. "The employers and the owners were concerned about the cost of these increases. They had options of taking the work elsewhere," Mr. Fraleigh stated. There was the fear that the Building Trades would get less work from the contractors and construction

owners. The merit shop (non-unionized) contractors offered a competitor to the unionized Building Trades. Plus, the emergence of the Christian Labour Association of Canada (CLAC) as an alternative employee representative, was a threat to the Building Trades. The negotiated settlement called for the unionized employees receiving a 6% raise in 2009. The unions and contractors decided it was not advisable to give that raise in tough economic times, so agreed to a 3% raise instead and to a delay of six months for the other 3% raise. The construction project owners were in trouble and were not in a good position financially. Projects were being cancelled.

It was in the context of the previous acrimonious round of bargaining, and the distinct possibility of work going to the competition, that Neil Tidsbury, President of the Construction Labour Relations Association (CLRA), and chief negotiator for the REO's, concluded there had to be a better way of negotiating construction industry collective agreements with the Building Trades. He met with the four unions who filed the charter challenge and discussed with them different ways of being more responsive to the construction industry. They examined the way collective bargaining was conducted, searching for a better way. "At that time there was a realization of the harm done by the parties. As an industry we had unravelled a huge amount of positives and good will," stated Mr. Tidsbury. The Charter challenge caused a lot of uncertainty amongst the owners. They did not know what the outcome would be, thereby impacting the possible awarding of contracts into the future. "It was a reflective moment for us as well," Warren Fraleigh explained. The unions involved began to question the worth of the challenge and what its' impacts were.

Neil Tidsbury approached the four unions proposing a different approach to solving the parties' problems, a more respectful, interest based way of listening to one another, a facilitated communication. The unions were interested in exploring this so a Problem Solving Committee was established, consisting of representatives of the unions and the REO's. Both parties agreed to explore this opportunity to do things differently. The Problem Solving Committee got to work and tackled four issues namely, the 6% increase going to 3% and 3%, Project Labour Agreements (agreements specific to a particular project), fly in and out schedules (e.g. 10 and 4 schedules and 14 and 7 schedules) and attendance and performance issues.

The Committee invited other unions to partake in these discussions as well. The Committee members employed facilitators, one of whom was Mr. Lyle Kanee to help the problem solving process. CLRA and the Building Trades had negotiated a comprehensive labour agreement for the Petro Canada project, with the assistance of Lyle Kanee as a facilitator. So it made sense to engage Lyle Kanee to facilitate some of the discussions of the members of the Problem Solving Committee.

The Committee resolved all four of the contentious issues, causing the members to wonder whether they could find a better way of conducting collective bargaining.

## The Framework Bargaining Model

The facilitated discussions in the Problem Solving Committee resulted in the concept of Framework Bargaining coming into being in early 2010. “With Lyle’s help we developed a memorandum for Framework Bargaining and the REO’s found ways to deal with the issues,” stated Warren Fraleigh.

The memorandum was officially called, The Memorandum of Conditions for Joint Bargaining, signed off by about fourteen Employers’ Associations and an equal number of Building Trade Unions, in early 2010 which contained a number of key elements:

- A proposal for four consolidated bargaining groups to be jointly submitted to the Labour Relations Board.
- A rigid timetable for the commencement, conduct and conclusion of Framework Bargaining and Trades Specific Bargaining including dates for reaching a memorandum of agreement and the ratification of same. All of this was to be completed prior to the expiration of the previous agreement, April 30, 2011.
- The parties opened early with the intention to complete Framework Bargaining by mid-December 2010 and to conclude Trades Specific Bargaining by the end of February 2011.
- The use of a Bargaining Coordinator, whose role it was to ensure the parties kept to the timetable.
- The agreement of the parties as to what issues were to be discussed at Framework Bargaining, prior to the commencement of bargaining, with the understanding that these issues would be negotiated as common terms applicable to all the participating trade jurisdictions.
- Unique terms and conditions of employment could be deferred by the Framework Bargaining Committee to the Trades Specific Bargaining Committee.
- Parties unwilling to have an issue negotiated on their behalf by the Framework Bargaining Committee could opt out in respect to that issue. Whether or not a party opted out they could not bargain that issue on their own until Framework Bargaining was completed.
- The utilization of a mutually agreed upon facilitator to assist the parties on the Framework Bargaining Committee.

The unions formally dropped their Charter challenge after the signing of the Memorandum of Conditions for Joint Bargaining.

With Framework Bargaining the Unions and REO’s gave up their autonomy to bargain on their own. It was new to the construction industry in Alberta and the people involved were willing to give it a chance. “People stepped up. They were committed to the process. There was a change in the environment and culture. It was a breath of fresh air. People were strangely optimistic. They were leery but supportive. There were no other alternatives,” explained David Galvin, President of the Boilermakers Contractors’ Association of Canada and one of the spokespersons for the REO’s at Framework Bargaining.

## The 2010/2011 Round of Bargaining

The REO's selected Mr. Gary Truhn, Vice President and General Manager of PCL and Mr. Neil Tidsbury, President of CLRA as their chief spokespersons. The Building Trades chose Mr. Warren Fraleigh, Business Manager of the Boilermakers, to be their chief spokesperson. He was perceived by some as one of the most radical of the union leaders. However he quickly became a champion of the Framework Bargaining process. Herb Holmes described him as, "...smart, articulate, serious, intelligent and hard working. He had the best interest of the construction industry at heart."

In September of 2010 the parties put their respective issues forward. They were purposely called issues and not proposals. "We came up with our issues fairly quickly and didn't have to refer back to the protocols very often, we didn't have to use the formal voting process we had established. Instead we found consensus. It was a positive experience and was another example of how to work together. We bargained for the industry as a whole not for the individual unions. We were all in the same boat," Bruce Moffatt, Co-Chair of the Unions' Framework Bargaining committee, explained. The unions over the summer of 2010 had been working with Bertha Greenstein, the Director of Mediation Services for the Government of Alberta to develop a decision making process which Mr. Moffatt referred to above. If the unions could not come up with a consensus during bargaining the issue was to go to a vote of the unions.

Bargaining began in September 2010 with the Framework Bargaining Committee scheduled to complete bargaining by December 13, 2010. The Trades Specific Bargaining commenced concurrently with a targeted completion date of March 2, 2011. The unions signed on to the process with the ability to opt out if they wished. "So there was zero risk for the unions. If Framework Bargaining was a disaster, then there was still time for the unions to bargain in January in the traditional way," Lyle Kanee explained.

Mr. Kanee would help Neil Tidsbury and Warren Fraleigh develop an agenda for each meeting and would facilitate discussions for each of the issues raised. The process used was a problem solving one. Issues were presented to the Framework Table that were broadly based issues, ones that had a common impact on all trades, such as overtime, travel and industrial rates of pay, and not specific to any one trade. Individual Trades Bargaining Tables were used to settle issues specific to each trade, for example tool lists and commercial terms and conditions. The Framework Bargaining Table took the pressure off the individual Trades Bargaining Tables, freeing them up to talk about the market and using interest based bargaining to work together to get jobs and projects.

Facilitator Lyle Kanee introduced the parties to interest based bargaining using the following six step process.

1. Establishing Ground Rules
2. Identifying the Issue(s)
3. Identification of Interests

4. Generation of Options
5. Evaluation of Options
6. Closure

Ground rules involved such things as one person speaking at a time, voicing issues openly to the full group and being respectful of each other's ideas and suggestions. The identification of issues was simply a description of the problem, reframed as an open-ended question like "How can we... or What is the best way to...?" To identify an interest one must share information openly, use questions to learn more about the interest, and practice effective listening. The generation of options involves brainstorming a full range of possibilities, withholding judgement on each until all options have been mentioned, and being as creative as possible. Once the options have been listed they are evaluated against the respective interests of the parties involved. Consensus decision making usually takes place at this step. The last step, closure, occurs when all members of the group support the decision reached. The group's decision is the best course of action in the circumstances.

In the words of Warren Fraleigh, "Lyle Kanee's influence was significant. He had the trust of the parties and he had the industry's interest at heart. During negotiations he held us accountable. Lyle Kanee was chosen as the facilitator because of his reputation as the Vice Chair of the Labour Relations Board and his preference to mediate with the parties rather than go to a formal Board hearing. Lyle was very well respected by all. He helped us with the problem solving stuff."

For some of the bargaining committee members moving from traditional positional bargaining to interest based bargaining was difficult, for others they were familiar with the interest based approach. The parties in Framework Bargaining first identified their interests in bargaining generally. With Lyle's assistance they brainstormed interests and identified their mutual interests such as: be competitive, keep the construction owners happy, and obtain a ratified agreement. The parties' separate interests were documented as well. The mutual interests were often referred back to as a criterion to reach agreement on specific issues. "There was serious buy-in to the process by both parties," stated Mr. Kanee.

First, the facts around an issue had to be uncovered. The parties had to drill down to get the facts. Often what is discussed at the table is just rumour or perception but when the real facts of the situation are known then the parties can deal effectively with them. Once the facts are known the parties can discuss each of their interests surrounding a particular issue or topic. Next the parties discuss how their interests can be met and how the problem with the issue can be solved. The parties then brainstorm possible solutions for the problem or options available to the parties. Each of the possible options are examined in the context of whether or not they would work in different situations or scenarios. This discussion leads to a narrowing of the options down to a short list and in the end, consensus is arrived at for the best solution.

If the parties got bogged down, Lyle Kanee would assist them. He would caucus with either Management or with the Unions or he would take two of the co-chairs from management and two of the co-chairs from the unions aside and ask them questions like, "Will this solution work?" or he might offer recommendations in terms of process. The Framework Bargaining table was, "...an open forum and engaged all those present. There was an openness and a

transparency. Everyone was involved and everyone was valued,” Mr. Galvin explained. From the union perspective the assessment of the situation was similar. Bruce Moffatt stated, “I was blown away at how quickly the union representatives adapted to interest based bargaining. We were able to brainstorm creative solutions. For any given topic Lyle would ask what are the interests for each side and what did we want to achieve? When brainstorming, he would draw us back and say remember the interests expressed. If the solutions did not fit the interests, he would address that.”

For example, the issue of transportation to jobs from camps and back, was discussed. First, the parties brainstormed their interests concerning this matter, some being mutual interests and others were not. Once the brainstorming of interests was complete the parties then brainstormed solutions to the issue. Each potential solution was evaluated against the interests that were generated previously. The solutions were then narrowed down and compared to the overall general interests.

Solutions were worked through at face to face meetings with only some caucus meetings. Mr. Kanee did not shuttle messages back and forth between the parties. He consciously had the parties present their various solutions face to face.

If the options did not fully meet the interests of either party Lyle Kanee would have the parties circle back and review the interests again. The parties re-visited their interests and then went through the option generation activity. Once the options were agreed to they would be articulated into contract language.

Mr. Brian Halina, Director of Labour Relations for the Electrical Contractors Association of Alberta, described a typical day at Framework Bargaining saying, “We had a spokesperson for each side and had caucus rooms. We would pick an item and ask the group, what are we trying to accomplish? We then put all of our interests on the board and listed what was good and bad about them. We discussed what the problems were related to the item and then reviewed possible solutions to the problem. We listed all the pros and cons to each solution. Sometimes the parties broke for a caucus meeting to discuss the item but both parties came to consensus. There was a lot of give and take. We went over what would and wouldn’t work. Lyle Kanee kept us on track. He identified possible solutions and he assisted the parties to create draft language. Early in the process confrontation disappeared.”

With regard to the negotiation of wages, the approach was no different. Neil Tidsbury explained the unions’ interest was to maintain and increase the purchasing power of their members whereas the employers’ interest was to develop some proxy for the demand for construction projects.

Graham Lowe, University of Alberta professor, was engaged by the parties to look at different options or criteria to set wages. One example was a Building Trades market share index. Another index proposed was employment rates. The parties eventually agreed to a mix of a) changes to the Consumer Price Index and b) the price of West Texas Intermediate Crude oil,

based on a six month moving average. It was important for the parties to land on a formula which could be easy to explain to the members. Complex criteria were not going to work.

The settlement achieved was a freeze in wages in the first year, 2011 and for 2012 an increase based on the CPI, no less than 2% and no more than 4%, comparing the CPI for December 2012 with the CPI for December 2011. In the third and fourth year of the agreement (2013 and 2014) wages were pegged to the price of oil, resulting in a 14 cent an hour increase in May of 2013 and an increase of 75 cents on average for November 2013. In 2014 the May increase was again 75 cents per hour. The November 2014 increase averaged between 55 and 75 cents, depending on the specific trade. Over the course of the final two years of the agreement the members received a 2% real wage gain, after inflation. This wage formula was a radical departure from previous rounds of construction collective bargaining. Facilitator Kanee's job, during these discussions around the wage formula was never to evaluate the options but to assist in the discussion of them.

"The formula adopted was symbolic in the sense that it conveyed to the owner community that the Building Trades got it. The price of oil dictates everything. The formula was a way of telling the owners that the parties to bargaining, understood the consequences of changes to the price of oil," stated Lyle Kanee.

Warren Fraleigh spoke of the wage formula saying, "We needed some sense of reality to determine wage increases and some sense of where the economy was going. We did a lot of research to end up with the right criterion." Did the formula serve us well? The first increase in May of 2013 was just 14 cents, based on the year over year change to the CPI. That raise was not indicative of the economy at that time. The members saw it as a slap in the face. However, each of the November 2013 and the May 2014 increases were in the 75 cents per hour range. Those increases re-instilled our confidence that the formula might work."

Another radical feature in the new agreement was the inclusion of two model Special Project Needs Agreements (SPNAs). In the past, site specific agreements called Project Labour Agreements had been ad hoc and each had to be ratified by the unions. They saw this as problematic. Now, after the 2010/2011 negotiations, SPNAs replaced the Project Labour Agreements and were standardized and formed part of the Collective Agreement. The members ratified the inclusion of SPNAs in the agreement.

Template A was for remote jobs, which included such things as shifts and fly in and out schedules, and Template B was for local jobs in the Edmonton and Calgary areas. Both Templates contained a no strike no lockout clause for the duration of the project. The criterion for the use of one of these templates was that an owner, a multi trade contractor, or the Building Trades had to request the use of the template and the project would have to utilize at least four different crafts or trades. The templates worked well for the first six months of the agreement but then owners wanted to include variations and special requests. "We are struggling with the SPNAs. It did not achieve the universality we wanted," stated Mr. Fraleigh.



Another unique part of the Framework Bargaining process was the communication of the tentative agreement to the parties' principals. The Building Trades Unions used the communication firm of Calder Bateman to craft a consistent message that was provided to all the trade unions. It was important that a consistent message go out to the union members from their respective Business Managers and Agents in order to sell the ratification of the tentative agreement. The Unions let the REO's review their communicate to help the REO's develop a similar consistent message for their principals as well. All the parties' communications, were consistent.

Part of the agreed to time table was a common ratification date for all the unions. "We did not want to have some of the unions ratify before others. All the union Business Managers would say the same things at the same time," stated Bruce Moffatt of the IUOE. What resulted was, "We didn't have one union dissenting. We all recommended the tentative agreement together and it was ratified by more than 75% of the trades before the expiry of the old agreement," (April 30, 2011) Warren Fraleigh explained.

A number of post bargaining de-brief sessions on lessons learned were held and facilitated by Lyle Kanee. During this process all items in negotiations were reviewed. Overall everyone was pleased with the process. Gary Truhn said it best. "The 2010 round developed good trust. All those at the table were big into the process and our needs were met, both the unions' and managements'." Another positive outcome of the 2010/2011 round of bargaining was that most trades had settlements pending ratification by April, 2011. Even some unions not at the Framework Bargaining Table ended up adopting much of the issues settled at Framework Bargaining.

Framework Bargaining was radically different than the traditional process used in the past. Interest based negotiation was used successfully for the first time by the parties. In addition, third party neutrals usually are not used at the start of the process but are called in when things are not going well for the parties. Lyle Kanee as the Facilitator was there from the beginning, helping the parties apply the new Framework Bargaining (interest based) process.

Mr. Kanee did not want to create a dependence on him, by the parties. He said, "An important piece for me was if we were going to have a four year deal then people needed to be able to sort out issues during the collective agreement." For that reason he did not just shuttle messages back and forth between the parties but brought them into the same room to work out their issues and interests together. It was a conscientious decision on Lyle Kanee's part to develop relations so that the parties could deal with issues as they came up during the term of the agreement.

#### The 2014/2015 Round of Bargaining

What was different in the 2014/2015 round of construction industry collective bargaining compared to the previous round described above? First, more unions participated in this round of Framework Bargaining than the previous round. The Painters and Coating Contractors along with the Plasterers, Reinforcing Ironworkers and Structural Ironworkers had signed on this time around. "We had all the industrial trades represented," stated Mr. Neil Tidsbury.

Another thing that worked, Neil Tidsbury added was that, “We had been through the process before. When we were done we had a feeling we had been part of something special.” That sentiment carried over into the 2014/2015 round. It created high expectations on the part of the participants. In the 2010/2011 round there were no expectations because it was the first time for this type of an approach to bargaining.

Third, there was a different dynamic amongst the participants in the most recent round of bargaining as there were some new people on both sides. Warren Fraleigh, the chief spokesperson in bargaining last time for the Building Trades Unions, was in a different role this time. Previously he was the Business Manager for the Boilermakers, appointed by the Unions as the lead spokesperson, but this time he was working for the Business Managers as the Executive Director, Building Trades of Alberta. . In this role he could afford to be more objective around the process of bargaining. He continued to be a, “...tireless worker with a high level of commitment. His influence was different,” Neil Tidsbury explained.

Lyle Kanee was employed again as the Facilitator and his comments on the presence of new participants related to their knowledge of the interest based process. “Not enough time was taken to prepare people for the interest based process. Four years ago at the last round, people understood what interest based negotiations meant. This time there were some new people. The problem manifested itself at the exchange of issues. On the employer side, some of the issues came out as proposals. They need not have done that. Starting out with a positional approach was not preferred. Not that it was destructive to the process, it just made things less creative than they should have been,” Mr. Kanee explained. That being said Mr. Kanee added there was broader engagement than before. On the union side participation was high and the Framework Bargaining members spoke more than last time.

Others involved in the process also commented on the use of positional bargaining rather than interest based bargaining. Gary Truhn explained that about a third of the way through the bargaining the parties got positional. “We went to solutions too quickly. We had to get back to the needs and the drivers of those needs. Lyle Kanee worked hard to get us back on track using the agreed to interest based process.” In Mr. Bruce Moffatt’s view 50% of the time in negotiations was spent on interest based bargaining, 50% of the time was spent on the positional approach. “Lyle Kanee was very effective and at times got very directive with us in our union caucus and at the joint table.” Warren Fraleigh explained this phenomenon in terms of expectations. “We had new expectations about what we could achieve. We thought we were better than we were. In that way we set ourselves up for disappointment because we did not achieve as much as we had hoped for. We will have to be more prudent next time.” Mr. Neil Tidsbury agreed that some proposals brought forth to bargaining were not framed as problems to be solved. Rather they were stated as positions. He mentioned the example of two break options in a ten hour schedule saying, “...this was worded as a position and should have been articulated as: How to organize the work day for more efficiency?” Consequently, solutions suffered, in his view. “We could have explored more possible solutions had the issue first been

framed as a problem to be solved. This didn't fit the process of interest based bargaining." he added.

A difficult aspect of negotiations in the 2014/2015 round was the wish, on the part of the REO contractors, to harmonize the terms across the trades agreements. In Bruce Moffatt's view this approach, "... made sense on a philosophical level. It was a worthwhile goal but there was not enough money to fix it." For example overtime meals; different agreements had different provisions for the paid time to consume the meal, the flexibility in the time to provide it and different options in circumstances where a meal cannot be provided. "It would be a "big ask" in Lyle Kanee's opinion to take the overtime meal provision up to the highest level and give it to all the unions," explained Mr. Moffatt. Harmonization only achieved limited success with the employers wanting less than the richest provisions in the agreements and the unions wanting to go to the highest common denominator. Facilitator Kanee commented on the issue of harmonization saying, "...it was the contractors and not the unions who were looking for harmonization. It must be noted that different trades and different employer organizations have different degrees of power. If you harmonize, the people who have the power to obtain better terms and conditions will have to give something up to reach a compromise. It is tricky. There are important dynamics at play. The risk is if the different power levels are highlighted and parties have to give up something, then they may start to question the value of the Framework Bargaining approach. They may start to think that on my own I can get a better deal than through Framework Bargaining. If this becomes the view of all parties then Framework Bargaining is in jeopardy. Harmonization has to be incremental. Power is not always in the same place. It is fluid. There is a different power dynamic in each round of negotiations. Some people may think that an outcome is not in their best interest but they can't look at each issue in isolation. They have to look at the big picture. In joint bargaining they are doing this all together as an industry."

Point 8 in the Memorandum of Conditions for Joint Bargaining, signed in March of 2014, created a process whereby...."Parties who are unwilling to have any specific Framework Bargaining Issue(s)...shall have five days...to advise the Framework Bargaining Committee of their intention to opt out in respect to such Issue(s)." Mr. Tidsbury explained that in the current round of bargaining there were more issues where the parties opted out than the last round. All of the trades that had opted out included the complete Framework Bargaining outcomes package in their respective memoranda of settlement. There were no Framework Bargaining outcomes for some of the issues from which some trades opted out – they were sent over to the Trade Specific tables.

Due to the open and forthright discussion which took place in bargaining the parties were able to clear up some misunderstandings on a number of issues. For example, related to the SPNAs, the unions were of the view that the template in the agreement was constantly being changed by contractors. That was the feedback they were getting from their members. The management

team investigated this and at the bargaining table listed all the SPNAs that did not change. The reality was different than the perceptions on this issue.

Framework Bargaining resulted in some effective solutions being achieved. Gary Truhn mentioned the example, travel allowance. "It is automatic on how it changes so we do not need to negotiate it each time." The work the parties did on a review of the construction industry's Alcohol and Drug Policy points out how effective the working relationship had become between the management bargaining team and the Building Trades bargaining team. Although not part of collective agreements, the parties developed a protocol to ensure the fairness of the process of testing. As well a union representative could attend at the assessment de-brief meetings. Mr. Tidsbury explained that the new protocol adopted by the parties was an example of addressing the parties' interests on a matter outside of the collective agreement.

Another aspect that worked in this most recent round of bargaining was the physical setting of bargaining. As was the case in 2010, the negotiation meetings took place at the Operating Engineers Hall, however in 2014 all meals were catered with the costs split between the parties. This made for effective meetings without the problem of taking long breaks for lunch for 40 people. "The creature comforts were provided and the Operating Engineers were great hosts," Mr. Tidsbury explained.

Warren Fraleigh had a similar point of view saying, "People were more comfortable with the process. There was anxiety last time. This time we understood the process better. There was a higher level of engagement too. The process was more fluid. We were more disciplined in the sense we had better attendance and adhered to meeting times. We were better prepared and the timelines worked. We were geared up for solutions. There was more respect in the room and we were understanding of each other from the start. Neil Tidsbury and I were the lead people, as we were last time so there was consistency in the leadership. It was like we were neutral. It was an easier role for me because the last time I was one of the Business Managers. This time I represented all the Building Trades."

On the positive side of the ledger, most of the timelines spelled out in the 2014 Memorandum of Conditions for Joint Bargaining were met. In fact Framework Bargaining concluded a month earlier than the deadline. The physical layout of the Framework Bargaining room was effective. Tables were configured in a big u shape, with wireless microphones for participants to use. Other chairs were placed in the room to allow alternates to sit. Breakout rooms were also provided to each of the parties, as they were in the 2010 round of bargaining.

From the perspective of Facilitator Lyle Kanee the most positive outcome was the parties now having the skills and resources to jointly deal with situations as they arise. In Mr. Kanee's words, "There were some really tough issues and using the interest based approach was helpful. For those issues I thought would be difficult, I met with the leaders individually to really understand the background to those issues, where the hot spots were, and who had strong feelings about

the item. I asked them how they were going to manage their team and the team's expectations. I also reminded them of the value of the interest based approach. That worked well."

The economic landscape changed drastically during the 2014/2015 round of construction industry bargaining. In the fall of 2014 the price of West Texas Crude was approximately \$100/barrel. By the beginning of 2015 the price had dropped to the \$40 to \$45/ barrel range. A tentative plan for compensation developed in the fall of 2010 was revisited in February because of the extreme changes in the economic situation in the province. An agreement was reached on February 9, 2015, resulting in no wage increase for May 2015.

A tentative agreement was signed by the parties on February 25, 2015, agreeing to a four year agreement. As in the 2011 agreement, the 2015 to 2019 wage increases were based on a combination of the price of oil and the Consumer Price Index. This time the formula was as follows:

The wage adjustment for November, to be calculated in the first week of September, shall be:

- (i) If "Oil Price" is less than \$65, zero
- (ii) If "Oil Price" is \$65 or greater, but less than \$85, one half of CPI Change multiplied by the journeyperson gross wage rate stipulated in the Collective Agreement effective April 1<sup>st</sup> of the year of the adjustment.
- (iii) If "Oil Price" is \$85 or greater, but less than \$105, one half of the total of CPI Change and 0.5%, multiplied by the journeyperson gross wage rate stipulated in the Collective Agreement effective April 1<sup>st</sup> of the year of the adjustment.
- (iv) If "Oil Price" is \$105 or greater, one half of the total of CPI Change and 1.0%, multiplied by the journeyperson gross wage rate stipulated in the Collective Agreement effective April 1<sup>st</sup> of the year of the adjustment.

The wage adjustment for May, to be calculated in the first week of March, shall be:

- (i) If "Oil Price" is less than \$65, zero
- (ii) If "Oil Price" is \$65 or greater, but less than \$85, one half of CPI Change multiplied by Group 4 Average Wage.
- (iii) If "Oil Price" is \$85 or greater, but less than \$105, one half of the total of CPI Change and 0.5%, multiplied by Group 4 Average Wage.
- (iv) If "Oil Price" is \$105 or greater, one half of the total of CPI Change and 1.0%, multiplied by Group 4 Average Wage.

In no case shall the total of the May and November wage adjustment in each year exceed 5%.

In the event the above calculations do not result in an increase in 2015 and 2016, the Framework Bargaining Committee shall reconvene discussions in the first week of September, 2016.

Group 4 referred to the trade group number four from the Consolidation Order and included the Boilermakers, Electricians, Plumbers & Pipefitters, Bricklayers – Refractory, Carpenters, Ironworkers – Structural, and Millwrights.

Lyle Kanee summed up the settlement reached as follows. “The parties reached a tentative agreement in compensation in November of 2014 and given the changes to the price of oil, they re-grouped on February 9<sup>th</sup>. They came to an outcome they felt good about. It was a good way to end the process and to begin it again. Given the nature of the industry they now have the skills and tools to be able to talk to one another. For me it is comforting to know they succeeded and they now have the confidence to deal with issues as they arise in the future.”

The parties had agreed, in advance of bargaining, to a timetable for the conclusion of negotiations and for the ratification of the tentative agreements. Framework Bargaining concluded in advance of the December 15, 2014 deadline. Trades Specific bargaining was to commence during the week of September 30, 2014 and was to have concluded on March 2, 2015. A ratification deadline of April 15, 2015 for all trades was agreed upon.

By May 1, 2015 eighteen of twenty-four trade jurisdictions in the General Sector had ratified agreements and achieved the needed 75% to prevent strike action. Four trades had settlements pending ratification namely, the Elevator Constructors, Insulators, Roofers and Carpenters. The Boilermakers initially failed to ratify the tentative settlement but subsequently settled later in May. The Electricians and the Elevator Constructors went to a CIDRT in the summer of 2015. The award in respect to the Electricians was issued in October and the award in respect to the Elevator Constructors was issued in December, 2015.

The same communications consulting company was retained by the Building Trades to craft a common message to the union members on the tentative agreement. The message going out to the union members was shared with the REO's so they could develop a similar common message to the contractors. In Warren Fraleigh's words, “One of the key elements to success is the communication piece. Just like the last round we developed a consistent message for all the trades to use to communicate the tentative agreement. Calder Bateman was used again this round to help craft the message. A key part of the process used this time is confidentiality and consensus. Part of the process for the unions was they had to recommend the outcome to the members and had to support the process by promoting and recommending all issues out for ratification.”

A coordinated ratification process had been part of the Memorandum of Conditions for Joint Bargaining. Some trades did a mail out ballot while others did a walk in ballot. Prior to 2011, the trades released their ratification counts separately meaning one trade could be influenced by the ratification vote of another trade. For example, once one trade rejected a settlement, another trade would do the same.

Trades Specific Bargaining addressed specific issues to each trade. Some of the Trades Tables used interest based bargaining, others did not. “We can never get to one agreement for all trades. So some issues were deferred from Framework Bargaining Table to the Specific Trades Tables. Some trades bargaining was a bit sluggish while other Trades Tables settled early. So the problem could be the time lines we used.” Mr. Fraleigh explained.

What were some of the lessons learned in this round of bargaining? The parties agreed in principle to issues but left the actual contract language to the end of bargaining, creating a backlog of agreements to be written. “We would have been much better off had folks been tasked with writing the language as we went. The parties now had to come back and re-visit some of the proposed wording changes because things had been missed,” Neil Tidsbury explained.

Another one of the lessons learned, from Mr. Tidsbury’s perspective was that the compensation formula tied to the price of oil works well in relatively stable times. “Collective bargaining is not meant to deal with catastrophic events,” Neil Tidsbury added. Another lesson learned was that, “The people involved were stretched, it was a busy time, a lot was going on in the economy and in the construction industry. Perhaps next time we can start in the summer and stretch out the timeline. We could also move some issues to sub-groups and have them work on the options for that issue,” mused Mr. Tidsbury.

## Conclusion

Has the interest based approach to construction industry bargaining in Alberta between the Building Trades and the REO’s benefited the parties? From the perspective of those involved it has. Facilitator Kanee summarized the process saying, “Overall it was a positive experience and an efficient use of time. People were thoughtful and respectful to one another. There was a high level of commitment to the process. They showed up on time and came back from breaks on time. It was an intense process. I was impressed by the level of commitment. They now have the tools and experience to be well positioned to cooperate and meet the challenges ahead. They get it. In the past they have faced challenges and did not have the relationships they now have. Now they have a better chance of success as the challenges arise.”

A similar sentiment was voiced by David Galvin of the Boilermaker Contractors’ Association of Canada. He said, “The adoption of the interest based bargaining process has allowed the parties to, as issues come up, meet and discuss them and come to some mutually agreed solutions. As outside influences affect and impact the construction industry, the REO’s and unions now have a process to deal with these as they come up whether it is a drastic reduction in the price of oil

or changes and updating of the Canadian Model for drug testing and fit for work programs. Now there is a common interest that we are in this together. Your issue is my issue and my issue is your issue. We don't have to wait for the contracts to be over to solve problems as they come up. We want to be the employer of choice and the labour provider of choice,"

Bruce Moffatt of the Operating Engineers concluded, "We function better in Alberta than anywhere else in Canada regarding collective bargaining. We had an interest in making it work. Kudos to Neil, Warren, Lyle and Bertha for helping us get there."

In one sentence Warren Fraleigh summarized the positive effect of interest based bargaining on the parties saying, "The norm for our industry is now interest based bargaining."

It is clear from the comments of the participants in the process that the interest based approach to collective bargaining, although it is a lot of work and is something that continually has to be worked at, results in a more effective solution than traditional position based bargaining. The experience of the REO's and Building Trades has given them the ability and resources to tackle issues and problems as they come up. They have the skills together to work them through.

The Alberta construction industry experience using interest based bargaining can be an example for other unions and employers. The parties involved see the benefits of such an approach. Others can learn from this approach and perhaps use it in the future. However, to be successful, as is shown here in this article, there has to be a commitment to the interest based process. The parties have to be willing to trying something new. They have to work hard at using a collaborative problem solving approach to collective bargaining.

I wish to acknowledge the assistance of Neil Tidsbury, Warren Fraleigh and Lyle Kanee for making this article possible.

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