Collective Bargaining

changing the approach
The Legislative framework of public service labour relations Globally

- In many countries, the Constitution, complemented by national legislation, gives public employees the right to collective bargaining. Although the regulatory framework governing labour relations vary from country to country, the principle of bargaining in the public service is very similar across geographic regions.

- In South Africa Section 23 of the Constitution guarantees the right to fair labour practice and Section 23(5) of the Constitution confers the right 'to engage in collective bargaining'.

- Labour Relations is the enabling legislation that gives effect to these rights.
The Legislative framework of public service labour relations Globally

• In view of the fact that the public service is "owned" by the governments, it has a two-fold function: as employer and as national administrator. This results in almost all countries focusing on efficient performance and delivery of the public service.

• This is also the case in South Africa where focus is on service delivery and provision of efficient services - evident with the recent signing of the Service Charter - to improve services.
The impact of globalization on labour relations and employment in the public service

- Globalization has become part of today's world order and a driving force in global economic development.

- It concerns all actors in the economy, ranging from individuals and households to governments, it also greatly affects the social partners too, since traditional labour relations must increasingly evolve in order to become actually able to deal with entirely new and very dynamic situations.

- The extent of the consequences of globalization on public service labour relations vary from country to country due to differences in culture, political systems, and relative economic strength.
The impact of globalization on labour relations and employment in the public service

- In South Africa as in some other countries fierce demands for services and economic pressures being faced by public administrations are compelling management to demand more concessions from unions in order to avoid relocating jobs to external services.

- The outsourcing of certain public service functions has gradually shifted jobs from their regular locations.

- This trend clearly poses a major challenge to unions in their effort to promote labour relations activities, protect jobs and better working conditions.

- These changes and challenges require labour relations systems to adjust to the globalising world economy and bring new patterns in the conduct of labour relations.
The impact of globalization on labour relations and employment in the public service

- It is evident that Public service labour relations in many regions of the world are in a state of change.

- It can be argued though that in South Africa our approach has been somewhat static and begs the question that perhaps it is time to change our approach to conventional collective bargaining.
Interest-Based Bargaining

• What would that change be?
• Is interest based bargaining the answer?

IS INTEREST BASED BARGAINING A Viable Option for the South African Public Service
Interest-Based Bargaining

• It is generally accepted - IBB is a viable approach to mutual interest negotiations and collective bargaining, in achieving optimal results in the shortest amount of time and reducing strike incidents.

• Still a relatively new concept, when considering that the traditional adversarial model of Position-Based Bargaining (PBB) has been in place for centuries.

• These two approaches are in conflict, not only in method, but also in terms of their foundational values and belief-systems.
What is IBB again?

• Since it first started making an appearance around the mid 1990’s the number of supporters of the IBB approach have shown steady growth worldwide, especially in the public and organised sectors.

• The Federal Mediation and Conciliation Service in the US (FMCS), (which in some ways fulfil a similar dispute resolution role to the CCMA and Bargaining Councils in South Africa, expands on the concept of IBB, where in discussing the concept, it states:
"When everyone understands the interests and concerns that lead a person or group to take a position on an issue, they often find that some of those interests are mutual, that both sides at the table are trying to achieve the same goal, just taking different approaches.

And they frequently discover that what at first appear to be competing interests are not really competing at all.

Dealing with each other in this way makes it possible to generate and consider options to satisfy particular interests that may never have been considered before."
What is IBB again?...continued

- Interest-based bargaining is a process that enables traditional negotiators to become joint problem-solvers.

- It assumes that mutual gain is possible
- That solutions which satisfy mutual interests are more durable
- That the parties should help each other achieve a positive result.
- In the collective bargaining context, it assumes that negotiation, like other aspects of the collective bargaining processes, can enhance the labour-management relationship
The interest based model involves five steps.

For the sake of time constraints I have simplified these steps, and will provide you with a brief overview of each step. Should we begin to practice IBB there would be a need to look into these steps more intensively.
1. DEFINING THE ISSUES FOR BARGAINING

• This process frames the issues. The negotiators jointly develop the issues so that everyone has involvement in defining the issues to be bargained or setting the bargaining range as it is known.

• This is the first step of communication in organising the issues and information needed before the bargaining team commences with negotiations.

This step replaces the traditional setting of demands in the positional bargaining processes.
2. IDENTIFYING THE INTERESTS

• Having framed the issues, step two is for each Party to separately identify their interests underlying the issues.

• Each Party should reflect on the reasons why the issue is on the bargaining table

• The separate interests are then brought together with a view to find mutual overlapping interests and also to learn about interests they did not realise the other party had.
3. DEVELOPING OPTIONS

• During this step Parties jointly develop options through a structured brainstorm.
• The goal is for the bargaining team to produce as many options to solve the issues as possible
• The more options the parties are able to produce the more potential outcomes the Parties are able to fully consider in the following steps.
The Process of IBB...continued

4. FILTERING THE OPTIONS

• This step narrows the options and focuses on discussing the most promising solutions

This step replaces the traditional setting of bottom lines in the positional bargaining processes
5. CONSENSUS DECISION MAKING

• In the fifth step the group comes to a resolution by using consensus.
• Typically several options are combined and fashioned together to create the best solution at that time to meet the interests of Parties.
What are the benefits of IBB?

- The interest based process minimizes power play.
- The process encourages everyone at the bargaining table to become collaborative problem solvers.
- The focus is on the issues and not the individuals during the bargaining process, preventing personal attacks and relationships from deteriorating.
- The process removes the “us vs them” scenario with a “we” scenario, negating adversarial atmosphere encompassing positional bargaining.
- Mutual Gains and benefits is possible, even when there is a “fixed pie”, since the objectives may explore cutting the pie with a “different knife” to find a way to meet all the interests.
Spring Valley School District and the Spring Valley Teachers’ Association tried interest-based bargaining as a solution to a stalemate between teachers, who proposed a three percent pay raise, and the district, which maintained that the budget did not allow for that large of a pay increase. After training, the District and the Association negotiators began the interest-based bargaining process. During the process, the negotiators began to trust one another and probed more deeply either side’s positions. Finally, negotiators uncovered the cause of the three percent request: teachers were having trouble paying for their child care. Discussion and brainstorming produced the final contract: a two percent raise for all district personnel, not just teachers, and a commitment from the District to fund a child care co-op.
An example / Case Study of Interest Based Bargaining

- An example of interest based bargaining closer to home comes from a prominent mediator Mr Azful Soobedaar who the quoted the following scenario at a recent conference: Mr Soobedaar indicated that when mediating at a private sector wage negotiations he used the IBB in addressing a demand by Labour for sick leave to be increased by 10 days.

- After applying the principles IBB already alluded to Mr Soobedaar was able to unlock the demand to be actually addressing a group of employees who had exceeded the EAP age limit and therefore would require more sick days.

- The Parties were able to address their interests through exploring the option of increasing the age limit for EAP to address this group of employees without increasing the number of days of sick leave.

- Typically in traditional bargaining, this matter would have been addressed through positional statements, followed by a sequence of offers and counter offers without actually addressing the issue of access to EAP.
SUMMARY OF IBB

• IBB is an alternative to traditional positional based bargaining.
• This alternative is only possible when the Parties have a mutual interest to improve the relations between labour and management through a cooperative method.
• The reliance on communication and trust and good faith can not be over emphasised for IBB to be successful.
• There is a need to acknowledge that the employment relationship serves two interests and in using IBB as an alternative approach will ensure that both interests are protected and the options explored in serving these interests can be jointly incorporated.
Conclusion

• We have looked at the role of IBB in the collective bargaining context and questioned whether its an option for the South African public service.

• We have also noted that entering Collective Bargaining with a true IBB mind-set achieves the better results in the shortest space of time and should have the effect of reducing strike incidents.
Conclusion

• The South African Public Service collective bargaining structures provides for Chambers in all Sectors, these decentralised structures could be trained and workshopped on the processes of IBB as a starting point to bring about mind shift in our approach to collective bargaining.

• The relationship between labour and the employer at Departmental level needs to be strengthened, the IBB model can that catalyst that improves the relationship.
Conclusion...continued

- Some countries like Canada, the US, and African neighbours like Ghana have developed their IBB processes over many years and it may be wise to learn from their experiences, especially ways to avoid pitfalls and to overcome obstacles to its successful implementation.

- Perhaps the time has come to use and develop interest based bargaining in the Public Service.