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# **Negotiation – breathing life into the employment relationship**

## **Main tasks**

- **Highlight the role negotiation plays in employment relations**
- **Outline the main negotiating processes and differences between them**
- **Consider the changing balance between the different processes**

## **Summary**

It is negotiation that gives effect to the employment relationship. Negotiation involves far more than the management-trade union bargaining over wages and conditions with which it is popularly associated, however. In a phrase, the work organisation is ‘a system of negotiated order’. Negotiation is a collection of processes that individuals as well as groups use to define and redefine the terms of their interdependence with other parties – it is especially important where this interdependency is characterised by uncertainty and incompleteness as in the case of the employment relationship. Following Walton and McKersie, these processes embrace not just ‘fixed sum’ and ‘variable sum situations’ (‘distributive’ and ‘integrative’ bargaining), but also influencing relationships, changing attitudes and shaping preferences (‘attitudinal structuring’). A fourth process (‘intra-organisational’ bargaining) reflects the vertical as well as horizontal relationship involved in the employment relationship – the fact that the parties typically involve more than one individual and have to reach some accommodation among themselves about how

they are going to deal with the other groups. In recent years, reflecting the economic and political changes discussed in the previous chapter, the emphasis in management-trade union relations appears to be shifting from ‘distributive’ to ‘integrative bargaining’ or, to use the terms that have become more common, ‘mutual gains bargaining’, ‘partnership’ and ‘social partnership’. There is also a lot more ‘attitudinal structuring’ taking place as management simultaneously seeks to persuade employees to work harder and accept greater responsibilities for many of the benefits traditionally associated with the employment relationship such as careers and pensions. Additionally, the EU’s social dimension is drawing attention to developments such as framework agreements, coordinated bargaining, benchmarking, and the ‘open method of coordination’, all of which are designed to overcome the ‘collective action’ problems inherent in multi-level governance situations.

### **Introduction: not just a matter of collective bargaining**

The popular understanding is that negotiation is something that management and trade unions do. It seemingly defies any kind of logic, takes up an inordinate amount of time and often results in strikes or other expressions of conflict. The focus is also on the negotiation of wages or other economic dimensions of the employment relationship such as working time. Negotiation, in other words, is about bargaining. The widespread assumption, perhaps not surprisingly, is that the decline of trade union density and collective bargaining coverage confirmed in Chapter 9 means a reduced role for negotiation, along with the strikes and other forms of industrial action that seemed to accompany it.

The reality is very different, however. Negotiation is by no means restricted to collective actors, being as much a feature of employer-employee relations as it is of management-trade union ones. Negotiation is a collection of processes that all of us use to define and redefine the terms of our interdependence with other parties. It plays an especially vital role where this interdependence is characterised by uncertainty and incompleteness as in the case of the employment relationship. Nothing, it must be remembered, is automatic about the employment relationship – to put management decisions, collective

agreements and employment rights into effect involves dialogue, day-to-day consensus building and ‘give-and-take’, i.e. ‘negotiation’. True, as Chapter 6 will explain in more detail, the employment relationship involves an asymmetric or unequal power balance. But there is considerable mutual dependency – just as employees rely on the employer for their income, managers depend on employees to achieve their own goals and targets. The result is that coercion is very rarely a serious option. In the words of Muller-Jentsch, ‘any type of order, even the most repressive, is to a certain degree negotiated order. It springs from the interaction of the individual and collective actors; they produce and reproduce social order in organisations ...’. They can do so explicitly through formal negotiations or implicitly through ‘tacit agreements’ and ‘silent bargaining’ or ‘implicit negotiation’<sup>1</sup>.

For example, ‘implicit negotiation’ and or ‘tacit agreements’ are part and parcel of the notion of the ‘psychological contract’ introduced in Chapter 3. In Guest and Conway’s words, such a contract can be viewed as ‘a set of reciprocal or two-way obligations and promises between the worker and the employer’<sup>2</sup>. To paraphrase them further, in the first instance, it may involve specific levels of performance or a contribution to innovation or a willingness to share knowledge; in the second, it may cover fair pay, security of employment, equality of treatment, involvement and consultation and so on. The negotiation involved is sometimes explicit, e.g. in appraisal or performance review sessions, or in discussions about working time flexibility, but is more often ‘implicit’, taking the form of behavioural action and reaction through which the parties explore and draw the boundaries of their mutual expectations. The state of the ‘psychological contract’ is also typically measured in terms that underlay every type of negotiation: the fairness of obligations and promises, the extent of the trust that the parties have in them and the extent to which they are honoured. In short, it is not the legal contract that determines how employers, supervisors and managers behave on a day-to-day basis. Rather it is the ‘psychological contract’ that determines what the parties will, or will not do and how it will be done and this is more or less continuously being negotiated.

Similarly, negotiation is not restricted to economic issues. Indeed, it extends far beyond the ‘exchange’ and ‘contracts’ with which is popularly associated and embraces the conduct of employment

relationship, including how the ‘rules of the game’ are administered as well as made. It also involves a strong element of seeking to influence relationships, change attitudes and shape preferences. In short, it is negotiation that breathes life into the employment relationship.

The process of interaction involved in negotiation is also fundamentally important in the wider scheme of things. Crucially, it helps to explain why it is so rarely possible to establish a straightforward link between particular practices and outcomes. It is the state of the relationship that makes the critical difference. Such relationships can also take considerable time and effort to change. One reversal to original type or a case of what one party sees as a breach of trust can also confirm their underlying suspicions.

### **The main processes**

Although it was published as long ago as 1965, Walton and McKersie’s *Behavioural theory of labor negotiation* remains the most extensively quoted and widely used text for understanding the role of negotiation in employment relations, along with its significance. It is valued not just because of the terminology and ideas that it has given us, but also because it is one of the best examples of literature in the employment relations tradition. It is multi-disciplinary and multi-level in its approach. It also respects the complexity of its subject matter. Although it does not make predictions, it does generate deductive propositions that can be tested in empirical research: for example, that there are links between the type of negotiating process and the tactical behaviour of the parties; or the more knowledge a party has about the other’s position, the more likely they are to make their ‘last offer first’; and so on. In the words of the authors themselves, it is a ‘framework or a good comprehensive way to think about the complexity of negotiations’<sup>3</sup>.

The starting point is that negotiation comprises four systems of activity, each with its own function, its own internal logics, and its own identifiable set of instrumental acts or tactics. The discussion is couched mainly in the context of management-trade union negotiations, but can also be applied to management-employee relations as well as other areas of social activity such as inter-business dealings and international relations.

*Distributive ('win-lose') bargaining*

'Distributive bargaining' is the process that most people are likely to think of when negotiation is discussed. It deals with issues where one party's goals are in basic conflict with those of another - it is 'bargaining' in the strictest sense of the word. In the language of game theory, there is a fixed or 'zero sum' in which one party wins what the other loses. In more normal language, there is a cake of a given size - the bigger one party's share, the smaller the other party's.

The most obvious example is that of wages. Any improvement in wages means an increase in management's costs; the bigger the improvement, the bigger the increase in these costs. By the same token, the lower the wage increase, the less is employees' income.

'Distributive bargaining' is not just restricted to economic resources such as wages or working time, however. Issues of power and status can also be involved. In the UK, an excellent example is the long-running dispute between British Airways and its cabin crew, which began in 2009 as a result of the management's attempt to impose new working practices and manning levels. As time went by, with the basis of agreement emerging about how to handle the original problem, the focus of the dispute shifted. In an attempt to influence opinion in the run up to one of the several strike ballots that were held, the management said that it would withdraw the travel privileges of cabin crew taking strike action. Having gone ahead with its threat, management felt unable to withdraw its decision without losing face. As for the trade union, withdrawal of the ban became the main issue - especially as many members claimed that it would be difficult for them to get to and from assignments without the benefits of the arrangements. At the time of writing, the dispute remained in stalemate.

Another example is a demarcation dispute between two groups of employees over 'whose work' it is. Such disputes were notorious in the national newspaper industry in the 1960s, where virtually every group was represented by a different trade union. Indeed, the author remembers one such dispute where brothers from the then National Graphical Association and the National Society of Operative Printers and Assistants literally came to blows over who was to operate a lever on a new rotary press.

It is its fixed or 'zero sum' nature that helps to explain why

bargaining over issues of power and status can prove to be especially intractable. In the case of economic issues such as wage increases, it is usually possible to reach some kind of compromise – in the case of collective issues, the trade union does not usually get what it asked for, but management gives more than it wanted to. In disputes over discipline or demarcation, however, compromise is much more difficult to achieve. One party clearly ‘wins’ and the other ‘loses’ – the travel privileges are re-instated or not; one group or the other ends up doing the job - which means that loss of face is an important consideration.

In terms of tactics, threats and bluffs tend to abound where ‘distributive bargaining’ is involved, along with every effort to demonstrate commitment to positions. At the same time, there will be efforts to establish what the other party’s true settlement point is and attempts to convince them that it should be nearer to their own.

In the case of wages, trade unions typically ask for and management offers more/less than they will finally settle for. Indeed, moving position is seen as a key point in reasonableness. Sometimes, however, one or other parties may opt for a ‘last offer first’ approach as a way of seeking to demonstrate out-and-out commitment to their position. Or it could be because they genuinely believe that they have little or no room for movement. Either way, the strategy can go badly wrong if the party making the offer cannot convince the other that it really is the ‘last’ one.

In the case of individuals, ‘distributive bargaining’ is less obvious – partly because it is a much more private affair and partly because most employees are paid under grade structures that rarely give the individual the opportunity to negotiate a change in position. It is not unusual for there to be negotiations over starting salaries, however, even in the case of individuals in relatively junior grades. Equally, employees may threaten to tender their resignation in the hope of securing promotion and/or an increase in wages from their present employer. Former employees many also become involved in negotiations over the terms of their departure in the event of a claim for unfair dismissal.

*Integrative ('win-win') bargaining*

A second sub-process Walton and McKersie identify is 'integrative' or 'co-operative' bargaining. This recognises that there are some issues that involve objectives that are *not* in fundamental conflict with those of the other party and which therefore can be integrated to some degree. Such objectives are said to define an area of common concern – they are essentially a 'problem' to be solved, where a compromise can bring benefits to both parties. There may be intense arguments over the precise trade-offs that have all the hall marks of 'distributive bargaining'. Agreement can nonetheless bring mutual gains – the major changes in working practices and structures that senior managers seek can also mean considerable improvements in employee's terms and conditions. Rather than being fixed, to go back to the language of game theory, the sum is variable.

In practice, negotiation typically involves an element of 'integrative bargaining'. There have also been periods, however, when it is has been especially important. In the UK, the productivity bargaining under incomes policy in the 1960s and early 1970s is a very good example. More recently, for reasons which the next section will explore in more detail, there seems to have been significant shifts across the board. In the UK, this takes the form of 'partnership' agreements and in the USA 'mutual gains bargaining'. In mainland Europe, much the same ground has been covered in 'pacts for employment and competitiveness'. Also in many EU countries, at the cross-sector level, there has been a spate of so-called 'social pacts', involving governments as well as the peak employers' organisations and trade unions.

Like its 'distributive' counterpart, 'integrative bargaining' is not something that is restricted to collective actors. Arguably, it is the dominant form of negotiation so far as individual employees are concerned, becoming more and more important as the need for greater flexibility intensifies. As Chapter 3 emphasised, in principle, the employment relationship bestows residual rights of control of the employer. In practice, there develops what Marsden calls a 'zone of acceptance' within which employees agree to let management direct their labour<sup>4</sup>. This may relate to the range of tasks that employees are willing to undertake at management's direction, but it may also include the priority to be accorded to different types of work, along

with a willingness to vary working time according to management's requirements. From time to time, these limits need to be updated, and given that the employment relationship is built on exchange, the logical way to change terms is also by agreement, which involves a form of 'tacit' or 'implicit' negotiation.

Marsden gives two detailed examples involving performance management in the British public services that help to illustrate the point<sup>5</sup>. The first concerns teachers and the priorities accorded to teaching test and non-test elements of their subjects. In recent years a range of government initiatives has increased the pressure on schools, and on their management, to do more to ensure good exam results. In response to 'league table' pressures, many schools have directed more resources towards subjects covered by tests, the increased academic content of courses and the teaching of test-taking skills. Almost invariably, such a change of priorities involved the active agreement of classroom teachers. School management recognised that it was unlikely to succeed in imposing such changes top-down: it was unable to easily monitor the breakdown of time between classroom activities: it lacked knowledge of the subject matter and relevant teaching methods, and could not establish a clear relationship between teachers' efforts and exam outcomes. For all these reasons, new objectives unacceptable to teachers were likely to remain a fiction in the classroom.

The second example involves multi-skilled care teams in a National Health Service (NHS) trust hospital providing general and acute care services. A key obstacle to more flexible work patterns was that different categories of staff had their 'zones of acceptance' drawn in different ways and supported by different principles. Thus, some categories, such as ward nurses, worked shifts, whereas others, such as physiotherapists, worked Monday to Friday, with premium payments for working overtime and unsocial hours. The solution to the problem involved scrapping payment of special allowances for unsocial hours, in return for adjustments to basic pay and the introduction of a performance bonus whose absolute size was determined by how well the hospital achieved its objectives, and which was payable to satisfactory and good performers. Accompanying the new pay structure was an individual performance appraisal and goal setting

system, involving the clarification of work roles, setting goals, planning personal development and regular reviewing. Managers and staff were encouraged to discuss, on a one-to-one basis, the purpose of the job, its main activities, responsibilities, resources and so on, and whether the job description needed revision. They were also encouraged to ‘jointly develop, goals, tasks or objectives’ which facilitated achievement of the job’s purpose, along with a personal development plan.

Different strategies and tactics will be found in ‘integrative’ as opposed to ‘distributive bargaining’. There are likely to be less threats and bluffs. Instead, there will much more focus of the ordering of the agenda and the items that people are prepared to put on the table. There will also be greater concern to establish what they have in common and to avoid putting one another in a seemingly ‘win-lose’ situation. Often, too, a number of mechanisms will be used to help the central negotiators to do this, including joint working parties, third-party facilitation and continuous review of progress.

### *‘Attitudinal structuring’*

‘Distributive’ and ‘integrative bargaining’ can be involved in either the one-off negotiation such as the labour services agreement or on-going ones as in the case of the employment relationship. ‘Attitudinal structuring’ is the term predominately reserved for the on-going relationship that has a past and a future. The term is something of a mouthful, but has the virtue of saying what it means. It reminds us that negotiation is not just about exchange or, indeed, making decisions. It is also about influencing and shaping preferences. This process is therefore critically important in the employment relationship for all the features highlighted in Chapter 3 – it is on-going or continuous; it is incomplete; and it brings numerous opportunities for the parties to seek to change the relationship to their advantage.

In face-to-face negotiations involving either ‘distributive’ or ‘integrative bargaining’, ‘attitudinal structuring’ is used to confirm strength of position. In his Fleet Street days, the author well remembers that, whenever there was a dispute involving composers, almost invariably the London Branch of the then National Graphical Association would include a representative from *The Financial Times* on their negotiating team dealing with problems in other newspaper

offices. At the time, *The Financial Times* was by far and away the highest paying office because of the volume of share prices that had to be set under the London Scale of Prices governing type-setting charges. As if on cue, this representative would invariably express astonishment that so much time was being taken up in dealing with such a trivial issue. He and his colleagues had settled this with their management long ago. The tactic was not only designed to unsettle the management team, but also to embolden the Chapel representative colleagues from the newspaper office where the dispute was taking place.

‘Attitudinal structuring’ can also serve as a substitute for the face-to-face processes of ‘distributive’ and ‘integrative’ bargaining. Management-trade union relations in France are a good illustration. Historically, France was held to be the exception among industrialised economies in that formal collective agreements between trade unions and employers’ organisations were rare and seemingly lasted for long periods of time without change. This led commentators to draw the conclusion that the parties preferred the legal enactment route to that of collective bargaining. Case study research showed that this view was too simplistic, however. A process of ‘arms-length bargaining’<sup>6</sup> was going on that performed many of the functions of the more traditional forms. Agreement may have been rare, but the parties were regularly seeking to influence one another’s position. In the case of wages, for example, managers would very often try to estimate what would keep the peace and make a formal statement to that effect. The trade union would not formally accept. But the threatened strike would not take place. If management underestimated what was necessary, however, or if the *militants* had been able to raise expectations, there might be industrial action. Depending on circumstances, this might be followed by a management decision to increase the size of the wage increase it was going to introduce. In this way, in other words, managers could maintain the appearance of not conceding managerial prerogative, while the *militants* could argue that they had not recognised management’s right to manage by actually agreeing to anything<sup>7</sup>.

Arguably, ‘attitudinal structuring’ is most prominent in the case of the relationship between management and individual employees and is

an integral feature of most communications activity. In many cases, the aim of managers is not just to give employees information. Rather it is to structure their attitudes and shape their preferences. It has long been accepted that managers have been much more prone to share the bad rather than the good news in the hope and expectation of dampening expectations about a wage increase or other improvements in terms and conditions. In recent years, however, for reasons explored in more detail in the next section, the boundary between communications and what might be described as ‘marketing’ has become increasingly blurred. In many organisations the aim is now quite openly to ‘win hearts and minds’, above all where employees are required to interact with customers or clients - programmes of ‘total quality management’ (TQM), ‘customer care’ and ‘management by customers’ (i.e. customer surveys) have proliferated, along with a series of initiatives targeting individual performance.

Arguably, in many instances promotion of the ‘psychological contract’ is tantamount to ‘attitudinal structuring’. To expand on the discussion in Chapter 3, there are two main traditions of ‘psychological contract’ thinking. In the older tradition, which is mostly followed in the UK, the ‘psychological contract’ is seen as the perceptions of the two parties of their mutual obligations<sup>8</sup>. In the more recent one, which is associated with Rousseau in the USA, the emphasis is very much on individual employees and their beliefs<sup>9</sup>. Organisations are encouraged to deal with the problem of ‘drift’ in employee attitudes and induce change by communicating with their employees in order to revise their beliefs and expectations concerning the ‘deal’ implicit in the psychological contract. Regrettably, however, the term ‘negotiation’ is rarely mentioned, let alone ‘attitudinal structuring’. As Marsden points out, ‘psychological contract’ researchers appear to have difficulty in finding a place for negotiation in their analysis – partly, he suggests, because they address a largely management audience and partly because they treat the ‘psychological contract’ as a set of beliefs or expectations, rather than focusing on the nature of the transaction itself<sup>10</sup>. The ‘negotiation’ of the ‘psychological contract’, say defenders<sup>11</sup>, raises theoretical difficulties because it is not clear how one can negotiate over changes in beliefs. The answer is very simple: ‘attitudinal structuring’ is a form of negotiation.

*Intra-organisational bargaining*

The fourth process to be considered draws attention to something that very rarely receives the attention it deserves in discussions of negotiation - the importance of the 'collective action' problem and the behaviour involved in resolving it. Negotiation is seen largely in terms of a 'horizontal relationship' – A tries to reach some accommodation with B and vice versa. In the typical situation, however, things are more complicated: there is 'vertical' as well as 'horizontal' relationship. A and/or B usually involve more than one individual and the groups comprising A and B have to reach some accommodation among themselves about how they are going to deal with the issues.

The greater the complexity of the issue, the greater is the collective action problem. This is because, in practice, wherever groups of people are involved, there are usually quite fundamental differences of opinion or position to be found between the members. Moreover, this is true of even the most apparently homogenous groups such as 'management'. For example, there may be differences of opinion between the different levels of line management about how to handle an issue. Or the differences may be of position and functionally-based. For example, the line manager driven by operational needs may say or do things on the spur of the moment, whereas the HR manager may be more concerned to maintain consistency of behaviour.

In management-trade union negotiations, the parties usually spend a considerable amount of time and effort before any face-to-face negotiation in trying to come to a common position, while simultaneously trying to find out how whether there are any differences of opinion on the other side that can be exploited. In the face-to-face negotiations themselves, everything will be done to avoid differences emerging. Each party may involve several members, but only one member is likely to do the talking - if others wish to make a point, they will be expected to pass or note take great care to resolve their differences or hide them from the other party. Or members may be given very clear cut roles. In the author's Fleet Street days, the Chapels very often designated a 'hatchet man' whose role was to disrupt the management and exaggerate the strength of feeling of Chapel members – the Father of the Chapel (shop steward) was being

extremely reasonable and moderate in his demands and management would do well to support him etc etc.

### **Negotiation in practice: a changing balance**

The balance between the different negotiating processes, like so much else in employment relations, is heavily influenced by context. Recent years have seen a considerable shift from ‘distributive’ to ‘integrative bargaining’. ‘Attitudinal structuring’ also figures much more prominently. Similarly, there is growing recognition of the problems that ‘intra-organisational bargaining’ gives rise to, which is reflected in the coming to prominence of forms of so-called ‘soft regulation’.

#### *From ‘distributive’ to ‘integrative bargaining’?*

As the previous section suggested, on the face of it, there has been a shift in the nature of management-trade union negotiations, with a wider range of topics on the table and management very often taking the initiative in raising them – the negotiation of ‘pacts for employment and competitiveness’ in most EU members countries in the second half of the 1990s is an example. Or, in the case of national ‘social pacts’, it has been governments that have most often taken the initiative. In both cases, a strong element of problem solving and ‘quid pro quo’ bargaining characterises the process of negotiating. Many of the mechanisms of ‘integrative bargaining’ listed earlier are also to be found, i.e. joint working parties, third-party facilitation and continuous review of progress.

Table 5.1 gives an idea of the issues that were typically involved in the negotiation of ‘pacts for employment and competitiveness’. More recently, similar issues have loomed large in the light of the global financial crisis. Thus there have been major restructuring exercises involving companies such as Daimler (Germany), Škoda Auto (Czech Republic), Hewlett-Packard (Spain), Axa (Ireland), Electrolux (Italy), Volvo (Sweden), and JaguarLand Rover and JCB (UK)<sup>12</sup>. Typically, redundancies and skill loss have been avoided. In return, however, there have been pay freezes and short-time working, leading sceptics to argue that what is involved simply boils down to ‘concession bargaining’.

In the case of cross-sector ‘social pacts’, the scope has been similarly broad. Most have involved a form of ‘soft’ incomes policy with wages guidelines rather than explicit and binding figures and the main concern is with competitiveness, helping to explain why a major feature is external benchmarking, more of which below. Wages, though, are far from the only topic covered: tax, social security and education policy strongly feature, along with active employment policies, the overall aim being to reduce non-wage costs in the form of pension and social security charges.

There are two main considerations that lie behind the shift in emphasis from ‘distributive’ to ‘integrative bargaining’, which are discussed in more detail in Chapters 8 and 9. The first is the increasing competitive pressures on management above all in manufacturing. In part, this reflects the rise of Japanese/Chinese manufacturers; the introduction of the Single European Market – which encouraged a considerable restructuring as companies looked to service one regional, rather than a series of national, markets as well as the opening up of markets and privatisation; and the collapse of the former USSR and the incorporation of Poland, Hungary etc into the EU – which has offered alternative locations for investment close by. In part, it also results from the liberalisation and deregulation of capital markets that have much greater pressure on senior managers to maximise returns to shareholders. Put simply, as Chapter 9 argues in greater detail, there are much smaller ‘rents’ to share with trade unions. Indeed, the only way that managements have been able to satisfy trade union demands for annual wage increase in line with inflation is to absorb increase in pay by offsetting improvements in productivity and performance.

The other main consideration has been the change in macro-economic policy and, in particular, the adoption of ‘non-accommodating’ monetary regimes targeting relatively low rates of inflation with corresponding borrowing rates. Thus, the coming of European Monetary Union meant that governments were not only obliged to adapt their policies, helping to explain the incidence of ‘social pacts’, but it also meant the spread across Europe of the German *Bundesbank's* regime. The intention and effect was not only to help bring down the rate of inflation – a major consideration in

distributive bargaining over pay – but also to make pay bargainers recognise that attempts to reach above-inflation settlements would now result in unemployment. In practice, trade unions have had to adjust the point of resistance to the prevailing level of inflation in the attempt to maintain living standards, while employers have done everything they can to minimise the impact on unit costs by insisting on major changes in working practices. The effect has been something of a convergence of pay settlements around the level of inflation (a 'European going rate'<sup>13</sup>) which has taken some of the meaning out of national sector bargaining, at the same time as encouraging further decentralisation to secure the off-setting productivity increases.

The jury remains out on whether this shift is leading to a fundamental change in relationships between the parties as depicted in Table 5.2. Intuitively, it is appealing to think that this is the case. Arguably, too, is not completely unrealistic – most issues are 'integrative' rather than 'distributive'. Yet embedding 'integrative bargaining' is far from easy. The parties may be able to come together in a crisis situation, especially when management needs the legitimisation of employees and their representatives for very difficult decisions such as job cuts and major changes in terms and condition. Transferring the spirit and practice to more 'normal' times, however, is very difficult. This is above all in times of rapid change, when managers worry that 'consultation' and 'negotiation' will slow down decision making and trade union officials are anxious to avoid exposing themselves to charges of 'concession bargaining'.

Tradition also dies hard. In UK, for example, the then deputy Director General of the CIPD is quoted as saying that, 'The British get dictation and they get negotiation, but they don't get consultation'<sup>14</sup>. Arguably, a major consideration is the structure of collective bargaining for the reasons discussed in Chapter 2. In many EU countries, multi-employer bargaining at sector level tends to deal with 'distributive' matters, leaving discussion at the level of works council or its equivalent to deal with 'integrative' ones. The negotiation of 'social pacts' at national level has also set a favourable context for dialogue and deliberation. In the UK and the USA, by contrast, not only does the lack of a dual structure mean that it is extremely difficult to separate 'distribution' from 'integration', but there are also few examples of national level concertation to draw on. This means

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that managers and employee representatives have little opportunity to develop the social skills that are involved in high performance working. Perhaps inevitably the behaviours of ‘distributive bargaining’ tend to dominate, helping to account for and perpetuate a tradition of adversarial relations. Equally, the focus is on short-term ‘effort bargaining’ rather than building trust and long-term relationships.

#### *An increasing resort to attitudinal structuring*

Arguably, although ever present in negotiation, ‘attitudinal structuring’ has become much more extensive in recent years both in terms of its coverage of issues and organisations. The nature and extent is more difficult to pin down than the increase in ‘integrative bargaining’, but there has certainly been an increase in communications activity, which is the key instrument. According to the UK’s WERS, for example, mechanisms of so-called ‘direct voice’ have increased considerably: the number of workplaces using team briefings, for example, more than doubled between 1984 and 2004<sup>15</sup>. In many respects, the development is the mirror image of the shift from ‘distributive’ to ‘integrative bargaining’ and is hardly surprising. Intensifying competition means greater pressure on performance, which translates into greater need for commitment. This is above all true of the service sector, where ‘appropriate’ employee attitudes have become more and more important. As Chapter 3 indicated, other important considerations have been the pressures to change expectations about some of the long-standing features of the employment relationship – for example, that there has to be a change in the balance of responsibility between employer and employees so far as careers and pensions are concerned.

There are also been some eminently practical considerations involved. In countries where there is no statutory provision for employee works councils, such as the UK and USA, the decline of trade unions and collective bargaining means that there is no obvious employee representatives with whom to talk. If management wants to communicate, it has to do so with individual employees. For managers, communications is also the easy option, making far fewer demands in terms of individual social skills than consultation or face-

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to-face bargaining. It means, too, that they keep control of the process; there is little or no exchange explicitly involved – certainly nothing that threatens existing structures and ways of doing things – and the onus of change is shifted onto employees; and there are few opportunities for employees to question or challenge the management position. Developments in information technology have also increased the number of ‘arms-length’ means of communications available to managers such as email, websites and social networks.

Arguably, however, although ‘attitudinal structuring’ may be much less demanding of managers, a considerable price is paid for relying exclusively on it. In the absence of opportunities for serious employee ‘voice’, the danger is that managers do not get to hear about how things really are - if they do not have representatives to speak for them, employees are likely to be reluctant to express their true opinions directly for fear that their comments might be held against them. In the words of the final report of the CBI-TUC’s 2002 Productivity Challenge Best Practice Working Group,

Involving individual employees or teams in decisions that affect the day to day organisation of their work helps create a culture of autonomy and responsibility. And systems for encouraging employee feedback and suggestions are key to innovation and building commitment to continuous improvement.

Collective voice is important in building a climate of trust where individual employees are confident that their contribution will be valued. Equally valuable is its role in helping to identify shared objectives and resolve conflict. The involvement of employees’ representatives can create the sense of mutuality that is essential for the sustainability of new working practices – the belief that both the employer and workers are reaping real benefits from improvements in work organisation.

Excessive reliance on ‘attitudinal structuring’ is also exposing management to criticisms of manipulation and unethical behaviour. This is above all true of situations where management attempts to manage the emotions of employees. As one commentator asks, 'Is the management of organisational and more importantly employee value systems a step into the realm of manipulation potentially threatening employees' right to privacy and dignity?'<sup>16</sup>

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This helps to account for the scepticism with which the employment relations community regards the concept of the ‘psychological contract’. The ‘psychological contract’ can be a useful concept when, as in the case of most of the UK literature, the older tradition is followed of seeing it as the perceptions of two parties of their mutual obligations. In the words of Cullinane and Dundon, the notion has ‘potential merit as a construct capable of correcting some of the limitations of the legalistic view of the employment relationship. It also has the potential to shed light on the often neglected and more uneven micro and socio-cognitive processes that take place between employee and employer’<sup>17</sup>. There are considerable doubts about its role, however, when it is seen exclusively in terms of the employee as it tends to be in recent US literature. It may be logically correct to argue that ‘organisations do not have beliefs’<sup>18</sup>. If the ‘psychological contract’ is reduced to beliefs held by employees, however, it must raise questions about the validity of the very notion of a contract<sup>19</sup>. Even if it may not be the intention, it is also an open invitation to managers to ‘step into the realm of manipulation’. The following conclusion may seem harsh, but is widely shared: ‘In its present form, it [the ‘psychological contract’] symbolises an ideologically biased formula designed for a particular managerialist interpretation of contemporary work and employment’<sup>20</sup>.

### *Coping with the collective action problem - developments in ‘soft regulation’*

A number of other long-established features of negotiation have come to prominence in recent years largely as a result of EU developments. As well as the tendency towards ‘framework’ directives and agreements, there is ‘co-ordinated bargaining’, ‘benchmarking’ and the EU’s ‘open method of coordination’ (OMC). In part, these developments are an institutional expression of the processes of ‘isomorphism’ discussed in Chapter 4 and reflect the tendency for actors faced with common constraints to adopt similar solutions, that European integration is encouraging – ‘Europe is learning from Europe’ in Teague’s words<sup>21</sup>. In greater part, however, they are to be explained in terms of the nature of the ‘intra-organisational bargaining’ or collective action problem policy makers and

practitioners are faced with in a multi-level governance situation. At EU levels in particular, given the problems of arriving at agreements that resonate with the principle of 'subsidiarity' (i.e. dealing with issues at the lowest feasible level), such forms of so-called 'soft regulation' have the inestimable advantage of helping to resolve both the horizontal and vertical dimensions of the collective action or 'intra-organisational bargaining' problem.

Take, for example, 'framework agreements'. These make it possible for the principals to set a sense of direction and yet to avoid failures to agree over the details that often bedevil negotiations on the horizontal dimension. At the same time, by delegating responsibilities to representatives at lower levels to tailor solutions to their immediate situation, it helps to relieve the collective action problem on the vertical dimension. Also, the degree of 'softness' can vary, with significant implications for effectiveness of implementation. There is considerable difference between a 'framework agreement' elaborating a set of principles but having no further consequences for representatives at local levels and one whose express intention is to 'incite' negotiations at these levels and which also establishes mechanisms to monitor implementation. The contrast is even greater with a 'framework agreement' establishing a set of principles or minimum standards, which are binding on the parties at other levels, but within which these parties have scope to fashion their own solutions. In effect, the last outcome combines a 'hard' with a 'soft' dimension<sup>22</sup>.

Another development has been 'co-ordinated bargaining', in which parallel sets of negotiators attempt to achieve the same or related outcome in separate negotiations. There are two main types. The first, the unilateral form, is where one or other of the parties is opposed to collective bargaining at that level and/or believes it unnecessary. The second, the joint form, is where the parties develop an understanding, which may be implicit rather than explicit, that co-ordinated bargaining is likely to open up options not available under established collective bargaining arrangements.

So far, 'coordinated bargaining' at the EU level has been largely unilateral, the European Metalworking Federation's (EMF) initiative being the longest-established and most developed. It started in the mid-1990s, with the convening of its first collective bargaining

conference in 1993 and the separate and successful development of a common template for negotiations establishing European Works Councils with a series of multinational companies. Subsequently EMF adopted a bargaining co-ordination rule for wage negotiations in 1998, specifying that settlements should be equivalent to the cost of living plus a balanced share of economy-wide productivity gains, and a working time charter which lays down a minimum standard of 1750 hours annual normal working time and an annual maximum of 100 overtime hours. More recently, it has established minimum standards on the scope and quality of training aimed at realizing life-long learning. Its long-standing collective bargaining committee has been invigorated by the creation of a smaller working group which has driven forward these initiatives and, in tandem, EMF has established a comprehensive electronic database of collective bargaining information, aimed at both diffusing information across affiliates and monitoring outcomes of negotiations. Important too have been the nurturing of ‘reflexive mechanisms’ such as peer review and an annual summer school through which national negotiators become integrated into the co-ordination process.

As Table 5.3 suggests, the rise of ‘benchmarking’ from management tool to regulatory instrument has been one of the most striking recent developments, coming to occupy a place at the heart of the EU’s approach to co-ordinating economic and social policy within and across the member states. As in the case of ‘coordinated bargaining’ and ‘framework agreements’, ‘benchmarking’ helps to deal with both the ‘horizontal’ and ‘vertical’ dimensions of the EU’s collective action problem. A broad direction can be set, minimizing the scope for disagreement over detail on the horizontal dimension. At the same time, deference to the principle of ‘subsidiarity’ helps to relieve the collective action problem on the vertical dimension. Arguably, ‘benchmarking’ and the OMC have a ‘logic of appropriateness’ promising greater democratic legitimacy *and* effectiveness in policy development and implementation<sup>23</sup>. The centre adopts the role of ‘policy entrepreneur’, but consults and involves the member states, ‘social partners’ and other interested parties in decisions on strategy. Involvement of national actors means that interventions may be more appropriate, and therefore more likely to

be put into practice. Rather than being tied down with ‘institutional harmonisation’, EU policy-makers can take a problem-solving approach with a longer-term focus that is flexible enough to adapt to changing circumstances and extend itself to new areas. The iterative cycle of ‘benchmarking’ also means that the policy process becomes less opaque (and therefore more legitimate) with the elaboration of clear goals and targets, the identification of best practice and member state and social partner scrutiny. ‘Benchmarking’ helps ensure the value of the OMC as a coherent policy mode, and one that acknowledges democratic principles of voluntarism and subsidiarity.

Looking to the future, perhaps one of the most intriguing speculations is about the implications of the development of the EU’s multi-level governance arrangements. The coming of the Single European Market and the single currency have encouraged a number of contradictory developments: decentralisation in the form of company and workplace bargaining as the parties seek to grapple with the implications of restructuring; greater centralisation in the form of ‘social pacts’ at the cross-sector level as Governments to seek national level understandings with the ‘social partners’ on wage moderation, greater labour market flexibility and reform of social protection systems; and greater cross-national activity – in particular, at the cross sector and multinational company levels. In principle, there need not be a conflict between the different levels – indeed, coordination is necessary to avoid a process of ‘regime competition’, where one country competes with another. Even so, time and energy are limited resources. The parties are increasingly confronted with a variety of options along with the so-called ‘joint decision trap’<sup>24</sup> – the more successful activity at one level is in handling the situation, the more difficult it is to involve others.

**Figure 5.1 ‘Pacts for employment and competitiveness’<sup>25</sup>**

In the second half of the 1990s, there was a major wave across Europe of company-level negotiations dealing with restructuring, so-called ‘pacts for employment and competitiveness’ (PECs). Although there was no typical PEC, most had two main objectives: to minimise reductions, preserve and/or stabilise employment; and to reduce the organisation’s costs and/or improve its ability to adapt, thereby contributing to future conditions for economic growth and job creation. Three main ideal-types could be identified reflecting the balance of emphasis between short term cost reductions to safeguard jobs and measures to improve the flexibility and adaptability of the organisation in the medium-term. In the first, agreements are essentially concerned with the ‘survival’ of the business or some of its operations. In the second, agreements are intended to aid the process of ‘retrenchment’ – the situation was not so much one of survival, but of slimming down in the light of changing market conditions. In the third, agreements were designed to help with the ‘adaptation’ of the business to deal with new situations, for example under market deregulation. The contents included the following:

- guarantees of employment and/or no compulsory redundancy
- investment for particular establishments
- transformation of precarious into more stable jobs.
- additional employment for groups such as the young and unemployed
- the relocation of the workforce within the company
- the introduction of ‘work foundations’ to improve the employment prospects of redundant workers
  
- reduction in pay levels and associated benefits,
- lower starter rates for new employees
- commitments to moderate pay demands
- increases linked to indicators such as prices, productivity, exchange rates.
- share ownership
  
- temporary or long-term reduction in the working week
- greater variability in working hours without overtime premium

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- the increased use of part-time work
- extension of operating hours (e.g. weekend work)
- conditions for using fixed-term contracts, temporary work and outsourcing
- new forms of work organisation such as team work
- training and development

**Figure 5.2 Changing emphases in employment relations<sup>26</sup>**

**The 'old' employment relations**

**The 'new' employment relations**

*Key assumptions*

- stability
- conflict
- social justice
- standardisation
- a predominant level of activity
- centralisation

- change
- co-operation
- continuous improvement
- diversity
- multiple levels of activity
- decentralisation ('subsidiarity')

*Subject matter*

- claims/grievances
- rights/obligations
- pay and conditions
- inputs

- information/
- standards/targets
- employment and competitiveness
- outputs

*Processes*

- distributive bargaining
- agreement making
- law making
- vertical integration
- enforcement/sanctions

- integrative bargaining
- social dialogue
- benchmarking/target setting
- horizontal co-ordination
- monitoring/learning

**Table 5.3 All benchmarkers now<sup>27</sup>**

Benchmarking started life as a management tool to increase competitive performance. There are three main types. First is ‘performance benchmarking’, involving quantitative comparisons of input and/or output measures. Second is ‘process benchmarking’, covering detailed scrutiny of the efficiency of particular business processes and activities, plus arrangements such as quality standards accreditation. Third is ‘strategic benchmarking’, which involves comparing the driving forces behind successful organisations, including leadership and the management of change.

Since the mid-1990s, however, it is as a regulatory tool across a range of EU policy fields that benchmarking has rapidly acquired prominence, leading one European Commission President (Jacques Santer) to suggest that ‘We are all benchmarkers now’<sup>28</sup>. As well as the Community institutions and member states, trade unions too have embraced benchmarking as a means of underpinning their cross-border bargaining co-ordination initiatives – the European Metalworking Federation is an example. Two main phases may be identified. Until the late 1990s, benchmarking was still largely seen as a management tool that policy-makers could utilise to promote improved competitiveness on the part of individual companies. By the turn of the decade it had become something more ambitious: a central plank of national policy development and implementation across a range of strategic activities. According to its former Secretary General, it was the ‘European Round Table’, which groups together major multinational companies, that has to be credited with its becoming a regulatory mechanism for the EU as a whole. Anxious to avoid further social regulation, and yet keep labour market reform on the agenda, it enthusiastically promoted the idea of benchmarking to policy makers as ‘more than simply number-crunching’. ‘It was a communication tool of enormous value’ which, crucially, ‘would help them work together towards common goals without jeopardising their freedom to take their own decisions in the light of their own circumstances’<sup>29</sup>.

As an EU policy tool, benchmarking began to gather momentum with the approach of EMU, involving the setting of common objectives, the preparation of national action plans and peer group

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review. The 1994 Essen European Council asked member states to establish employment programmes and to report annually to the Commission on their implementation. The 1997 Amsterdam Treaty institutionalised this procedure, thereby giving benchmarking a Treaty basis: Article 118 stipulates that the Council can ‘encourage the member states to adopt initiatives aimed at improving knowledge, developing exchange of information and best practice, promoting innovative approaches and evaluating experiences in order to combat social exclusion’. Subsequently, the 2000 Lisbon Summit explicitly confirmed the ‘Open Method of Coordination’ as a governance method.

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