WRITE-ON COMPETITION

“BUT THINK OF THE CHILDREN”
Teacher’s Union President & School District Superintendent

NEW YORK LAW SCHOOL | DISPUTE RESOLUTION TEAM | drt@nyls.edu
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Thank you for participating the Dispute Resolution Team’s annual summer Write-On Competition. The Write-On Competition is a method for students at New York Law School to apply for membership on the Dispute Resolution Team for the 2018–19 academic year.

The Competition consists of two sets of hypothetical facts – General Facts and one side of Confidential Facts. The Executive Board of the Dispute Resolution Team will evaluate all responses properly submitted to this Competition to select new members. The number of applicants offered admission to the team is not based on a pre-determined number or proportion of applicants. Each submission will be evaluated anonymously.

Instructions for Responses:

Read the General Facts and Confidential Facts. Based on the given fact pattern, you must formulate a negotiation plan as if you are an attorney preparing for a negotiation. Provide responses to the best of your ability.

You do not need any specialized knowledge of alternative dispute resolution to answer the questions. However, you are allowed, though not required, to do substantive research to acquaint yourself with the relevant law. Any research you do of the law should be included in your plans.

Please note that no questions about the competition will be answered by any member on the Dispute Resolution Team. If there is ambiguity, state it. Feel free to include facts that you would like to know that you believe would help you during a negotiation.

All work must be your own. You may not work with another person on this Competition. Any assistance you receive from another person constitutes a violation of these rules, and will result in disqualification. Due to a high volume of submissions, the Executive Board will be unable to provide feedback on submitted plans and will not reconsider any decision made during submissions.

There is a range of acceptable responses. “Right” answers (if there are any) and precise numbers are not as important as demonstrating capable analysis of the issues in the facts and offering sound explanation of your reasoning. Remember that these questions are practical, not academic, so you should focus on how you would approach these issues if you were an attorney participating in a negotiation. Recognize that your acceptance on the team is based solely on this submission. Be as creative and thorough as possible when explaining your reasoning and thought process.
The authors of *Dispute Resolution and Lawyers* write, “Because negotiation takes place in such a wide variety of situations, and relies significantly upon judgment, some argue that negotiation skills cannot be taught. We believe, however, that anyone can improve his or her negotiation skills by learning from experience and by planning, practicing, and reflecting on negotiation.”¹ Consider this approach when you are answering the questions.

A sample response is included to provide a general guidance of a negotiation plan. However, you are not required to follow the structure, format, reasoning and rationale of the sample response. As a reminder, your responses should be as creative and thorough as possible, and should be based on your judgment of this particular scenario provided to you in the fact pattern.

**Eligibility**

All continuing New York Law School students who meet New York Law School’s requirements for participation in co-curricular activities are eligible to participate in this Dispute Resolution Team’s Write-On Competition.

**Submission Protocol**

- Submissions must be as a Microsoft Word document (.doc or .docx).
- Name of the Microsoft Word file must be in the following format:
  
  **Lastname.Firstname - DRT Write on Response - year.month.day**
  
  *Example:* “Smith.Jane - DRT Write on Response - 2018.06.30”

- The document must be double-spaced.
- Font must be in 11-point Arial
- The document must have one-inch margins. You may include footnotes, tables, charts, and graphs, provided they are not used to circumvent the page limit.
- Your submission must not exceed ten (10) pages total. Anything over ten (10) pages will not be considered.
- Do not include your name, year, or any personal information within your submission. Any submission that includes the name of the applicant or any personal information within the response pages will not be considered. Your name should only be in name of the file as instructed above.
- All submissions must be emailed to DRT@nyls.edu.

- All submissions must be emailed by 11:59 PM (EST) on July 8, 2018. Late submissions will not be considered.
- The subject line of your email must read: “Submission for Write-On Competition 2018”
- The body of your email must only include your submission as an attachment, and nothing else. Remove any email signatures.

The Executive Board will announce its new member selections by July 27, 2018.

Good luck!

- THE DISPUTE RESOLUTION TEAM EXECUTIVE BOARD OF 2018-2019
GENERAL FACTS

“BUT THINK OF THE CHILDREN”

Nothing much ever happened in the small town of Pipesville. A small town predominantly of middle class folks earning just enough to feel comfortable, but not too comfortable.

A few months ago, Pipesville elected a new school district superintendent – Bobby Morgan. Bobby was a top executive at the Pipesville textile mill for over 20 years before recently retiring. The school board believed that someone with Bobby’s business background was capable of turning the school system around. Bobby promised to improve the overall quality of education for Pipesville’s children.

Most residents want to see Pipesville prosper but most residents are also reluctant to rock the boat. Bobby had big plans for the Pipesville schools, and that involved some serious boat rocking.

The first item on Bobby’s agenda was to centralize control over the Pipesville school system. Bobby asked the Pipesville town council to amend the charter so that the superintendent was empowered to make unilateral education related decisions. Bobby persuaded them that, based on decades worth of business experience, the school system would be more efficient and cost-effective with one person in control, and that this plan would boost the economy to benefit the entire town of Pipesville.

Intrigued by the idea, the town council agreed. Superintendent Morgan immediately began to change the entire landscape of Pipesville’s school district. Teachers’ salaries were cut. Education funding was slashed. But now the town council had substantially more money in the budget. The town council could finally address the crumbling Pipesville infrastructure long overdue for a fix, starting with plans to build a high-end shopping center. Tomorrow, Bobby will be the spokesperson welcoming big development companies to bid on the project and Bobby invited the press conference for such a groundbreaking event.
Teachers Union President Jamie Smith was not convinced these plans are best for Pipesville. Jamie had taught in Pipesville schools for 10 years and became union president last year. The teachers rallied around Jamie, who always advocated for education to be the top priority for Pipesville’s council. Jamie’s philosophy was that an investment in education was an investment in Pipesville’s future.

Two days ago, Superintendent Morgan forced a dozen Pipesville teachers into retirement. Jamie had had enough.

Yesterday, Jamie held a press conference, joined by 50 Pipesville teachers (including “the Pipesville 12”), asserting that Bobby was violating due process, undermining the integrity of the school system, and disrespecting teachers. Jamie warned that there would be dire consequences if “the Pipesville 12” were not reinstated, and with additional benefits to boot. Jamie passionately stated, “We must show our children that we must support each other against those such a greedy and power-hungry wolf. Unless our union demands are met, mark my words, the teachers will strike tomorrow.”

Today, Superintendent Morgan, accompanied by school district general counsel, will meet with Union President Smith, accompanied by attorney for the union, to see if a strike can be averted. The critical issues to be resolved are (1) the balance of power, (2) teacher salaries and benefits, and (3) education funding.
CONFIDENTIAL FACTS:
SCHOOL DISTRICT SUPERINTENDENT

Superintendent Bobby Morgan is a loyal Pipesville citizen who ultimately wants whatever is best for the town as a whole. Bobby certainly understands the value of supporting education, but as far as you are concerned, education is merely one component of a vast, integrated organizational machine. As far as Bobby is concerned, you have to show respect to earn respect, and Jamie’s press conference was tantamount to a public slap in the face. If Jamie could show a little more discretion and keep this dispute out of the court of public opinion, Bobby will have far more willingness to meet the union’s demands. Bobby’s number one concern is to prevent the teacher strike from happening at tomorrow’s press conference in front of all the big developers and the huge press conference because that either turn the big developers away or receive bids higher than the 2% town council budget allocated to the bids.

There is no clear precedent on the legality of a teacher strike. Even though the law is vague, the media consequences of a potential lawsuit suing the teachers paints you as a villain, and it will be nearly impossible to get your other agenda items in motion while battling in court.

Incredibly, after Jamie’s press conference, you received a phone call from a marketing rep of an educational technology company. The company has developed self-guided supplemental education software that can theoretically be used in the absence of a classroom teacher. The marketing rep agreed to provide the software at no cost if Bobby promised to promote it as a suitable replacement for the striking teachers. Bobby likes the idea from a purely business perspective, but only wants to move forward with it as an absolute last resort.

Here is a breakdown of how your recently instituted changes compare to the policies originally in effect:

Before you took office, teachers earned $45,000 annual salaries. Now, with a green light from the Pipesville town council, that salary has been reduced to $37,500. However, these cuts
are only meant to be temporary until the town as a whole is more secure economically. Bobby was able to persuade the town council to agree that a superintendent can increase school budget once profits start streaming in from the high-end shopping center.

Prior teacher benefits included year-round health insurance and a pension. Now, health insurance no longer applies to the summer months, and overall healthcare costs have increased by 15%. Bobby plans on compensating for the lack of summer coverage by doubling the current amount of overtime. In this way, you hope to encourage the teachers to go the extra mile during the school year so they can be rewarded with greater spending power as they enjoy the summer vacation. The increased healthcare costs are consistent with the state of affairs nationwide. Jamie would have to compromise on other demands in order to forego benefit cutbacks.

The annual education funding stream was traditionally calculated at 10% of the total municipal budget, and the Pipesville town council normally operated with around $100 million. Under your proposed plan, only 8% of the town budget would be allocated towards education. However, similar to proposed salary cutbacks, the reduced funding towards education is only meant to be temporary. Bobby is committed to using his executive authority as superintendent as a platform to improve the town of Pipesville as a whole. The 2% of funds normally allocated for education would be invested in big development plans, such as the shopping center. According to verifiable research, the shopping center could generate up to $2 billion in revenue within 3 years and early estimates indicate that the town should earn that money back within 2 years. So Bobby is prepared to reinvigorate education funding at that time, even going so far as to request an increase to 15% of Pipesville’s overall funding stream.

In order to afford these changes, Bobby needs to impose a hiring freeze on new teachers. However, in exchange for imposing the hiring freeze, you are willing to offer extensive professional development resources for current teachers, and additional support for Pipesville teacher training programs. In that respect, the next wave of new teachers will be in an even better position to make a positive contribution for Pipesville’s children.
As far as the so-called “Pipesville 12” are concerned, Bobby wanted to make a splash right away. Your intention was to illustrate your compassion for the more experienced teachers by offering them attractive buyout packages. After all, most of them would likely have moved on voluntarily considering their age. Similarly, if Bobby can persuade more retirement eligible teachers to transition out of the classroom, then a hiring freeze wouldn’t be necessary, and the school district can commit to strengthening the Pipesville teacher training program.

To that end, you know that a lack of teaching experience works against your credibility. But business sense is still an asset, particularly as a way of loosening the town council’s purse strings for increased education funds. Bobby sees potential in forming a longstanding business relationship that can benefit both sides.

Overall, Bobby wants to show Jamie that they can work together, as a team, for the benefit of Pipesville’s children, and for the future of Pipesville in general. To that end, you could think of creative ways of demonstrating how much you value Pipesville’s teachers; reinforcing the idea that if the union can accept a short-term hit in its wallet, there will be handsome and gratifying long-term rewards. Because time is of the essence, it is in your best interest to encourage Jamie to reconsider an immediate strike as soon as possible, as that would allow each party the opportunity to prepare for a deeper, more comprehensive meeting in the near future.
SAMPLE RESPONSE

Negotiation Strategy

Goals:

We want to try and advocate for the best-case scenario given by John.

Best Case Scenario: Private, oral apology with a confidentiality agreement and an agreement that quality will not sue over the matter as well as Quality’s continued service on his estate with a much-reduced price and only organic substances. It is of the utmost importance that his statement and his finances remain private.

Alternative to renegotiating the contract: Cash settlement of no more than $250,000, with the conditions that the terms of settlement and dispute remain confidential. (Try your best to steer clear of this option, as it should only be a last resort.)

Key Facts:

Helps John’s Argument:

1. Contract specifically stated that Quality would ONLY use organic pesticides, fertilizers, weed killers, and the like in the course of fulfilling their duties under the agreement.
2. Quality has had three official complaints of drug use by previous employers. (Also rumors that one of the owners “Shoeman” encourages drug use by telling employees not to get caught.)
3. Large oak tree with dozens of cigarette butts strewn all around, but most being remnants of hand-rolled marijuana joints. (Marijuana use is illegal and aggressively prosecuted in New Freedonia)
4. Quality lawn care did not deliver “quality” service. (John noticed uneven grass, weeks, and substantial overgrowth on the grounds.)
5. Quality lawn left behind several empty containers of a particular dangerous chemical-based pesticide. (Non-organic, and even worse, widely attributed to causing Early Onset Dementia and other brain diseases!)

6. Section 7 (c) of the agreement further states that Quality Law Care would practice safe during when entering, exiting, and while on property. (Questionable if proven that workers smoking marijuana on the job, evidence of lots of marijuana joint butts on ground may lead to the assumption that so high, they couldn’t deliver quality work, nor drive properly, although no direct evidence of this.)

7. In general, Quality breached several contract stipulations as mentioned above.

8. John is a very conservative man who has been known to speak his mind, whether or not his opinions are popular.

9. Drug use/possession may be detrimental to Quality’s business, since they have previous complaints, and another one may seriously harm their reputation, as well as the possibility of them perhaps being fined, jailed, or put on probation.

**Hurt’s John’s Argument:**

1. Walked in on Gibbs and Shoeman sharing an intimate moment, flew into a rage, and yelled demeaning comments within earshot of Quality employees.

2. Although John sent the termination notice through certified mail as was stipulated in the contract, he did not give 30-day’s notice, nor did he give them 10 days to cure the problems, thus breaching his side of the contract.

3. Contract specifically states that contract cannot be rescinded “without cause.”

4. Possible scandal may be detrimental to John’s enterprise.

5. John didn’t pay for the services which he already received.
Neutral:

Arbitration Clause. Since there is no actual ability to bring the case before a court due to the arbitration clause, it is probably best to come to some sort of mutual agreement/negotiation, than to have binding arbitration on the parties, which may put both in a worse off situation.

The Law:

There are several categories of law that must be addressed here.

**Discrimination in Employment Law:**

1. Since the employment contract arises in private industry, normally an employee may be fired at will. (However, here they stipulated that the contract could only be terminated at will, and with a ten day window to cure the issue.)

2. A Plaintiff (π) alleging sexual orientation discrimination bears the initial burden of establishing a prima facie case or discrimination by showing that he or she is a member of a protected group, that he or she was qualified for the position in question, and must also show adverse employment action (in this case, termination of the employment contract) and that circumstances give rise to an inference of discrimination.

3. Once π makes out their prima facie case, the burden shifts to Defendant (Δ) to articulate some legitimate, nondiscriminatory reason for firing π. (Here, the multiple violations of the employment contract and the use of illegal drugs on-site.)

4. After Δ has stated reasons for firing, π then bears the burden of showing that this preferred reason is in fact pretext.
   a. It is not enough to show that employer made unwise business decision or an unnecessary personnel move, since issue is not whether employer acted with good cause, but whether its business decisions would not have been made but or a discriminatory motive.
Criminal Law:

1. NFCC 19-33:8 Art. 12: Definition of Cannabis includes joints.

2. NFCC 19-33:8 Art. 13: A person is guilty of unlawful possession of marijuana when they knowingly possess cannabis.
   a. Possession of marijuana is a violation punishable by a fine of nor more than $10,000. However, where the Δ has previously been convicted of an offense defined in this article, committed within one year shall be punishable by,
      i. A fine of not more than $18,000, and imprisonment for no more than 5 years.

3. NFCC 19-33:8 Art. 18: Persons found guilty of …Art. 13 shall be subject to drug testing up to twice per month for one year immediately preceding the violation.

4. Aiding and abetting in criminal possession of drugs nor narcotics (may apply depending on more fact finding): Although more than mere presence in the company of one possessing drugs is required, the aider or abettor need not have had actual physical possession of the contraband.
   a. (Did more research on this topic, but didn’t want to push it in case we are not able to find facts that would satisfy this area of law. It would be wholly dependent on whether during negotiations we could somehow get the other side to give us information, or if our private investigator could dig up more facts regarding the drug usage, and complaints, and further whether we might be able to use other complainants as witnesses later.)

Negotiation Strategy/Plan:

Given the sensitivity of the subject matter, I think it would be best not to make this into a distributional zero-sum game type of negotiation. I would prefer to make this into a more
integrative type of negotiation, exploring many different options and using both leverage and accommodation to try and work towards getting John’s “best case scenario.” John’s concerns:

1. Reputation – doesn’t want a scandal erupting which may harm his already fragile enterprise.
2. Financial situation – His business isn’t doing as well as it used to be. Might have a hard time paying Quality Lawn Care for their services over the course of the year anyways.
3. John himself violated the contract by not giving the other party adequate time to cure the problem. However, there is an issue regarding the drug use on his property. Here, since they were doing something illegal, he may be allowed to use that as a basis for severing the contract, but there is a matter of finding hard and fast evidence aside from the marijuana butts, and hearsay of other complainants.
4. There were several witnesses at Quality Lawn Care’s office who heard John’s ranting.

John’s leverage points:

1. Violation of several terms of the contract by the opposing side.
   a. Use of extremely harmful pesticides.
   b. Cigarette butts and marijuana joint remnants strewn about property.
   c. Improper disposal of chemicals.
   d. Failure to maintain the grounds properly
   e. (Maybe) Failure to safely drive when entering/exiting property
      (Dependent on marijuana use.)
2. Marijuana use is illegal in New Freedonia and aggressively prosecuted even for minor offenses.
3. John being very conservative person, known to speak his mind, whether or not his opinions are popular. (May use this to try and sway the other party in realizing that maybe he is just bit peculiar, or perhaps just very particular about certain things, which
may be used in favor to show that he was just enraged about the violations of the contract, and not focused so much on the acts which he observed in their office.)

4. If K is renegotiated, the other party can still do business and maybe even find better customers.

5. Binding arbitration may lead to a worse off result with both parties losing.

6. π would have the burden of proving that he was terminated based on sexual orientation, which he may have a hard time proving here, due to his own violations.

7. Quality Lawn Care also has a reputation to uphold. News about encouraging drug use on the job may sully this reputation and be detrimental to QLC’s business. If convicted of drug possession could lead to heavy fines, and if continued, both imprisonment and mandatory drug screening.

**Tentative Agenda** (although this is a rubric, it is important to be aware of the opposing party’s demeanor and status upon beginning the negotiation):

1. Introductions: Address the sensitive situation. Be apologetic. State something along the lines of “We understand that your client’s may have been very offended by the situation, and sorry……”
   a. Nevertheless, do not concede that John did it with malicious intent.
   b. Give some background info regarding John. Portray him as a reasonable individual, but also that he is a very particular person, with very strong, maybe somewhat controversial views.
      i. Portray him as a normal human being.
      ii. Portray him as an understanding person who was just at the end of his fuse after seeing the multiple violations of the contract, but don’t use it as a mere excuse. (Remember, there’s a fine line)
iii. Help the other side to realize that John is contrite and ashamed of his actions, since it is never okay to go off on any individual in such a manner, especially in such a derogatory manner.

2. Discuss the issues:
   a. Although we want to walk into this negotiation in a polite and apologetic manner, it doesn’t mean that we should concede everything over to the other side. (Being apologetic and understanding is not the same thing as just laying down and letting the competition walk all over you.)
   b. Assert what it is that we have as leverage. (We seem to have several things working in our favor, let them know that, but do so in a firm but polite manner.)
   c. Poke and prod to see what information we can get from the other party.
   d. Figure out what it is the other party would like, but do not talk about numbers. Explicitly say, “Without talking about numbers, but perhaps other concerns and issues, what it is that your party is looking for?” (Listen!)

3. After hearing the other party’s interests, start by anchoring number. Start at $4500. Although this number may seem low at first, if calculating for services it is actually pretty close to what they were originally receiving.
   a. $25000 divided by 8 is $3125.
   b. Now we are only asking them to come twice a week, which would leave the price at $6250, but accounting for the mishaps, we should be able to ask for a discount.
   c. Starting at a $4500 may seem low, but will give us room to negotiate and hopefully end up somewhere near $6000.
   d. State that John is willing to privately sit down and speak with the other side and formally apologize and have them work it out. Make John out to be a personable
individual who understands his mistake and the hurt that he may have caused the other party.

e. Use our leverage points to convince the other party that binding arbitration may not serve the interests of either party, since it may be detrimental to both sides.

f. Stress that both parties can come out winning under the circumstances.

g. Express the want for a confidentiality agreement, whereby John will not formally complain as to the drug charges.

h. Use the drug charges in John’s favor.

i. Criminal charges will be very detrimental to QLC’s reputation and fines could make their situation much worse.

j. Be flexible within reason.

k. In the worst case, offer a settlement.


a. Maybe paying for the last month’s service which was unpaid, and leave it at that.

   i. Allows both parties to walk away, and not have to worry about each other any longer.

5. Work out the kinks, and try to resolve the situation as best as possible.

a. Thank the other party for joining in negotiation and get everything in writing

b. Close the negotiation and be on your way.