

TEACHING HUMAN RESOURCE MANAGEMENT STUDENTS ABOUT WORKER CENTERS

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ABSTRACT

Worker Centers – nonprofit organizations that provide services to and advocate for workers – have grown dramatically in recent years. They largely exist outside of the scope of labor laws, yet many critics charge that they are, in effect, surrogate unions. This paper describes three different class assignments to teach Human Resource Management and Labor & Employment Relations students about the complex challenges Worker Centers pose to efficient business management and the challenges that modern business practices pose to workers (e.g., classifying workers as independent contractors)..

Keywords: worker centers, union organizing, labor law, negotiation

INTRODUCTION

The trade union movement is in decline. Organized labor today represents less than 7% of private-sector workers (U.S. Department of Labor, Bureau of Labor Statistics, 2017), down from a high of over 30% in the 1940s. This decline has left millions of workers without any type of voice or formal representation in the workplace. In terms of compensation and benefits, over one-half of all workers report having little or no say in these matters, even though they express a desire for such voice. Consequently, nearly 50% of nonunion workers report that, if given the opportunity, they would probably vote for a union (Kochan, Yang, Kimball, & Kelly 2019). Yet many are never given that opportunity.

Approximately 17% of the U.S. workforce is comprised of immigrants, many working in nonunion settings (Blanco, 2017). Some immigrants are employed as day-laborers; others work in minimum-wage positions in sweatshop conditions. For example, 36% of workers in Chicago were found to labor in sweatshops (defined as two or more workplace violations of state and federal labor laws as per Levin & Ginsburg, 2000). Arnold and Hartman (2006) define “sweatshop” more broadly: “...any workplace in which workers are typically subject to two or more of the following conditions: income for a 48-hour workweek less than the overall poverty rate for that country; systematic forced overtime; systematic health and safety risks due to negligence or the willful disregard of employee welfare; coercion; systematic deception that places workers at risk; and underpayment of earnings” (p. 677). Using this more expansive definition, immigrants continue to labor in such workplaces (McDonald, 2018).

Worker Centers - nonprofit organizations which provide services to and advocate for workers - have arisen to serve the needs of immigrant and other nonunion workers. As such, worker centers vary greatly in their organizational structure and focus. Some devote their energies to serving the needs of specific types of occupations (e.g., construction labor, farm workers). Others serve specific demographic groups (e.g., Korean or Mexican immigrants). Because many immigrant workers have poor language skills, some worker centers operate as training facilities (e.g., teaching English) and employment agencies. Many provide legal services and dispense other advice, such as how to deal with landlords. Still, others mimic the role of organized labor as they seek to bargain with employers. For example, Worker Centers may represent those taxicab drivers who are classified as ‘independent contractors’ and therefore ineligible for unionization (Reilly, 2015; Milkman & Ott, 2014).

HISTORY OF WORKER CENTERS

Worker Centers started as nonprofit organizations in the 1970s and 1980s to meet the needs of immigrant and racial minority workers, often with the assistance of religious charities, social benevolence societies, and labor unions. While there were less than ten worker centers in the U.S. in the early 1990s, today there are over 200. Due to their nonprofit status, they are eligible to apply for grants, and many also receive charitable contributions (Grossman, 2013). Many provide services to new immigrants, coming from Mexico, Central America, Africa, and Asia.

TYPICAL WORKER CENTER ACTIVITIES

The services that Worker Centers provide range from teaching English and financial literacy to acting as an “agent” on behalf of day-laborers (to ensure that all get the same rate of pay from those who hire them) to providing legal services for employees. Some also advocate that workers join labor unions. Still, other Worker Centers advocate political action, publicizing sweatshop conditions, and calling for consumer boycotts.

Holley, Ross, and Wolters (2017) classify Worker Center activities into the following categories:

- 1. Publicizing problems in the media.** These authors note that the “Fight for \$15” campaign in 2014 in major cities was largely organized by Worker Centers. More recently, the New Orleans Workers’ Center for Racial Justice (2019) publicized the fact that a ‘key witness’ in a hotel construction accident was deported (because he was an illegal immigrant) and thus unavailable to give testimony as to the causes of the accident.
- 2. Boycotts and picketing.** A boycott of Taco Bell in Florida by the Coalition of Immokalee Workers led the owners of the restaurant chain to pay a higher price for tomatoes – with corresponding pay raises for tomato pickers (Grossman, 2013). The Chicago-area San Lucas Worker Center claims it forced several day-labor organizations to “stop specific abuses about fees, unsafe rides, and unpaid wages” (quoted in Carrillo, 2017, p. 92).
- 3. Lobbying for government action.** Lobbying prompted several cities and states to raise their minimum wage levels. For example, Centro de Trabajadores Unidos en La Lucha

(CTUL) – or Center of Workers United in Struggle – in Minneapolis succeeded in getting the hourly minimum wage increased to \$11.00 for small businesses and \$12.25 for large businesses (CTUL, 2019). This Worker Center also claimed credit for persuading the city to fund one additional inspector to investigate “wage theft” (the failure of employers to comply with minimum wage laws or to pay overtime). Separately, New York City passed a law that prohibited employers from scheduling workers for too many shifts (e.g., closing a restaurant late in the evening and then re-opening that restaurant the following morning) during a standard workweek (Johnson, 2017).

4. Class-action lawsuits. Sweatshop conditions, safety violations, and withholding overtime pay can all lead to such lawsuits. In New York, a class-action lawsuit led to a court ruling that a state law excluding farm workers from union organizing was unconstitutional (WCCNY, 2019).

5. Union organizing. Occasionally union organizers work with Worker Center staff to apply for jobs, hoping to get hired by a particular company. If they do get hired, they often act as union “salts” and attempt to organize a labor union within that business. If they don’t get hired, they file charges with the National Labor Relations Board (NLRB) charging that the business discriminated against them because of their pro-union sentiments.

RELATIONSHIP WITH ORGANIZED LABOR

Worker Centers have often had an uneasy relationship with traditional labor unions. On the one hand, many union leaders have supported Worker Centers (e.g., the “Justice for Janitors” movement is formally affiliated with the Service Employees International Union); national union leadership at the AFL-CIO has passed resolutions promoting cooperation (Luff, 2007; AFL-CIO, n.d.). On the other hand, some union leaders have worried that new immigrants threaten union workers’ standard of living and embolden employers’ efforts to de-certify unions. Others have been concerned about Worker Centers’ radical ideology and their willingness to use direct action to resolve conflicts; these leaders have sought to bring Worker Centers into the traditional union fold. For their part, Worker Center leaders have experienced frustration with institutional labor unions, feeling that they are too bureaucratic and slow to meet workers’ needs – particularly in the face of employer opposition to improved wages and working conditions (Fine, 2006).

“Worker centers are often one step removed from dealing directly with their members’ employers. Some of the groups go to the top of the employment food chain and create agreements with the corporations that hire ...contractors. Those contractors employ the worker center members. That adds another layer of legal complexity, making it more difficult to determine if a worker center is actually acting as a union” (Penn & Lee, 2018).

For example, the CTUL successfully negotiated an agreement with Target to respect workers’ rights to “Freedom of Association” in its Vendor Agreement. This provision reads, “We seek suppliers who productively engage workers and value them as critical assets to sustainable business success. This includes respecting the rights of workers to make an informed decision as to whether to associate or not with any group, consistent with all applicable laws” (Target, 2014).

The code also specifies that any additional subcontracting by vendors must be approved in advance by the corporation [presumably so that they can't avoid the terms of the Vendor Agreement]. As a result of this action, janitors who worked at several cleaning firms that did business with Target stores were able to successfully unionize (Penn & Lee, 2018). Thus, while the Worker Center did not negotiate directly with the janitorial cleaning services on behalf of their janitors as union would do, they did negotiate an arrangement with a major customer (Target) to require that its vendors respect the right of workers to unionize.

WORKER CENTERS AND LABOR LAW

Private-sector labor unions are regulated by numerous laws, most commonly the National Labor Relations Act of 1935 (NLRA; the Wagner Act), as amended and subsumed by the Labor-Management Relations Act (LMRA; the Taft-Hartley Act). These laws, as interpreted by the National Labor Relations Board (NLRB), specify a process for certifying a labor union in a workplace. Typically, this process involves a campaign and culminates in a secret-ballot vote by the workers in an appropriate bargaining unit. If a majority of workers vote for the union that is on the ballot, then that union legally represents everyone in the bargaining unit (even those who voted against it). Once certified, the employer is required to bargain in good faith with the employees' designated union representative over wages, hours, and working conditions.

However, critics charge that these elections are subject to delay and employers often manipulate the rules to avoid ever certifying a union and implementing a collective bargaining agreement (Strom, 2003). Worker Center advocates note that many employees – particularly those who are here illegally – are reluctant to join traditional labor unions. They fear being dismissed by their employer or even deported if the employer contacts immigration officials. Employers also may seek to avoid a union contract by transferring work to nonunion facilities, closing facilities (either action would result in layoffs), reclassifying workers as independent contractors, or by engaging in “surface bargaining” where the management negotiation team “goes through the motions” in order to meet the legal “good faith bargaining” requirement but actually has no intention of reaching an agreement.

Because Worker Centers do not necessarily represent the majority of the workers employed by a single employer, they do not negotiate collective bargaining agreements. Thus, technically, they are not labor unions. This means that they are freed from the legal regulations imposed on traditional labor unions by the LMRA (Naduris-Weissman, 2009). Among other things, this means that they are free to request “donations” directly from employers; they also can publicize poor wages and working conditions even if they only represent a small proportion of the workers (not a majority) employed by that company. They may engage in secondary boycotts, pressuring companies to cancel contracts with or otherwise avoid dealing with a first company until that first company improves wages.

EMPLOYER REACTIONS

Not surprisingly, many employers view these tactics with grave concern. To many managers, Worker Center leaders are simply unaccountable outsiders who often harass companies and conduct ‘shake-downs’ for ‘donations’ – all while hiding behind a veneer of leading a charity. They are exempt from labor laws, including the financial reporting requirements of the Labor-

Management Reporting and Disclosure Act (Landrum-Griffin Act) of 1959. This law is designed to prevent corruption in labor organizations and to make union finances transparent.

“The LMRDA was enacted, in part, to ensure protection of certain minimum rights of employees vis-à-vis the labor organizations that represent them. The LMRDA contains significant protections for employees with respect to promotion of the principles of organizational democracy, access to basic information, and promotion of a duty of fair representation. As worker centers have evolved over the years, many have assumed roles akin to those of a traditional labor organization, and as such should be accountable to the workers they claim to represent under the laws Congress passed to establish such accountability. However, few appear to have embraced the obligations of the LMRDA.” (U.S. Chamber of Commerce, 2018, p.2).

Under the Landrum-Griffin Act, (1) labor organizations must allow union members to speak at union meetings without fear of reprisal; (2) all union members are allowed equal voting rights; (3) officer terms are limited; and (4) dues can only be raised by a secret-ballot vote of the members. Labor organizations must also file financial disclosure documents (LM-1 and LM-2 forms). This is done to provide financial transparency and to promote democracy within labor organizations. Worker Centers are under no obligation to conform to those rules.

The U.S. Chamber of Commerce (2018) charges that the Office of Labor-Management Standards (OLMS) has contradicted its own guidelines. The OLMS is the department within the U.S. Department of Labor (DOL) that is responsible for administering and enforcing the Landrum-Griffin Act. In 2008, and again in 2013, the Obama-era OLMS declared Worker Centers exempt from labor law because they were deemed not to be “labor organizations” engaged in collective bargaining or affecting interstate commerce. The OLMS made this determination by comparing Worker Center activities with the definitions of “labor organizations” found in Sections 3(i) and 3(j) of the Landrum-Griffin Act [see 29 USC § 402(i) and (j)]. Yet, section 030.611 of the OLMS *Interpretive Manual* states: “the fact that [an organization representing workers] does not now have contracts with any employers does not place it outside the scope of the Act.” Further, critics observe that Worker Centers often “deal with employers” – the phrase that is used in the NLRA, which has broader meaning than “bargain with employers.” Thus, employers charge that Worker Centers are often ‘front’ organizations for unions (U.S. Chamber of Commerce, 2017).

In response, Griffith and Gates (2019) note a few differences between Worker Centers and traditional labor unions. First, Worker Centers rarely focus on only one company and do not seek to represent employees on an ongoing basis; their focus is on providing services to clients and protesting unfair conditions throughout an economic sector (e.g., the fast-food industry) only when necessary.

Second, the financial reporting requirements under the Landrum-Griffin Act are quite onerous compared to IRS rules for charities; few Worker Centers can afford to meet these LMRDA requirements. Griffith and Gates (2019) note that Worker Center revenues are miniscule compared to those of labor unions, “A quarter of these 104 worker centers had yearly incomes lower than \$180,000. Half earned less than \$410,000. Worker Center incomes are paltry compared to a union local, like the UNITE-HERE Local in Chicago, which reported yearly revenue of \$9 million for

the year of our study.” The authors also note that over 80% of Worker Center revenues come from grants and charitable donations and only 2% come from “dues paid by internal organizational membership.”

Griffith and Gates (2019) worry that under President Trump’s administration, the OLMS has shifted course and created a test case by attempting to designate the CTUL as a “labor organization” under the Landrum-Griffin Act. They worry that a decision in favor of the new OLMS determination by a federal court would have “a chilling effect” on many Worker Centers and their activities advocating for workers. By contrast, Patrick Semmens, vice president for public information at the National Right to Work Legal Defense Foundation, said, “We view this as a positive development and, hopefully, an indication that this Department of Labor is ending the longstanding DOL practice of turning a blind eye to this area of the law” (Diaz, 2019).

Under current (Obama-era) rules, Worker Centers apparently do not need prior authorization from a majority of the firm’s workers to engage in boycotts, picketing, or negative publicity. It is often unclear whether Worker Center protesters represent a majority of employees in a firm. Many picketers may not even work for a particular company; thus, employers note that there is no guarantee that workers’ interests will be adequately represented. Yet, if a firm “deals with,” the leadership of a Worker Center, the consequence may be a legally-binding document that modifies employees’ wages, hours, and/or working conditions – all of which are the prerogatives of labor unions.

Employers also complain that they aren’t even sure with whom to bargain; they might reach an agreement with one Worker Center only to find that a different organization representing a different group of workers is still dissatisfied. For example, two different groups have targeted Wal-Mart. They include the Organization United for Respect at Wal-Mart (“OUR Wal-Mart”) and Making Change at Wal-Mart (“MCAW”, affiliated with the United Food and Commercial Workers International Union). These two groups were originally one, but split in 2015 (U.S. Chamber of Commerce, 2018). If the company made sufficient concessions to appease one group, there is no guarantee that the other group would also be placated.

PEDAGOGICAL STRATEGIES

The relationships between Worker Centers and employers present complex issues for both instructors and students in Human Resource Management and Labor-Management Relations courses. Although labor laws have not changed substantially in fifty years, the interpretation and application of these laws by various federal agencies (e.g., the NLRB; the OLMS) fluctuates. When a Democrat President occupies the White House, federal agencies tend to favor workers and their union representatives; when there is a Republican President in the White House, federal agencies tend to favor business interests (Penn & Lee, 2018). Thus, it behooves both students and their instructors to keep abreast of new legal developments.

In the following paragraphs, three instructional strategies are presented to introduce students to the concept and workings of Worker Centers. The first involves asking students to debate the topic; the second presents a plausible, hypothetical case for discussion; the third involves a role-playing exercise. Each will now be described; Teaching Notes will follow.

Strategy #1: Debate

An instructor might assign pairs (or teams) of students to debate the following topic:

“Congress should pass a law declaring Worker Centers to be labor organizations and should require them to adhere to all federal labor laws, including the Labor-Management Relations Act (LMRA; Taft-Hartley Act) of 1947 and the Labor-Management Reporting and Disclosure Act (LMRDA; Landrum-Griffin Act) of 1959.”

Strategy #2: Case Scenario

Because many students are used to working at minimum-wage jobs, they may naturally be more sympathetic to the Worker Center position, rather than to business interests. To help them see the HRM perspective, the incident found in Appendix A might be used. Briefly, this case presents a scenario where picketers arrive outside of a fast-food restaurant at lunchtime. They also send a delegation to request voluntary recognition of a new labor union. The student must analyze the case from the perspective of an HR manager and decide how to respond.

Strategy #3: Role Play and Negotiation

This is the most involved of the pedagogical strategies, but it is perhaps the richest, as it involves multiple perspectives. First, students are placed into groups of eight or ten (total). Then, they are assigned to one of the following roles: (1) Worker Center director and (2) union bargaining team members (*both roles are on the same team*), and (3) management negotiators. The scenario, roles, and confidential information (which is not identical for each side) are described in Appendix B. Each team’s negotiators are to meet with their own team to formulate their bargaining objectives, positions, and strategy. Then, they are to meet with the opposing team to negotiate a tentative agreement. Each side has been given specific topics to discuss, with accompanying background information.

TEACHING NOTES

Strategy #1: Debate (50-minute class period)

Learning objectives. Debating the topic of whether Worker Centers should be required to comply with existing labor laws in front of the larger class may help students (a) to realize the complexities of the issues of immigrant (and other) workers’ exploitation by businesses, as well as (b) the legal challenges that Worker Centers pose to Human Resource Managers.

Setting up the exercise. The instructor should assign the topic in advance so those who will be debating can adequately prepare. Approximately 20 minutes should be allowed for the main presentation with a two-to-three-minute rebuttal for each side. Thus, the formal debate should take no more than 30 minutes. If an instructor allows for questions from class members, then the entire activity may take up to 45 minutes.

If debates on controversial topics are used throughout the semester (e.g., in a “Current topics in HRM” course), then this topic can easily be included among those debates. If the instructor has a standard format for other presentations (e.g., limiting the use of video clips or the

number of PowerPoint slides), then this topic should conform to those course requirements. The topic is easily adaptable, provided that there is an opportunity for each side to do research.

Variations. An additional variation is to assign ‘impromptu debates.’ Here, an instructor divides the class into two groups, assigning one position (for or against the resolution) to each group. The instructor should make sure that at least one member of each group has Internet access. If the class is large, then four groups – two for each position on the issue – might be used. Then, the instructor should allow 20 minutes for group research and discussion prior to debating the topic. Each group should designate one or two spokespersons. (If two groups are assigned to each position due to the class size, then an additional 10 minutes should be allowed for them to compare and coordinate their main points, so that they can have one presentation team comprised of one to two persons from each group.) Approximately 15 minutes should be allowed for the main presentation with a two-to-three-minute rebuttal for each side. Thus, the formal debate should take no more than 30 minutes and the entire assignment should take 50 minutes.

Alternately, the instructor might use a ‘listing’ method. Here, the instructor simply asks each group to identify reasons for or against the resolution. Instead of debating, each group would simply identify the main reasons for their respective positions, with the instructor writing these lists on separate sections of the board. The instructor can occasionally use these lists as a springboard for further discussion or comment.

Student reactions. Students typically find this topic to be engaging. This is true, in part, because many of them have worked in low-level jobs, either while attending college or prior to entering the university. Students also have opinions regarding immigration and labor unions, which adds to their interest in this topic. After hearing the debate, an instructor might ask students to vote on whether they think Worker Centers should be classified as labor organizations. Following this, if not revealed in the debate already, the instructor can tell whether Worker Centers are classified as labor unions (at the time of this writing, they are not).

Potential problems (and instructor strategies to overcome them). Because students often have preexisting opinions about issues such as minimum-wage jobs, labor unions, and immigration they sometimes have difficulty “staying in their assigned role” and arguing against their own opinions. When assigning groups, an instructor can overcome this potential problem by reminding the presenters that they are to argue for their assigned positions – even if it conflicts with what they personally believe. This is because the class needs to consider all aspects of a controversial issue.

A second problem that sometimes occurs is that students do not understand (or remember) labor law and they substitute what they think for what the law actually says. This is why advance preparation is important – both in terms of classroom instruction and in terms of the student’s own research. The instructor should first cover (or review) the fundamental aspects of the 1947 Labor-Management Relations Act (LMRA; Taft-Hartley Act), as well as the 1959 Labor-Management Reporting and Disclosure Act (LMRDA; Landrum-Griffin Act). This review should be done in a prior class session. Then students can focus on the tasks of understanding what Worker Centers do and whether those activities should result in the organizations being classified as labor unions.

Strategy #2: Case Scenario (50- or 90-minute class period)

Learning objectives. To help students appreciate the legal and managerial dilemmas that HR managers face when confronted with labor organizing, and with Worker Centers in particular.

Setting up the exercise. After distributing the case in Appendix A, the instructor allows time for individuals to read the case silently (5 minutes). Then, the instructor can use a “pair and share” strategy where small groups of students discuss the case among themselves (15 minutes in a 50-minute class period; 25 minutes in a 90-minute period). Then each group should share some insight or recommended action with the larger class (15 minutes in a 50-minute class period; 20 minutes in a 90-minute period). Using the pair and share strategy promotes student engagement as it reduces student apprehension to offering their ideas (relative to simply sharing ideas with the larger class). The instructor might then use the case as a basis for a lecture, presenting the information found above. Facts identified in Strategy #3: “Confidential Information” (*see below*) might also be used to explain some topics such as a “living wage” vs. “minimum wage.” (15 minutes for a 50-minute class period; up to 40 minutes for a 90-minute class period).

Student reactions. Some business students see the actions portrayed in this case in black-and-white terms; for them, the only question is: What is the appropriate punishment for the picketers? Others give more nuanced reactions. On the one hand, many can readily relate to the Worker Center position, perhaps because some of them have either worked in the fast-food industry or are familiar with the “Fight for \$15” movement in the restaurant sector. On the other hand, many can identify with HR managers who need to control labor costs and maximize freedom for business leaders to make decisions based on the long-term interests of the firm.

Potential problems (and instructional strategies to overcome them). Sometimes students want to know if this was a ‘real case’ and, if so, what was the ‘right answer.’ Instructors should inform students that this case, although plausible, is merely hypothetical. Also, it is the basis for class discussion and is not intended to portray good or bad HR management practices. An instructor might, as a follow-up assignment, assign groups of students to various local fast-food restaurants and ask them to interview managers to learn what their firms’ policy is in such a scenario.

Some students may have such strong opinions in favor of the workers that they may find difficulty ‘setting those aside’ and adopting a manager’s perspective. They may grow frustrated with classmates who focus on the bottom-line and accuse them of insensitivity. Indeed, sometimes pro-business students make insensitive remarks. These problems can be overcome by a reminder from the instructor before distributing the case that there is a balance between the freedom to express an opinion and the need to be sensitive and respectful in how that opinion is expressed.

Finally, some student pairs only give the case cursory attention, choosing to work on other schoolwork or to socialize. Gentle reminders, accompanied by walking about the room, can usually get the students to re-focus on the task.

Strategy #3: Role Play and Negotiation (two 50-minute class periods; one 120-minute class)

Learning objectives. First, students should learn multiple perspectives through role-playing one of the following roles: (1) Worker Center director and (2) union bargaining team members (*both roles are on the same team*), interacting with (3) management negotiators (See Appendix B). Because each side has unique information, students should come to appreciate that their own knowledge of industry and restaurant practices is limited, and multifarious viewpoints are necessary to fully address the problems in the workplace. Second, students should gain experience using problem-solving and negotiation skills.

Setting up the exercise. Instructors should give students adequate time in class to read the background material, meet with their respective teams, and plan their strategies and realistic bargaining positions (first 50-minute class period or first half of a 120-minute class period). In the second 50-minute period they will negotiate for the first 20-25 minutes (a deadline is set by the instructor). Once the deadline has passed, the instructor should ask each group to summarize their agreement; if no agreement has been reached, they should state their last espoused positions when the negotiation period ended. This reporting period should take about 10 minutes. If the instructor wishes the teams might also describe their negotiation tactics. Following this, the instructor can use the remainder of the class time to deliver a mini-lecture on Worker Centers.

Student reactions. Students gain a new appreciation for both labor and management positions in this dispute. This appreciation stems from two sources: (1) the information that is presented and (2) the interaction with the opposing team. Although students are usually able to memorize facts for a test, the students find such memorization much more compelling when they anticipate using those facts to persuade their opponents to accept specific positions.

Typically, Worker Center representatives are assigned to specific topics (e.g., food menu items); otherwise, they keep silent or advise union officials only (perhaps in caucus sessions). This is so that they do not bargain with management representatives directly over wages, hours, or working conditions. However, sometimes Worker Center representatives forget and talk directly to management representatives about work-related matters. This gives managers the upper hand because the managers can now threaten to get the Worker Center reclassified from a ‘charity’ to a “labor organization” (with its more burdensome financial reporting requirements).

Some teams may use the Worker Center representative as the team leader who is not even in the room during negotiations. In this way, union negotiators may employ the “higher authority gambit” (Dawson, 2001) – by not giving themselves the power to agree, but instead by obligating themselves to get any tentative agreements approved by their “higher authority,” the negotiators can attempt to secure greater concessions, presumably because the “higher authority” wanted additional concessions.

Potential problems (and instructional strategies to overcome them). With a large class, logistics can be problematic. Student groups in the same classroom can overhear each other’s conversations. Therefore, this activity works best if additional classrooms or other space (unused conference rooms; unused lounges) are available or can be reserved in advance. The instructor can then proceed from one room to another. If these cannot be secured, the instructor should assign the negotiation activities to different corners of the classroom.

Sometimes groups assigned to other rooms finish negotiating and seek to return to the classroom where one group is still bargaining. This transforms the exercise into a ‘fishbowl’-type activity for the one group – because everyone else is watching them negotiate. While that might make for an interesting discussion (e.g., “What effect did the audience have on your willingness to make concessions?”), it is generally best if students who are assigned to other rooms do not return to the main classroom until the deadline is reached.

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APPENDIX A

3:16 Burgers Case

Assume that you are the HR Manager for the 3:16 Corp. Your company owns ten 3:16 Branded Burger fast-food restaurants (where the top buns sport a burned “3:16” brand as part of their western theme). You employ several hundred workers and managers. Profit margins are thin, so you only pay minimum wage to the hourly employees and give no benefits beyond those required by law. You work in an office building that your firm owns; it is across the street from one of the restaurants.

One day, three employees and two former employees show up at the secretary’s desk in the outer office demanding to see you. You come out to see what the commotion is. They give you a sheet of paper. On it are written:

*A “living wage.”

*Paid sick leave accrual at the rate of one hour per month.

*One-week paid vacation each year.

*Voluntary recognition of a new union, “Branded Burger United Workers (BBUW)” with contract talks to begin one month from today.

*Voluntary donation of \$50,000 by the 3:16 Branded Burger Corporation to the Fast Food Employees’ Worker Center (FFEWC).

“These are our proposals,” one worker says. “The contract talks will settle other benefits. We also will discuss better working conditions and other issues. For example, we want a pledge that you will use only grass-fed beef that hasn’t been given any antibiotics – this is for the health of our customers. We also want you to add a variety of vegetarian options to your menu. When your contracts with food suppliers expire, we want you to negotiate new contracts with them, so that they will pay their farm workers more money and provide better working conditions. Finally, we want more diversity training for restaurant managers; we are tired of being abused by managers who can’t do their own jobs – much less tell us how to do ours.” With that, they leave.

About an hour later, approximately 100 people start picketing the restaurant across the street. You recognize the two former employees who had been in your office earlier and one woman who works the night shift. However, you do not recognize any of the other people. They are all -very careful to stay on the public sidewalk (apparently so that they can’t be arrested for trespassing). Many are holding signs demanding “paid sick leave” and “living wage now!” A few are holding signs that said, “FFEWC” and “BBUW” [you have never heard of either group prior to today]. You recognize that this demonstration will hurt the lunchtime operations, as some customers will refuse to cross their picket line. As you are watching, a film crew from a local TV station arrives. The local TV station requests an interview with you.

A fellow HR manager knocks on your door, “See what’s going on?” the manager says. “We need to discuss this situation – this looks bad!”

Questions:

1. What are Worker Centers? How do they differ from traditional labor unions?
2. Why do you think there are two separate organizations picketing?
3. What is a “living wage”? Assume that the restaurants are located in your state: If you do an Internet search for “living wage calculator” (e.g., <https://livingwage.mit.edu/>) you can see how much money a worker needs to have a “living wage.” How much money do the workers want?
4. What plan of action will you recommend with regard to the groups that are picketing?
5. What are your legal options under the Labor-Management Relations Act of 1947? Would it be worth asserting your legal rights, in this situation? Why or why not?
6. What are your managerial options? Would it be worth asserting them? Why or why not?
7. Managing public relations is a function that sometimes falls to HR managers. If you provide a prepared statement to the TV station, what will you say? How will you handle this crisis?
8. If you decide to negotiate with this Worker Center, what will be your initial positions? What will be your “bottom line” positions?

APPENDIX B (ROLE-PLAYING SCENARIOS)

Confidential Information for Worker Center and Union Representatives

Assume that you are either a member of (a) the Executive Board of the Fast Food Employees' Worker Center (FFEWC) or (b) representatives of the newly-formed Branded Burger United Workers (BBUW) labor union. The FFEWC is a charitable organization that provides services for employees working in the Fast Food industry. Many workers are immigrants who need English language training and other services, such as advocacy in landlord-tenant disputes and legal advice. Many do not know their rights under U.S. labor laws including the Labor-Management Relations Act of 1947, the 1964 Civil Rights Act, the Occupational Health and Safety Act, and the Fair Labor Standards Act. The FFEWC shines a spotlight on issues such as safety violations and wage theft (where employers do not pay minimum wage or appropriate overtime (1.5x normal pay for hours worked beyond 40 hours per week)).

One business, in particular, has come to your attention: The 3:16 Corporation, which owns ten 3:16 Branded Burgers Restaurants (where the top buns sport a burned "3:16" brand as part of their western theme). The firm employs several hundred workers; dozens of these employees utilize the services of the Worker Center. These workers complain that the restaurants only pay the local minimum wage to the hourly employees and give no benefits beyond those required by law. Working conditions seem miserable and the managers treat the workers in a harsh and arbitrary manner; if workers discuss unionizing, those employees are dismissed. If you can get a union into this company and then negotiate changes in its wage levels and working conditions, it will set an example for other fast food firms in this region.

The 3:16 corporate headquarters is in an office building that is located directly across the street from one of their restaurants. This gives you an idea: If you send two dozen picketers to the restaurant, it will draw attention to the problems. If they stay on the public sidewalks and don't block traffic, they can't be arrested for trespassing. So, you carry out this plan. Many picketers are holding signs reading "We need paid sick leave" and "We can't live on what they're paying us!" A few are holding signs that say, "FFEWC" and "BBUW" [representing the "Fast Food Employees' Worker Center" and "Branded Burger United Workers" labor union respectively]. You recognize that this demonstration will hurt the lunchtime operations, as some customers will refuse to cross the picket line. You also notify the local TV station which sends a film crew to the restaurant site.

Just before the picketing commences, you send a delegation to discuss a list of proposals with 3:16 managers. Three employees and two former employees – all wearing BBUW pins – show up at the secretary's desk in the outer office, politely asking to speak to the HR manager. When he emerges, they present the following list of written proposals:

*A "living wage."

- *Paid sick leave accrual at the rate of one hour per month.
- *One-week paid vacation each year.
- *No self-service kiosks.
- *Voluntary recognition of a new union, “Branded Burger United Workers (BBUW)” with contract talks to begin one month from today.
- *Vegetarian food options added to the menu.
- *Higher prices for fresh food ingredients – with the difference to go as pay raises to farm workers.
- *Diversity training for all 3:16 managers.
- *Voluntary donation of \$50,000 by the 3:16 Branded Burger Corporation to the Fast Food Employees’ Worker Center (FFEWC).

“These are our proposals,” one worker said. “The contract talks will settle other benefits. We also will discuss better working conditions and other issues. For example, we want a pledge that you will use only grass-fed beef that hasn’t been given any antibiotics – this is for the health of our customers. When your contracts with food suppliers expire, we want you to negotiate new contracts with them, so that the suppliers will pay their farm workers more money and provide better working conditions. Finally, we want more diversity training for restaurant managers; we are tired of being abused by managers who can’t do their own jobs – much less tell us how to do ours.” With that, they leave.

Assume that the 3:16 Corporation voluntarily recognizes the Branded Burgers United Workers labor union. Further assume that negotiations follow. **If so, it is important that only the BBUW union enters into negotiations, and the BBUW only receives *advice* from the FFEWC. It is critical that the FFEWC not speak directly to the 3:16 management about issues of wages, hours, or conditions of employment in the firm. The FFEWC should only advise the union negotiators.** Why? Because if 3:16 managers can establish that they negotiated directly with the Worker Center, then they can get the FFEWC reclassified from a “charity” to “a labor union.” This reclassification could result in the federal government imposing stricter rules on Worker Center activities (e.g., no *secondary boycotts*: pressuring ‘neutral’ companies to cancel contracts with or otherwise avoid dealing with a first company until that first company improves wages; secondary boycotts are prohibited union activities by the Labor-Management Relations Act of 1947 – but are apparently legal for Worker Centers). Reclassification could also result in potentially-crippling financial reporting requirements under the Landrum-Griffin Act of 1959; unions must comply with these expensive reporting requirements, whereas charities do not. Of course, the Worker Center advisor is free to discuss “adding vegetarian food items to the menu” or “Higher prices for fresh food items” because those do not directly affect 3:16 employees’ wages, hours, or conditions of employment. If negotiations do occur, it is important to understand the basis for these initial proposals. This information is presented next.

Wages. You feel that workers in the fast-food industry are grossly underpaid. According to GlassDoor, the average fast-food employee earns \$24,993 annually or about \$11.97 per hour. However, the modal earnings are closer to only \$22,000 annually, or about \$10.53 per hour.

While these wage values are above the federal minimum wage of \$7.25, they are below the federal poverty level. Hoffower and McDowell (2019) observe that the federal poverty line in the 48 contiguous states in America is \$25,750 for a family of four (for Alaska and Hawaii, it is closer to \$30,000). That means that a full-time worker in the ‘lower 48’ needs the equivalent of \$12.38 per hour to avoid living in poverty. For more details on these issues, see Amadeo (2019).

The average wage earned by fast-food workers is also far below “living wage” levels – wage levels needed to cover most families’ expenses. According to the MIT Living Wage calculator, workers need to earn an average of \$67,746 per year (or \$32.57 per hour if an employee works full-time – 2080 hours per year) to be able to support a family of four (Martin, 2019; to compute the exact amount needed for your state, visit: <https://www.cnbc.com/2019/05/16/how-much-money-a-family-of-4-needs-to-get-by-in-every-us-state.html>). Even if the assumption is made that fast-food workers only need to provide half of their family income (because there is a second able-bodied adult in the family who is working), then they would need to receive pay of \$16.28 per hour. The average pay levels for fast-food workers is well below that of \$16.28 per hour level. Given that nearly a quarter of your Worker Center clients employed in the fast-food industry are single parents, you would like to see wages raised to a level between \$16.28 and \$32.57 levels.

Paid sick leave. Except for states that have laws requiring the accrual of paid sick leave, most fast-food employees do not have access to paid sick leave. Frankly, this is unhealthy, both for workers and customers. According to a press release by the National Partnership for Women and Families (Nov. 22, 2016), “Seven in 10 women in the fast-food industry report going to work coughing or sneezing, with a fever or diarrhea, or vomiting in the past year. The reason? Only 14 percent of women working in the industry, and a mere 6 percent of women fast food workers making less than \$9 per hour, say they have access to paid sick days.”

Paid vacation. Paid vacations are extremely rare in the fast-food industry. McDonald’s is an exception to this rule: The firm announced that its 90,000 workers at its corporate-owned restaurants would be eligible to earn up to five days of paid vacation. However, far more employees work at over 14,300 franchisee-owned McDonald’s restaurants (Casselmann, 2015).

No self-service food kiosks. The ‘wave of the future’ seems to be self-service kiosks, where customers place their orders and pay for their food, reducing the need for cashiers (Walker, 2019). However, many workers must support families on their limited incomes. If these loyal employees are replaced by self-service kiosks, then unemployment will soar, and these workers will be unable to provide for their families. If such self-service food kiosks cannot be avoided, then a no-layoff pledge should be negotiated. Limits on the kiosks should also be negotiated, such as only one

kiosk per restaurant, they should be available only during the busiest times (when everyone is working), customers must pay with a credit card (most still use cash), etc.

Voluntary recognition of “Branded Burger United Workers (BBUW) labor union. Under federal labor law, a union can be certified in one of two ways. First, if a union organizer gets at least 30% of people who work in an appropriate bargaining unit to sign authorization cards, a secret-ballot election can be scheduled through the National Labor Relations Board (NLRB). However, many union organizers will not seek to schedule such an election until well over a majority of workers sign such cards, because they know that signing a card does not automatically translate into a pro-union vote. Second, if a union organizer claims to get a majority of the cards signed, the union can ask management to voluntarily recognize the union (Mayhew, n.d.). Your BBUW union organizer has signatures from 38% of the bargaining unit members; however, you are optimistic that a majority *will* sign cards *if* management agrees not to oppose the union in its organizing drive. Thus, you would like management to voluntarily recognize the BBUW. Otherwise, a pledge by managers to remain neutral might suffice.

Vegetarian food options added to the menu. “Cooking [meat] releases grease, smoke, and particulates into the air, which can be both unpleasant and unsafe for respiratory health.” (Allen, 2014). Conducting an Internet search of the terms “fumes from cooking meat + illness + restaurant employees” also reveals several articles (e.g., Holland, 2019) and research studies (e.g., Sullivan, Erickson, Sandusky, & Barnard, 2008) showing these links. You also want the 3:16 restaurants to add a variety of vegetarian options to your menu, which are generally healthier (Gregor & Stone, 2015).

Higher prices for fresh food ingredients – with the difference to go as pay raises to farm workers. When restaurant contracts with food suppliers expire, we want 3:16 Burgers to negotiate new contracts with them, on the condition that the suppliers will pay their farm workers more money and provide better working conditions. Something similar was negotiated by the Coalition of Immokalee Workers (CIW) in Florida with Taco Bell (Leary, 2005).

Diversity training for managers. “We want more diversity training for restaurant managers; we are tired of being abused by managers who can’t do their own jobs – much less tell us how to do ours.” Of particular concern: insensitivity to Latino/Latina concerns and single-parent workers. The fast-food industry is notorious for firing people without justification (Nittle, 2019).

Voluntary donation of \$50,000 to the Fast Food Employees’ Worker Center (FFEWC). After all, the FFEWC operates on a shoestring budget of only \$400,000 annually and provides valuable services to these fast-food workers. The FFEWC depends heavily upon charitable donations and grants and \$50,000 will go a long way toward meeting the annual budget – besides any donations will be tax-deductible for the 3:16 Corporation.

Soon your team will meet with managers of the 3:16 Corporation to discuss this list of initial proposals and negotiate a written agreement. However, you should meet first with others on your

negotiating team. One person should assume the role of Worker Center advisor and the others should assume the role of BBUW union negotiators. When you meet privately with your team, you should consider these questions:

- What are our realistic positions?
- What is our “bottom-line” position?
- What bargaining tactics will we use?
- If negotiations fail, what other tactics will we use?

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Confidential Information for Managers

Assume that you are one of the Human Resource Managers for the 3:16 Corp. The 3:16 Corporation owns ten “3:16 Branded Burgers” fast-food restaurants (where the top buns sport a burned “3:16” brand as part of a western theme). You employ one hundred workers and 20 managers. Profit margins are thin, so you only pay minimum wage to the hourly employees and give no benefits beyond those required by law. You work in an office building that your firm owns; it is across the street from one of the restaurants.

One day, three employees and two former employees – all wearing BBUW pins – show up at the secretary’s desk in the outer office demanding, in loud voices, to see you. You come out to see what the commotion is. They give you a sheet of paper. On it are written:

*A “living wage”

*Paid sick leave accrual at the rate of one hour per month.

*One-week paid vacation each year.

*No self-service kiosks.

*Voluntary recognition of a new union, “Branded Burger United Workers (BBUW)” with contract talks to begin one month from today.

*Vegetarian food options added to the menu.

*Higher prices for fresh food ingredients – with the difference to go as pay raises to farm workers.

*Diversity training for all 3:16 managers.

*Voluntary donation of \$50,000 by the 3:16 Branded Burger Corporation to the Fast Food Employees’ Worker Center (FFEWC).

“These are our proposals,” one worker said. “The contract talks will settle other benefits. We also will discuss better working conditions and other issues. For example, we want a pledge that you will use only grass-fed beef that hasn’t been given any antibiotics – this is for the health of our customers. When your contracts with food suppliers expire, we want you to negotiate new contracts with them, so that the suppliers will pay their farm workers more money and provide better working conditions. Finally, we want more diversity training for restaurant managers; we are tired of being abused by managers who can’t do their own jobs – much less tell us how to do ours.” With that, they leave.

Soon after that, approximately 100 people start picketing the restaurant across the street. You recognize the two former employees who had been in your office and one woman who works the night shift. However, you do not recognize any of the other people. They are all very careful to stay on the public sidewalk (apparently so that they can’t be arrested for trespassing). Many are holding signs reading “We need paid sick leave” and “We can’t live on what they’re paying us!” A few are holding signs that said, “FFEWC” and “BBUW” [representing the “Fast Food

Employees' Worker Center" and "Branded Burger United Workers" labor union respectively; you have never heard of either group before today]. You recognize that this demonstration will hurt the lunchtime operations, as some customers will refuse to cross their picket line. As you are watching, a film crew from a local TV station arrives. The local TV station requests an interview with you.

A fellow HR manager knocks on your door, "See what's going on?" the manager says. "We need to discuss this situation – this looks bad!"

What will you do? Actually, you have very few options. As long as the picketers stay on public sidewalks, and don't block traffic, you can't have them arrested. You might hope to "outwait" them, but it doesn't look like the union picket line will go away on its own. You don't want this to become an expensive daily lunchtime ritual. Suing the union is not an option because it doesn't really exist – it is just a group of workers who are "banding together for mutual aid and protection" and the National Labor Relations Board tends to give great protection to such fledgling attempts at union formation. An Internet search indicates that the Worker Center is a charitable organization that provides services for employees working in the Fast Food industry. Many of their clients are immigrants who need English language training and other services, such as advocacy in landlord-tenant disputes and legal advice. Suing the Worker Center is a risky strategy because there may be a lot of negative publicity from a big corporation going after a poor, small, nonprofit organization. So, your best option may be to negotiate with the union.

Technically Worker Centers are not labor unions – which explains why there is a separate "Branded Burger United Workers (BBUW)" union. A Worker Center can call attention to problems in a particular industry and perhaps even advise union leaders. However, by law, a Worker Center is a charity and is not allowed to negotiate on behalf of any one specific firm's employees. If you can prove that the Worker Center is simply a Union Front Organization (a "UFO"), then you and your lawyers can perhaps persuade the federal government to reclassify the Worker Center as a labor union (Influence Watch, n.d.).

This reclassification could result in the federal government imposing stricter rules on Worker Center activities. For example, unions cannot engage in *secondary boycotts* where a union pressures neutral companies to cancel contracts with or otherwise avoid dealing with a first company until that first company improves wages. Secondary boycotts are prohibited by the Labor-Management Relations Act of 1947. While such activities are illegal for labor unions, they are apparently legal for Worker Centers.

Reclassification could also result in additional financial reporting requirements under the Landrum-Griffin Act of 1959; unions must comply with these expensive reporting requirements, whereas charities do not. Of course, the Worker Center advisor is free to discuss some of the written proposals such as "adding vegetarian food items to the menu" or "Higher prices for fresh food items" because those do not directly affect 3:16 employees' wages, hours, or conditions of

employment. So part of your bargaining strategy is to “catch the Worker Center in an unguarded moment,” That is, you want to establish evidence that you are not just bargaining with the BBUW, but also bargaining directly with the Worker Center over 3:16 employees’ wages, hours, and conditions of employment. Then you could threaten to have the FFEWC reclassified as a union and perhaps secure terms more favorable to your side.

Assuming that the 3:16 Corporation voluntarily recognizes and negotiates with the Branded Burgers United Workers labor union it is important to understand the basis for responding to the union’s initial proposals. This information follows.

Wages. You feel that the 3:16 Corporation pays wages that are comparable with others in the fast-food industry: All employees start at \$10.00 per hour (\$20,800/year) and, with five or more years of seniority, can earn up to \$12.50 per hour (working full time – 2080 hours/year – results in an annual salary of \$26,000). All employees earn the same wage regardless of their jobs, except for crew leaders (who should not be included in any bargaining unit anyway, as they are really managers). According to GlassDoor (2019), the average restaurant employee earns \$24,993 annually, or about \$11.97 per hour and the U.S. Bureau of Labor Statistics (2018) puts the median wage at \$10.45 per hour. Wage values are also far above the federal minimum wage of \$7.25. For more details on these issues, see Amadeo (2019). So, you feel wages are comparable with others in the industry.

Current Employee Wages

Formula: Hourly Pay x 2080 hours (if full time) = Total Yearly Compensation (per person)

Employees	Seniority (years)	Hourly Pay (current pay rate)	Hours per Year	Total Yearly Compensation (per person)	Total Annual Cost per seniority category
Employees #1- #20 (20 employees)	0 years	\$10.00	2080	\$ 20,800	\$416,000
Employees #21- #60 (40 employees)	1 years	\$10.50	2080	\$ 21,840	\$873,600
Employees #61-#70 (10 employees)	2 years	\$11.00	2080	\$ 22,880	\$228,800
Employees #71-#77 (7 employees)	3 years	\$11.50	2080	\$ 23,920	\$167,440
Employees #78-#85 (8 employees)	4 years	\$12.00	2080	\$ 24,960	\$199,680
Employees #86-#100 (15 employees)	5 years	\$12.50	2080	\$ 26,000	\$390,000
Total Annual Cost (100 employees)				TOTAL COST:	\$2,275,520

See the chart above for total labor costs. Also, see the worksheet (*below*) that you can use if you make wage adjustments. As you can see, total current labor costs for bargaining unit members are about \$2.27 million. Any wage adjustments should be modest as you only anticipate additional profits of \$2.1 million that you could possibly allocate to wage increases and benefits for all 100 employees.

MGT Team Members: _____

Worksheet: ESTIMATED Employee Wages with a NEW contract

Formula: Hourly Pay x 2080 hours (if full time) = Total Yearly Compensation (per person)

Employees	Seniority (years)	Hourly Pay (future pay rate)	Hours per Year	Total Yearly Compensation (per person)	Total Annual Cost per seniority category
Employees #1- #20 (20 employees)	0 years	\$	2080	\$	\$
Employees #21- #60 (40 employees)	1 years	\$	2080	\$	\$
Employees #61-#70 (10 employees)	2 years	\$	2080	\$	\$
Employees #71-#77 (7 employees)	3 years	\$	2080	\$	\$
Employees #78-#85 (8 employees)	4 years	\$	2080	\$	\$
Employees #86-#100 (15 employees)	5 years	\$	2080	\$	\$
Total Annual Cost (100 employees):				TOTAL COST:	\$

Over 30% of your workers are teenagers and another 33% are college-age; while you haven't done a survey, you are confident that most of these people are simply earning a little spending money or defraying tuition costs by working at 3:16 restaurants. It is true that wages are below what academics consider to be "living wage" levels – the amount needed to cover most family expenses. The U.S. average needed is \$32.57/hr. (visit <https://livingwage.mit.edu/> for state-specific "living wage" levels). Even if the assumption is made that a few fast-food workers need to provide up to half of their family income (because there is a second able-bodied adult in the family who is working), then they would only need half of \$32.57 per hour – or \$16.28 per hour – to have a "living wage." Even this level is unaffordable for a small fast-food chain like yours.

Paid sick leave. With the exception of states that have laws requiring the accrual of paid sick leave, most fast-food workers do not have access to paid sick leave. Offering even one day (8 hours) of paid sick leave costs \$8,752 for all 100 employees at current wage levels [computed as: $(\$2,275,520 \text{ total annual labor costs} \div 2080 \text{ hours worked}) = \$1,094 \text{ per hour} \times 8 \text{ hours}$]. You'd have to raise food prices to recoup these costs. Still, this might be an issue where you are willing to concede a bit. Many restaurant workers continue to serve when ill because they can't afford to miss work (Simon, 2013). You agree: Sick workers should stay home.

Paid vacation. Paid vacations are extremely rare in the fast-food industry and they shouldn't be expected. After all, most employees are high school and college students who tend to quit when they need a break. McDonald's is an exception to this rule: The firm announced that its 90,000 workers at its corporate-owned restaurants would be eligible to earn up to five days of paid vacation. However, far more employees – 1.9 million – working at thousands of franchisee-owned McDonald's restaurants receive no paid vacation days (Rosenberg, 2019; Casselman, 2015). Further, if paid vacations become a reality, whether through a negotiated agreement or unfunded mandate imposed by the government, there are significant costs to the company. At current wages, a week's worth of vacations for all 100 workers costs \$43,760 [calculated as $\$1,094 \text{ per hour} \times 40 \text{ hours}$]. The 3:16 Branded Burger restaurants would be forced to raise prices of all food items to cover costs. Simple economics indicates that as food prices rise, demand will fall.

The same is true for labor costs. As one restaurant owner wrote (in opposition to a New York proposal to mandate paid vacation time), "I imagine workers would want to take their time off on weekends and holidays, which is the busiest time for restaurants; so I would need to add employees or pay an overtime rate to existing workers, so I could run my restaurant and provide the level of service to which our guests have become accustomed. In today's tight labor market, it would be hard to find replacement workers." (Saxena, 2019).

Self-Serve Food Kiosks. Self-serve kiosks, where customers place orders and can sometimes also pay for their meals, seem to be the wave of the future. Although restaurant officials deny any connection, is it mere coincidence that McDonald's restaurants installed self-serve kiosks, reducing the need for human cashiers, as the "Fight for \$15" movement was gaining traction? (Rensi, 2016; LaCapria, 2015). By contrast, Wendy's officials admit that reducing labor costs is a part of the restaurant chain's goal in implementing kiosks (Sanchez, 2017). As labor costs rise, whether in the form of hourly wages or in terms of benefits such as paid vacations, one can expect to see increasing automation in the future. This is an option well worth exploring.

Voluntary recognition of "Branded Burger United Workers (BBUW) labor union. Under federal labor law, a union can be certified in one of two ways. First, if a union organizer gets at least 30% of people who work in an appropriate bargaining unit to sign union authorization cards, an election can be scheduled through the National Labor Relations Board (NLRB). You are dubious that 30% of your workers have signed cards (Ewing, n.d.).

Second, if a union organizer claims to get a majority of the cards signed, the union can ask management to voluntarily recognize the union (Mayhew, n.d.). You know enough about labor law not to ask to see the signed cards (if an employee was subsequently disciplined, that employee might claim it was retaliation for their union support). Rather, you might ask the union representative to show the cards to a neutral, mutually-agreed-upon individual who can check the signatures against a list of employees in the bargaining unit to verify that a majority want a union. This procedure is called a “card-check” procedure. You have no intention of handing over power to a labor group by voluntary recognition, with or without the card-check procedure. Therefore, you will insist on the full NLRB-supervised election process (Orechwa, n.d.). This process also gives you the right to express your opinion that you do not feel a union will benefit workers. You feel this way for two reasons. First, unions collect dues, reducing workers’ take-home pay. Second, unions in the fast-food industry are rare; one exception is Portland, Oregon. Even here, unions have been largely ineffective in bettering workers’ lives (Dillon, 2019).

Vegetarian food options added to the menu. The Workers Center wants the 3:16 restaurants to add a variety of vegetarian options to your menu, which are generally healthier (Gregor & Stone, 2015). They also have concerns that cooking meat poses health risks for employees. You are not convinced of either of these claims. After all, you have adequate ventilation for your cooks (Allen, 2014). You also have data to show that only 19% of your customers would “consider” buying a salad or ‘vegetarian burger’. The market simply isn’t ready for adding vegetarian options. You also deeply resent a group of outsiders telling you how to run your business.

Higher prices for fresh food ingredients – with the difference to go as pay raises to farm workers. The union has a novel proposal: *When current restaurant contracts with food suppliers expire, 3:16 Burgers must negotiate new contracts with them, on the condition that the food suppliers will pay their farm workers more money and provide better working conditions.* Something similar was negotiated by the Coalition of Immokalee Workers (CIW) in Florida with Taco Bell (Leary, 2005). However, who would audit and manage such a program? The CIW program has been criticized for financial mismanagement (Williams, 2014) and its legally-questionable tactics (Berman, 2018). Generally, you don’t think that it is appropriate for you to determine what another company pays its employees. If those workers are willing to work for a given wage level, then why should you interfere? The union’s proposal also seems like a “secondary boycott” as it is pressuring your firm to pressure another firm. Finally, profit margins are already thin. If you agree to pay more money for fresh ingredients, then that leaves less money for other things, including raises for your own 3:16 Branded Burger employees.

Diversity training for managers. The union wants diversity training for restaurant managers, but you are uncertain as to which specific groups managers should become familiar. Union protesters claim that the fast-food industry is notorious for firing people without justification (Nittle, 2019). However, your turnover rate is low (only 65%) in an industry where the average was 81.9% for 2015-2017, but annual turnover rates above 120% are common (Rosenbaum, 2019). Further, there is evidence that many ‘diversity training’ initiatives are ineffective and even counterproductive

(Kirk & Durant, 2009). While you are not necessarily opposed to diversity, you question whether sending managers to a pricey two- to four-hour workshop will actually undo years of learned attitudes and behavior. If you agree to this proposal, you'll want to be clear that you have control over the content and other details of the training, including costs.

Voluntary donation of \$50,000 to the Fast Food Employees' Worker Center (FFEWC). This demand is disingenuous; there is nothing 'voluntary' about it. Actually, it is a thinly-disguised attempt to blackmail the firm so that the Worker Center will go away. Ironically, by donating to the FFEWC, you would be shrinking the pool of available money to help your own employees. You simply cannot afford to donate such a large sum of money to the FFEWC and also provide the pay raises or new benefits that the FFEWC claims it wants for 3:16 Branded Burger workers.

If Worker Centers are really 'fronts' for labor unions, then such donations violate labor law:

“The Taft-Hartley Act also created protections for workers from collusion between labor organizations and employers. The legislation added Section 302 to the NLRA which outlawed employer payments to labor organizations except under a few limited situations, and similarly banned labor organizations from demanding or accepting such payments. Examples of these exceptions included the payment of dues deducted from employee wages, and contributions to trust funds created for the sole benefit of employees, such as pension or health and welfare funds.” (Marculewicz & Thomas, 2012, pp. 80-81).

Soon you will meet with the Branded Burger United Workers (BBUW) labor union to discuss this list of initial proposals. They will probably be advised by a representative from the Fast Food Employees' Worker Center (FFEWC). Your goal should be to get a written comprehensive agreement with a “no strike” clause (securing a promise from both the union and the Worker Center that neither organization will picket as long as a contract is in effect).

You also want to negotiate a very generous and very specific “management rights” clause (Siegel, 2016). A management rights clause seeks to ensure that you can continue operating your restaurants as before, without having to negotiate over every work procedure or work rule. If you do not negotiate such a clause, then there might be unwanted consequences. Suppose you try to change a work rule (e.g., when employees can take breaks); the union might claim that they are entitled to negotiate over these changes, especially if they fall under the mandatory topics of ‘wages, hours, or conditions of employment’ (Holley, Ross, Wolters, 2017)

Before you meet with the opposing side, you should meet with your own negotiating team. When you meet privately with your team, you should consider these questions:

- What are our realistic positions?
- What is our “bottom-line” position?

- What bargaining tactics will we use?
- If negotiations fail, what other legal and managerial tactics will we use?

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(for additional research by management representatives)

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