MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGANEMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY:

TEAMSTERS LOCAL 214

RESPONDING PARTY:

BURTON, CITY OF

MERC CASE NO.: L16 B-0210[1]

FACT FINDER'S REPORT

Pursuant to Michigan Labor Mediation Act (P.A. 176 of 1939 as amended)
[MCL 423.1 et seq.], and
Public Employment Relations Act (P.A. 336 of 1947 as amended)
[MCL 423.201, et seq.]

Fact Finder
Roger N. Cheek

Advocates
Union Advocate:
Mark T. Gaffney Business Agent; Teamsters #214

Employer Advocate:
Joshua J. Leadford, Counsel; City of Burton

PETTION FILED:	March 5, 2017
FACT FINDER APPOINTED:	May 24, 2017
SCHEDULING CONFERENCE HELD:	June 8, 2017
HEARING HELD:	August 25, 2017
POST-HEARING BRIEFS RECEIVED:	September 30, 2017
REPORT ISSUED:	November 30, 2017

[1] *MERC CASE File No.* correction made 12/9/17 (after initial date report was issued).

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WITNESS LIST

1. Bette Bigsby, Steward, Executive Benefits Representative; Teamsters #214

2. Jean Johnson, Director of Senior Services, City of Burton; and Alternate Steward, Teamsters #214

3. Ginger Burke-Miller, Financial Controller, City of Burton

4. Rik Hayman, Chief of Staff for Mayor, City of Burton

5. Sue Warren, Director of Human Resources & Labor Relations, City of Burton

6. Paula Zelesko, Mayor, City of Burton

1. INTRODUCTION AND BACKGROUND

Teamsters Local 214 represents a bargaining unit of nine (9) employees who serve as various administrators for the City of Burton, a municipality of about 30,000 residents located in southeastern Genesee County

Burton operates under a strong mayor-council form of government. Its council is an elected 7-member body vested with policy making and legislative authority, including being responsible for adopting the City budget. The mayor is also elected and is responsible for carrying out the policies of the council.

This fact-finding proceeding is required because the parties could not reach mutual agreement in traditional bargaining followed by three (3) sessions of State-supervised mediation. Therefore, an impasse was declared and the Teamsters submitted a petition to MERC on May 5, 2017 requesting that the Michigan Employment Relations Commission appoint a fact finder who would conduct a hearing and issue a recommendation.

On May 24, 2017, the fact finder was appointed, on August 25, 2017, he conducted a hearing, and on September 30, 2017 he received the parties' written briefs. The facts and argumentation provided through these proceedings created the record that the fact finder will use to make a recommendation. Finally, the law requires that the findings shall be made public, but shall not be binding upon the parties.

In its request for appointment of the fact finder, the Teamsters' declared that the parties had not resolved a) pension changes, b) wages and salaries, and c) pension co-pays, and further stated that the reasons why publicizing the facts and recommendations would assist in resolving the disputed issues is "to raise involvement to more City decision makers."

In its Answer to the petition, the City agreed that the open issues are as were set forth by the Union, but disputes that fact-finding is necessary to raise involvement to more City decision makers. The Answer further states that the position taken by the City is "absolutely consistent" with City decision makers' directives, and that there are "no issues of fact in dispute." And lastly, the City asserted that fact-finding was sought to delay implementation of the City's last-best-offer which had led the parties to reach at "good faith" impasse.

A principal claim made by the City is that rising pension costs will cripple the City because they will triple between 2016 and 2040. Further, the City asserts that the situation is destined to eventually result in exceeding the City's ability to pay. This significant claim seems to be clearly supported by the Gabriel Roeder & Smith Co. (GRS) actuarial valuations issued on the City's defined benefits system (DBS). GRS is a long-practicing national actuarial and benefits consulting services firm that operates extensively throughout Michigan. Its numerous analyses and reports issued each year are generally well-received by unions and employers engaged in collective bargaining. And Burton also obtains reports from CBIZ Pension Resources, a company whose address is Livonia, Michigan, and it advertises that currently has about 134 offices in the United states. The reports that firm provided Burton were projections issued in August 2016 of the funded ratios and Employer Contributions Under Various Scenarios company's projections of estimated future required contributions on five (5) divisions of Burton's DBS plans, including Division 20 which includes the Teamsters' members

The City says that the Teamsters have been asked to accept concessions in their pension program in the form of a bridged pension benefit along with what it describes as reasonable wage offers. The Teamsters also allege that the offer is wholly consistent with the offers previously made and accepted by the City's AFSCME and SEIU bargaining units, and several exhibits the City entered into the record confirm that.

On the other side of this dispute the Teamsters Unit consists of nine (9) employees in a "residual unit of all full-time and part-time administrative and supervisory employees of the City of Burton."

The Union asserted in its brief that the facts behind the need for this fact-finding "are uncommon and unusual." Apparently, this was stated because the parties had proceeded very far in the contract bargaining, to the point that they believed a traditional tentative agreement had been reached, which the Union said they ratified, and according to the Union, the City's negotiation team accepted also. Then the City Council refused to ratify this accord, choosing instead to hire a labor law firm to completely negotiate another agreement, and according to the Union, it was not only renegotiated, but the new terms were much more severe and some were unnecessary pension concessions.

I agree that these kinds of things are unusual and uncommon. But based on the government structure and division of power in Burton's government (described above in Introduction and Background) the in this case result was lawful since the city council voted to do it.

STATUTORY CRITERIA

This fact finding was held pursuant to Michigan Labor Mediation Act (PA. 176 of 1939 as amended) [MCL 423.1, *et seq*], and Public Employment Relations Act (P.A. 336 of 1947 as amended) [MCL 423,201, *et seq*].

STIPULATIONS AND PRELIMINARY RULINGS

None.

COMPARABLES

Union Exhibits #6, #7, and #8 are labor agreements that the Union offered for inclusionas external comparable communities for use in this hearing. Those exhibits are: *City of Davison and AFSCME Public Works Employees*, with coverage dates for 7/1/2015 to 6/30/2018; *City of Flushing and Police Officers Labor Council*, for 7/1/2016 to 7/30/2018; and *City of Flushing and AFSCME Local 1918.31*, for 7/1/2015 to 6/30/2018, respectively. The fact finder perused each of them and found they are what the Union claimed they are so they were made a part of the case record.

I am confident that the Union and the City know that the opportunity for them to effectively use any portion(s) of the contents of these labor agreements, as well as any other alleged "comparable community" document that may later be proposed for use as such, must be limited to only those which satisfy a proper foundation for permitting their inclusion in the record.

ISSUES BEFORE THE FACT FINDER

ISSUE #1
WAGES AND SALARIES - General Wage Increases.

Current Provision:	Various.
Union Proposal:	5% across-the-board increase, 1st Yr. of CBA, effective same date as employees' pension contributions take effect; pension contributions are to be applied to the system's UAL. *[As copied from Union's LBO dated 7/17/2017.]*
City Proposal:	2% across-the-board increase

Discussion. The Teamsters stated in their case presentation that they are "willing" to do "their part" to help the City manage the financial pressure falling on it from the UAL burden it is currently facing. This it did, despite also expressing its position that it concludes that Burton currently has a balanced budget and has had one during the past couple of years, and is expecting to continue to have one in the coming near future. The fact that Burton has recently been voluntarily paying the $1,000,000 extra contribution toward lowering its troublesome UAL obligation has apparently caused the Teamsters to believe that Burton has a healthy enough financial position to have an "ability to pay" more.

This being the case, and because the Teamsters has itself has expressed its view that some new concessionary labor agreement provisions will likely be going into the new successor labor agreement, and reducing Teamsters members' take home pay somewhat, they have shown that they are not willing to voluntarily go along with just a 2% general wage increase which they say not enough to be fair to its members.

The fact finder, on the other hand, finds that the City's desire to hold down wages payroll cost as much as possible so it can concentrate primarily on addressing the pension burden, is unwilling to voluntarily agree to give a 5% raise to the employees at this time. Also, the me-too agreements are there for the City to deal with based on what it decides to agree to with the with the Teamsters.

For this reason, the fact finder concludes it will be fair and doable to propose a general wages settlement that will provide the Union members with more than 2% but not as high as 5%.

Recommendation: The parties should agree to a 3½% general wage increase across-the-board. The fact finder finds that the planned payment of an extra $1 million payment to UAL faster is not a fair thing to do to the Teamsters he City employees at this time because they are almost are almost definitely going to suffer a reduction in their take home pay because of likely new pension contribution terms that will go into effect in the near future.

The parties should agree to pay a 3½% across-the-board wage increase. I realize this may result in more employees than just Teamsters employees receiving a greater raise (because of me-too agreements) but that does not turn me away from recommending that the greater raise be paid if the total is calculated jointly by the City and Teamsters and deemed to be in the "feasible" range, all things considered.to be feasible. I am not capable of knowing what the exact total cost of the recommended increase will be, but I suspect that it can be covered by the $1 million dollars. Regardless, I remain satisfied it is something that should be done if at all possible at this time when the employees are being asked to go along with significant changes in the rules applicable to their retirement benefit. I also am aware that the various BUs who have me-toos with the City will probably have their wage rates raised also.

ISSUE #2
WAGES AND SALARIES - Special Wages Adjustment Increases. Economic issue.

Union Proposed #1: Assistant Fire Chief salary equal to Purchasing Director.
City Proposed #1: Assistant Fire Chief, no special wages adjustment.

Union Proposed #2: Executive Benefits Representative salary equal to Purchasing Director.
City Proposed #2: Executive Benefits Representative, no special wages adjustment.

Discussion. The Union's proposal for special wage increases seeks raises for the two (2) job titles of Assistant Fire Chief and Executive Benefits Representative. It is interesting that both of those titles were each cited for a raise for multiple reasons. For Assistant Fire Chief the first stated reason was because the wage rate "lags behind" other area fire departments, then it was pointed out that four (4) Deputy Assistant Fire Chiefs had ended their employments with the City and thus the current Teamster member had taken on more responsibilities. And finally, as regards that title, it was said, and in another separate section of the comprehensive wage adjustments proposal, the salary for Assistant Fire Chief's salary is also to be equal to [City] Purchasing Director [salary].

The other Teamster job title proposed for receipt of a wage adjustment increase is Executive Benefits Representative. The first reason offered in support of this proposed adjustment is because the position is said to be out of line with other bargaining unit members. The second reason offered for the proposed increase is that it should be made equal to that of City Purchasing Director. [NOTE: I assume that "City Purchasing Director" and "Purchasing Director" mean the *same* job, and it probably is represented by another BU because that title is not included in Article I, RECOGNITION, of the Burton/Teamsters last 2012-2016 labor agreement.]

The problem here is that the record presented is not sufficient to support the proposal. Not enough specific details were entered into the record for me to confidently find a wage adjust is justified.

It must be remembered that as a MERC-appointed fact finder I am duty bound to only recommend to the parties that they pursue the objective I have found to be the most persuasive as a result of finding credible, rational, and a sufficient amount of proofs to support the findingcompetent rational proofs. Therefore, in this case, even though the witnesses clearly appeared to be providing only totally honest positions they judge to be accurate and complete it amounts to being merely opinions. That is not sufficient for me to recommend that the parties should settle the issue in accordance with objectives expressed in the Union's proposal, therefore, the City's *status quo* position should be followed.

Recommendation: I recommend that no special wages adjustments be agreed to for these two (2) job titles.

ISSUE #3
PENSIONS – DB Plan Multiplier. Economic issue.
Current Multiplier: 2.5%.
Union Proposal: Reduce to 2% multiplier.
City Proposal: Reduce to 1.5%

ISSUE #4
PENSIONS – DB Plan FAC. Economic issue.
Current FAC: Best 3 consecutive years.
Union Proposal: *status quo*.
City Proposal: Best 5 consecutive years, base wages only

ISSUE #5

<u>PENSIONS – DB Plan Cost of Living Adjustments (COLA)</u>. Economic issue.
<u>Union Proposal</u>: Reduce to 2% annually, annual adjustment
<u>City Proposal</u>: Freeze and no future COLAs

<u>Discussion</u>. The City has expressed great alarm about the current size of the unfunded accrued liability (UAL) of its defined benefits pension plan. It claims that the UAL is continuing to grow is and doing so too swiftly.

In support of this assertion, the City entered into the record an August 18, 2016 letter that had been prepared by CBIZ Retirement Plan Services at the request of the City and MERS which computed projected funded ratios and employer contributions under various scenarios including additional contributions. The letter said its purpose was to show the pattern in the employer contribution, which it did do for the following three (3) scenarios: 1) making additional City Contributions of $500,000 per year until UAL is paid off; 2) making additional $1,000,000 contributions per year; and 3) making additional $1,500,000 contributions.

The preceding suggests that Burton's management considers achieving a significantly lower level of UAL as soon as possible is a is an existential issue for Burton, causing it to diligently strive to get agreements agreement to new labor agreement provisions that they may not have even remotely considered for adoption as recently as when their 2008-2012 labor agreement expired. Simply put, I expect employees and their Union to understand that at this time they must anticipate receiving proposals from management team negotiators that will be seeking new objectives in the "pattern bargaining" proposals that all unions will most likely be receiving from the City.

The City seems to be trying to keep its claim of the existence of its severe UAL economic challenge front and center in the minds of employees and city residents, such as when when in its brief, it alludes to the potential future inability to pay promised pensions along with possible "destroyed" City government employment positions. That same point also appears to be evident as it points out that the 2016 annual pension contribution amount alone is equivalent to "42% of the City's annual revenues." And further, the City asserts that "the entire general fund [which it claims is roughly $20,000,000 in pooled investments consisting of various enterprise, restrictive, and other types of funds] will be drained by pension costs within ten years' time."

And possibly for effect and to truly drive the point home, the City candidly admits that "its proposals are drastic [and] part of a citywide effort to reduce pension liabilities to sustainable levels".

The City also included in the brief's narrative, the candid admission of what it terms a "historic" mistake that continues to wreak havoc on the City's budget. It is the fact that when Burton's members begin their membership in the MERS system sometime in about 1994, it did so with its then-existent workforce being granted full credit toward retirement for all their prior years of service but did not require those who took the credit to pay any make-up contributions for that the time. Obviously, this meant that "from day 1" a UAL existed in the MERS plan, and it could have been could have been a huge one!

The financial analyses the City relied on to make these assertions were not computed by the City, but were produced by professional pension consulting firms CBIZ Retirement Plan Services (CBIZ) and Gabriel Roeder & Smith and Compan (GRS). And although the reports from these two firms were not entered into the record as joint exhibits nor did the Union express its full concurrence with any of part(s) of either, the Union also did not try to refute any portion of their contents.

Even though the Union acknowledged the City's "problem" concerning the amount of its UAL, the Union never came close describing the situation was a as bleak as the City described it. And further, the Union claimed the City's proposed pension changes as being too harsh and trying to change too much too quickly. The Union classified many of them as "concessions" or "concessionary." And it said that the present day Teamsters now on the job were being asked shoulder more of the burden of changing things than they should be deemed responsible for since because much of the "problem" developed during a Time when many of them did not work

Teamsters put a bigger dent in the City's UAL than they believe present day Teamsters were being asked to accept changes to conditions they had not caused, i.e., that the situation was not the "fault" of the present day Teamsters were arguably not around while the UAL was growing out of control.

The Union brief also laments what it referred to as the "City's broken promise" to referred to by one of the witnesses who testified. Obviously, a comment like that revealed there may be a built up disillusionment and bitterness among today's Teamsters members that it has led to the stiff resistance that is now being put up against the City's proposals for changes and apparent personal ill will toward certain specified members of management. This is evident in some oral comments made during testimony given in the hearing some similar nastiness that continued in writing in the Union's brief. At least twice the "suspicious" was used, once regarding the City Council's "motives." "Lack of appropriate" approach was written, testifying that "a Council member said "Administration should not be Union was" related in the brief, being told proposals lack reasonableness, and referring to an employee who "no longer attends Council meetings. That a person was "bullied", "repeatedly harassed," and made subject to "facing "public bullying from council officials.

The Union brief even pointed out that one very high-ranking City official (apparently on the Mayor's staff) said that City Council members' actions of embarrassing employees publicly occurred, and that 7 out of 9 Teamsters members have "faced harassment and public bullying" from

Council members, plus the brief said that official also "testified to a lawsuit between Council and the Mayor," and that the final opinion of the testifier was that "these actions stem from a Union animus."

The Union claims the City does not need to pay another extra $1,000,000 into its MERS pension account like it has done for the last three (3) years. It considers the allocation of those dollars when there is no official requirement to make the payment supports its assertion that the present day financial condition of the City of Burton is "good," and at this very time when the City may succeed in reducing employees' overall compensation by winning some of the concessions they are seeking at the collective bargaining table.

Additional resistance to the City's proposed pension changes were provided through the testimony of Jean Johnson, the bargaining unit member who is <u>not</u> in the City's DB plan because she opted out of membership [possibly back in 1994 when the City first offered the MERS plan pension to City employees] in favor of an ICMA DC Plan. With respect to Jean Johnson's pension benefits, the Union said she had already made a pension concession in the prior labor contract for deducting a 5% "co-pay" that was never collected "at the City's own decision" thereby leading the Teamsters to characterize the situation as the City's *own fault* that it had not at least started one instance of an authorized action for collecting an employee's contribution.

Supposedly the City believed the collection could not be made due to "charter-listed" people being in the pension system. The Union's brief asserted "we should not be harmed by the City's inaction."

Notwithstanding all stated Union objections and rejections of the City's arguments, it concluded the comprehensive defense of its various positions by observing that its members are also concerned about the City's pension status, and therefore the Union had issued its last-best-offer which addressed that concern by proposing to accept some pension concessions that would cost the employees about $5,000 to $8,000 annually by the end of the contract period.

So, in the end, even though the Union never directly joined the City in declaring that the amount of the UAL and how long it would take to get it paid off was a critical concern to the Union also, I judged the overall comments and demeanors of the members of its case presentation team when making their oral presentations at the hearing, as concern for the seriousness of the situation.

Regardless of the Union's strong resistance to the City's positions, near the end of its presentation I felt it was tacitly acknowledging that its membership is concerned about the state of things, and in brief stated that is a reason the Teamsters' LBO contains multiple proposals "to do our part towards righting the pension situation".

Recommendation: Considering everything, I find that the record the City made is the more persuasive one and I recommend that the parties make effort to agree to the City's proposed level of cost reductions in the current plans and the proposed new DC Plans.

ISSUE #6
Employee Annual Contribution to MERS DBP Pension.

Current Benefit:	No contribution being collected from employee it was negotiated to be 5%.
City Proposal:	Begin 10% annual contribution from employee.
Union Proposal:	Begin 5% collection tied to 5% increase, (both starting at the same time); on 7/1/18 increase to 6%; on 7/1/19 increase to 8%; on 7/1/20 increase to 10%.

Recommendation. I recommend the parties bargain to reach a compromise settlement.

ISSUE #7
Lump Sum Bonuses Put Into ICMA DCP Accounts.

City proposal:	$1,250 bonuses 4-Yr CBA *if ratified before May 2017*
Union proposal:	$1,500 bonuses years 2, 3, & 4

Recommendation. I recommend the parties agree to a "middle ground" compromise bonus of $1375 for years 2, 2, and 4.

ISSUE #7

<u>**New ICMA DCP**</u> A supplemental retirement savings account is proposed for saving 3% of an employee's annual base wages.

<u>Union Proposal:</u> Tie this proposed 3% payment to the City's proposed 2% wage for a 5% total increase as was proposed by the Union.

<u>**Discussion**</u>: The brief explanation of this proposed new DCP appears to be recognizing that some of the proposed changes to Burton's current traditional DBP are likely to occur and thus lower the amount of true pension payments the employees will receive each month.

<u>**Recommendation**</u>. The parties should agree to establish this saving account opportunity for employees to enhance their financial position in their retirement years.

ISSUE #8

<u>**Jean Johnson DCP "Pension"**</u>**.**

<u>Current factors</u>: Jean Johnson has been in ICMA DCP after choosing it for her retirement benefit, has received 20%yearly contributions from the City.

<u>City Proposal:</u> Reduce annual contributions to 15%.

<u>Union Proposal</u>: *status quo.*

<u>**Discussion**</u>: Supposedly, this has been a very lucrative benefit for Jean Johnson because a mistake was made when she began in it, possibly as far back as 1994. The City apparently used too high percentages to for calculating what her annual contributions were supposed. According to a City representative, the City has not tried to get its excess contributions back.

<u>**Recommendation**</u>. I recommend that the parties agree to a compromise reduction to 17½% annual contribution anyway even though changes in UAL issues do not arise for a retirement DCP such as this. Demonstrating that there has been "buy-in" or that she too "has skin in the game" will help getting reluctant employees to accept the painful concessions they are v=beaing acked to agree to.

ISSUE #9
Contributions,
New ICMA DCP
Employee Contributions.

Current Benefit:	Intended 5% contributions plan from 2012-2016 did not start as intended
Union Proposal:	Start 5% now; 6% 7/1/18,8% 7/1/19, and 10% on 7/1/20.
City Proposal:	Start 10% now

Recommendation. The parties should agree to a compromise 7% employee contribution.

ISSUE #10
New ICMA DCP
Supplemental Accounts.

Current Benefit:	3% City contributions.
Union Proposal:	Tie proposed City 3% contributions to City proposed 2% general wage increases for total 5% contributions which is equal to Union's proposed general wage increase.

Recommendation: The parties should agree to start offering the Teamster members this supplemental plan at the 3% contribution amount as proposed by the City.[1]

ISSUE #11
New Employee MERS DCP (Art. 30.4).

Current Benefit:	15% employee contributions.
City Proposal:	Reduce contribution to 10%.
Union Proposal:	Will accept if City accepts Union's other LBO proposals.

Recommendation. The recommend the parties agree to the "middle ground" compromise amount of 12½% and without being tied to any condition such as was proposed by the Union.

ISSUE #12
ICMA DCP Accounts (Purchasing Pension Credits).
Current Benefit: Purchasing of additional pension credits is allowed.
City proposal: Delete benefit entirely.
Union proposal: *Status quo*.
Discussion:
Recommendation.

ISSUE #13
"New" Employees' Art. 30.4 MERS DCP.
Current Benefit: Employer makes 15% annual contribution.
City Proposal: Reduce contribution to 10%.
Union Proposal: Will accept City proposal if City accepts Union's other LBOs.

Recommendation.

SUMMARY OF RECOMMENDATIONS

ISSUE NAME	RECOMMENDATION
ISSUE #1. Wages and Salaries – General Wages Increases	I recommend the parties agree to a "compromise" 3½% across-the-board general wage increase.
ISSUE #2. Wages and Salaries – Wages Adjustment Increases	I recommend the parties do agree to make the two special wages adjustments increases, as proposed by the Union.
ISSUE #3. MERS DB Pension Plan – Pension Multiplier	I recommend the parties agree to the 2.0% multiplier for the MERS DB Plan, as proposed by the Union.
ISSUE #4. MERS DB Pension Plan – FAC	I recommend the parties agree to the 2% annual COLA in the MERS DB Plan, as proposed by the Union.
ISSUE #5. MERS DB Pension Plan – COLA	I recommend the parties agree to *status quo* for the FAC in the MERS DB Plan, as proposed by the Union.
ISSUE #6. Employee Annual Contribution to MERS DB Plan	I recommend the parties agree to start employee contributions in the MERS DB Plan at 7% of annual compensation.
ISSUE #7. Lump Sums Added to ICMA Accounts	I recommend the parties agree to a "middle ground" compromise bonus of $1375 to be added to the ICMA accounts for years 2, 3, and 4.

ISSUE #8. Jean Johnson's DC Pension	I recommend the parties agree to a "compromise" reduction to 17½% employer contribution to Jean Johnson's ICMA DC account.
ISSUE #9. Employee Contributions to New ICMA DCP	I recommend the parties agree to a "compromise" 7% employee contribution to start now.
ISSUE #10. New ICMA Supplemental DC Plan Accounts	I recommend the parties agree to the City proposal providing a 3% "primer" contribution for this DC Plan.
ISSUE #11. "New" Employees' Art. 30.4 MERS DC Plan	I recommend the parties agree to start co-pay contributions at a "compromise" 7% amount.
ISSUE #12. "New" Employees' Art. 30.4 MERS DCP.	I recommend the parties agree to reduction of the contribution to 10% as proposed by the City, and *without* any additional conditions as proposed by the Union.
ISSUE #13. ICMA DCP Accounts (Purchasing Additional Pension Credits).	I recommend the parties agree to the City's proposal that no purchasing of pension credits for any reason shall be allowed.

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Date: November 27, 2017 Roger N. Cheek, Fact Finder