

8/18/88

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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING REPORT

DELTA COUNTY,

Employer (Petitioner),
-and-

Case No: G86 J-789

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,

Union.

APPEARANCES

On Behalf of the Employer:

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On Behalf of the Union:

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LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

BUR OF EMPLOYMENT RELATIONS
DETROIT OFFICE

Delta County

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FACT FINDING REPORT

I - STATEMENT OF FINDINGS, CONCLUSIONS

The fact finder was appointed pursuant to a letter dated January 13, 1988. The fact finder immediately contacted the parties by telephone. Additional time was given to the parties in the hope that they would resolve their differences. They held negotiation sessions but could not resolve the issues. A number of dates were set, it was agreed that the hearing would take place on July 14, 1988. The hearing was held in the City of Escanaba, Michigan, at the Chamber of Commerce offices. The Employer was represented by Mr. Thomas L. Butch, Esq., and the Union was represented by Douglas L. Hiltunen, Staff Representative.

The application in this particular case was filed by the Employer and sets forth a number of issues that separate the parties. The Union did not file an answer pursuant to Rule 33. The parties engaged in a number of lengthy negotiation sessions and at least three substantial mediation sessions.

That effort culminated in a tentative agreement being reached on August 6, 1987 (see E-52). The Union membership, however, rejected the tentative agreement.

A number of exhibits were admitted into evidence and are listed as follows as a necessary part of the established facts:

- J-1 Annual Financial statements December 31, 1985
- J-1 Annual Financial statements December 31, 1986
- J-3 Annual Financial Statements December 31, 1987
- J-4 Collective Bargaining Agreement between the parties.

This is the basic document which the parties seek to modify through the application, fact finding process and subsequent recommendation.

- J-5 The original application for fact finding dated 6/11/87

- J-6 Union's position dated July 1, 1988 which in essence claims that the County is not in financial difficulty. As will be seen, this position is contested by the Employer's evidence and the testimony of Mr. Johnson, CPA-Auditor.

- J-7 Letter dated July 1, 1988 with attachment which sets forth the position of the Employer as of that date with regard to the issues.

The following are the Employer's Exhibits:

- E-1 Letter dated May 24, 1988 concerning possible environmental problems that may exist in the Court House basement which may require future unexpected costs.
- E-2 "Firm Profile" of the CPA, Anderson, Tackman and Co. that provide audit services for the County of Delta.

- (There was no serious question as to their qualifications)
- E-3 Layoff notice dated January 2, 1987 (effective 1/16/87) that laid off seven members of the bargaining unit.
 - E-4 Reclassification results dated December 3, 1987 of four employees (Buckland, Stenberg, Kinnart, and Olson) and the cost of that reclassification.
 - E-5 Cost savings of \$236,381 from the January, 1987 layoffs.
 - E-6 Press release concerning the effect of the discontinuance of Federal Revenue Sharing.
 - E-7 Memorandum dated 4/19/88 from Marsha L. Green, Treasurer to Finance Committee regarding the 1988 tax revolving fund, suggested method of handling the 1987 tax delinquency
 - E-8 Meeting minutes concerning the tax revolving fund, held 2/16/88 in Lansing, Michigan. (This was a meeting with tax/bond counsel Norton Berman wherein he proposed certain suggestions, i.e., the County should stay flexible, he advised against total self funding of bonds, also counselled against depleting the tax revolving fund for purposes of general operating expenses but should remain intact in order that the fund remains able to perform its primary function, i.e., provide a loan basis for local school boards and other government entities to borrow from.
 - E-9 Financial condition of the Employer as suggested as of 12/31/87. Showing the total fund balance and the unappropriated surplus as of 6/16/88.
 - E-10 Various letters concerning mental health cost addressed

to the County Administrator from the Mental Health Center, Department of Social Services (State), Probate Court.

- E-11 Graphic illustration of ten year comparison (1978-1988) of costs and expenditure for the following departments: Mental Health, Child Care, Prosecuting Attorney, Health Department, Sheriff's Department, County Courts and a pie shaped representation of percentage increases including the increase in court costs 1978-88.
- E-12 News article in the Daily Press dated 6/30/87 concerning termination of revenue sharing fund program.
- E-13 Results of the stipulated arbitration award that resulted in upgrading (reclassification) of five positions dated 1/14/87.
- E-14 Costing/hourly and yearly costs of various proposals submitted by the parties.
- E-15 Recap of savings from layoff of certain identified employees in Probate Court, Court House and Sheriff's Department.
- E-16 Economic outlook dated 5/23/88 U. S. News and World Report.
- E-17 1987 survey of Michigan County salary, employee benefits.
- E-18 Memorandum from John R. Axe, Attorney, concerning the transfer of surplus fund from the delinquent tax revolving fund to the general fund
- E-19 Bar graph regarding excess revenue expenditures, County and City comparables using Delta, Chippewa, Menominee,

Kalkaska, Lelanau, Oscoda, Grand Traverse, Luce, Houghton,
the cities of Negaunee and Escanaba

- E-20 Bar graph comparison of fund balance as percent of
total revenue and expenditures.
- E-21 Bar graph days of operation and fund balance.
- E-22 Tracking from 1984 through 1987 of federal revenue
sharing funds
- E-23 Graph of transfers in of federal revenue sharing funds
through 1984 and 1987
- E-24 Delta County S.E.V. (State Equalized Valuation) 1984-87
- E-25 Delta County levies 1984-87
- E-26 Delta County Court expenditures 1978-88 (Circuit,
District and Probate Courts)
- E-27 Child care expenditures 1978-88
- E-28 Health Department expenditures 1978-88
- E-29 Mental Health expenditures 1978-88
- E-30 Sheriff's Department expenditures 1978-88
- E-31 Prosecuting Attorney's expenditures 1978-88
- E-32 Pie chart comparing County budget 1978-88, percentage
increases in courts as a percent of total
- E-33 Projected costs against actual revenue and expenditures
1984-87, projections in 1988, 1989 and 1990
- E-34 Projection revenue expenditures excess and fund balance
"without cuts"
- E-35 Projection revenue expenditures excess and fund balance
"with cuts"
- E-36 Delta County original bargaining proposals

- E-37 Negotiation proposal from the Union
- E-38 Letter dated 8/13/87 from Mr. Butch to Mr. Nino Green, Attorney, containing the tentative agreement which was reached in the mediation session
- E-39 Summary of changes in the labor agreement, from the Union perspective, submitted to the membership
- E-40 Letter dated 9/24/87 inquiring as to the status of the tentative agreement
- E-41 Letter dated 9/23/87 from the Union indicating rejection of the tentative agreement
- E-42 New proposals after rejection by the Union
- E-43 Status of the proposal of the County as of 3/18/87
- E-44 Letter dated 12/30/87 from Thomas Butch to Edward Faccio, Union Staff Representative
- E-45 Package presented during mediation/negotiation 1/21/88
- E-46 Request for negotiations dated 5/12/88 concerning the reclassification of a number of positions, i.e. eleven (this is significant because there are 22 members within the collective bargaining unit, 5 of which have been reclassified and there is a request to have an additional 10 reclassified pursuant to E-46)
- E-47 Response to the request for reclassification
- E-48 Letter dated 6/10/88 from Mr. Butch to Mr. Edward Faccio containing a suggested settlement prior to fact finding, i.e., Employer offer
- E-49 Union rejection dated 6/17/88
- E-50 Union letter dated 6/23/88 - Union's proposal of settlement

prior to fact finding

E-51 County rejection

E-52 Employer's position

E-53 Agreement with 47th Circuit Court through 3/27/90

E-54 Agreement with the Delta County Probate Court through
4/12/90

E-55 Agreement with the 94th District Court through 3/27/90

E-56 Summary of table agreement with the Teamsters and
the Sheriff's Department through August 31, 1990

E-57 Union letter concerning negotiations dated 4/15/88

E-58 Union letter dated 7/7/87 concerning negotiations

E-59 Bar graph comparing counties regarding delinquent
tax revolving fund equity

E-60 Bar graph comparison of the same (DTRF) concerning
1987 debt issue

E-61 Bar graph comparison: percent DTRF equity to dept

The Union submitted the following Exhibits:

U-1 Delta County funds 1984-87 including the tax revolving
funds and the accumulation of fund balances

U-2 Memo dated 5/7/84 from Ed McGuire, then Delta County
Controller, to Chairperson of the County.

(The memo attempted to establish a committee with
Union representation to meet and mutually agree on
a date to present job classification discussion and
input on behalf of the Union and the Employer. Apparently
this was not done).

William Johnson, C.P.A. and partner in Anderson, Tackman,

has performed the County audits for a number of years. He testified at length concerning the bar graphs which he prepared and other financial data. Moreover, the firm prepared the three financial audits that are in evidence, identified as Joint Exhibits 1 through 3. The main thrust of Mr. Johnson's testimony suggested that the revenues of the County were declining and the fund balances (surpluses) are on the decline, while, on the other hand, costs have increased. His advice to the County has been to curtail costs. He indicated the County had taken action, i.e., the layoffs in 1987. Moreover, he feels that the revenues are not increasing fast enough and therefore the County must take on a cost containment financial posture. They should avoid uncontrollable costs if they can, so they do not run into a deficit which is prohibited by law. Mr. Johnson was pessimistic regarding the declining general fund surplus. He spoke of projections through 1990.

Mr. Johnson is very conservative in his approach and recommendation in these fiscal matters. Since we are dealing with public funds, his posture is appropriate. In response to a number of questions regarding the use of the Tax Revolving Fund, Mr. Johnson indicated that he advised the County Board not to spend that money or transfer it to the General Fund. He obtained an opinion from the bond/tax counsel, Mr. John Axe of Dykema, Gossett law firm (E-18). Mr. Axe said that in his opinion the unpledged funds of the Tax Revolving Fund could by law be transferred to the General Fund under certain conditions which he laid out. Generally speaking, those conditions would exist where the Board takes

certain action based on the fact that the needs in a particular year no longer exist. He recommended a "prudent level of unpledged reserves", and a process of review prior to any such transfer.

On the other hand the employees are very suspicious of the Employer and question their "gloom and doom" statements. Their concerns over the sincerity of the Employer are in part based on what appears to be an increasingly upward fiscal picture in spite of Mr. Johnson's testimony. Union Exhibit 1 indicates that total audited fund balances, General, Other and Tax Revolving, increased by \$1,412,388.00 from a period 12/31/84 through 12/31/87. The General Fund balance as of 12/31/87 was \$498,269.00. But, apparently, that figure has been reduced by "committed funds" in 1988 to approximately \$100,502 (E-9). The Union suggests that those figures have been "engineered" to appear lower than they actually are for purposes of the fact finding. Regardless, the final surplus tally will not be known until the 1988 audit is completed. Interestingly, the Tax Revolving Fund balance increased from \$304,478.00 on 12/31/85 to \$1,399,379.00 as of 12/31/86.

Notwithstanding the above, the general conclusion from the evidence is that the County has been and is operating in the "black". Obviously, some surplus funds have been designated by law, others have been designated by the County Commissioners - those which the County fathers wish to spend based on their particular priorities.

The financial costs of this case, that is, the increased new monies, should not adversely affect the County surpluses

based on the record evidence. This conclusion is based on the following analysis taken from the cost information contained in Employer Exhibit 14. That exhibit represents a cost breakdown of a number of the Union proposals and the Employer proposals. Total cost figures are included for the so-called \$300 signing bonus, and the retroactive payment of retirement benefits. Moreover, there are provisions within the Exhibit which set forth the new money costs of the various proposals, both the Union and the Employer. The exhibit shows that the total cost to the Employer of the \$300 signing bonus for all unit members is \$6,600.00. This is a one-time cost. As of 6/30/88 "retroactive payment of retirement benefits" for all unit members to a period of January 1, 1988, is a total cost of \$6,966.98. If these payments were made as anticipated by this exhibit, and paid in 1988 they would amount to a total cost of \$13,586.00 of new money. That amount is well within a reasonable range and certainly would not jeopardize the surpluses evidenced in the record.

The Employer's proposal, if accepted, would be \$6,973.00 (the difference between \$384,634 and \$355,606) of additional cost in 1989. Moreover, new money for increased costs in 1990 would be an amount of \$7,112 (the difference between \$355,606 and \$362,718). These figures do not represent so-called roll-up costs, rather they are representative of the increase to the base rate.

The totals of the above over the life of the agreement, which would not include roll-ups, but are indicative of new money or total cost for this Collective Bargaining Agreement

would be approximately \$27,671 (6,600 + 6,966 + 6,973 + 7,112).

So that we may see the difference in black and white, if the Union's wage proposals were granted the resulting difference is: The 1989 Union proposal of twenty cents per hour results in a total payroll cost of \$357,266.00 whereas the Employer's proposal is \$355,606.00, a difference of \$1,666.00 for that year (1989).

Likewise, in 1990, the Union's proposal of forty-five cents an hour would result in a total payroll cost of \$376,688.00 as opposed to the Employer proposal cost of \$362,719.00 or a difference of \$13,969.00 for that year (1990).

Thus, it can be said that over the life of the agreement the parties have been arguing about a total base rate difference of \$15,629.00 in the economic arena.

Obviously, from the above analysis it is patently clear that whether or not either proposal is adopted, the County will not be placed in the "red". However, in an overall analysis weight must be given to the testimony of Mr. Johnson, County Auditor, who has testified that based on commonly accepted accounting principles, certain balances should be maintained. Both parties should be interested in the solvency of the Employer. Moreover, since we are dealing with public monies, the priority of use is an important consideration. A balance, however, must be struck because employees have a right, on the other hand, to be paid a fair day's wage for a fair day's work.

The parties have submitted extensive Exhibits, which have

been carefully reviewed. In addition, both parties submitted final written argument in support of their positions. The arguments and evidence have been considered and will form the basis for the recommendation and finding that ultimately follows in this report.

Much has been suggested by the Employer concerning the alledged unfair labor practices of the Union. Suffice it to say that this fact finding forum is not the proper venue in which either party can receive an adjudication of an unfair labor practice issue. The fact finder understands the frustration of both parties, the lengthy nature of the negotiations and mediation process. All of the evidence, arguments of counsel, testimony presented and documentary substantiation has been carefully reviewed.

Specifically, the fact finder coordinated the positions (arguments) of both parties with the tentative agreements and offers as set forth in Employer Exhibits 38, 39, 50 and 52. In these Exhibits we have the sum total, with little modification of the final position of the parties. Where modification has been indicated in their final position, it has been considered by the fact finder.

Lastly, it was clear that certain tensions were present between the parties. Quite frankly, this state is probably due to the protracted time of the whole negotiation procedure. Hopefully, each party will find usefulness in the following recommendation which can become the basis for settlement.

II - RECOMMENDATION WITH REGARD TO THE ISSUES IN DISPUTE

EMPLOYER ISSUES

1. **Contract Language.** Contract language should be adopted since there is no objection on behalf of the Union, which would reflect item (1) of Employer Exhibit 52. The Prosecuting Attorney's Office should be added, however. This is the co-employer issue, and is consistent with the tentative agreement.

2. **Bumping Protection.** Employees of the bargaining unit should be allowed to bump across Department lines in the event of a layoff, however, the Employer's suggestion is adopted that this would not displace the first Deputy named by the co-employer, Department Heads, i.e., Treasurer, County Clerk, Register of Deeds, and Prosecuting Attorney. This recommendation is also consistent with the tentative settlement.

3. **Subcontracting.** The language as suggested by the Employer in Exhibit 52 is overbroad and should not be adopted. Rather, the language as suggested in the tentative agreement which adds the phrase "provided current employees are capable of doing the work" should be adopted. This recommendation is consistent and also considers the objections of the Union. This is especially true in light of the recent layoffs. On the other hand, this language will assure the Employer that there are people capable of performing the work which appeared to be a primary concern.

4. **Supervisors Working.** The language that should be added to Article 52 has been modified by the fact finder and should read: "All other co-department heads, i.e. the Treasurer, County Clerk, Register of Deeds, Prosecuting Attorney, may perform

any work within their Department in the event of an emergency or unavailability of bargaining unit employees to do that work." The suggested language and recommendations strikes a balance between the concerns of the parties.

5. **No Strike Clause.** The no strike clause as suggested by the Employer should be adopted with the addition of a sentence that reads: "The Employer shall not lock out employees during the term of this agreement." In the fact finder's opinion, this statement addresses the concerns of the parties, yet it also recognizes the direction of the Public Employee Relations Act (PERA) which prohibits strikes by public employees.

6. **Article 25.** The language as suggested by the Employer should be adopted with the understanding and condition that it will be effective upon receipt by the Union of the job descriptions that apparently have been prepared by the Employer. That is, upon receipt by the Union of job descriptions of all classifications within the bargaining unit, the language as proposed under Article 25, and as agreed to in the tentative agreement, should be placed into the contract and become effective. This recommendation would end this classification dispute during the term of this agreement. The Union still has the opportunity to grieve a new job classification and rate. They will have the assistance of mediation if there is a claimed "realignment of position".

7. **Overtime During Layoff.** The provision as suggested by the Employer is too broad. The Union's position should be adopted on this issue and the contract language should remain as it exists in Joint Exhibit 4. There is no evidence to support

the suggested change. Moreover, this recommendation addresses the concerns of the Union in light of past layoffs, and the continuing possibility of bargaining unit size reduction.

8. **Pay During Negotiations.** The request of the Employer should not be adopted. Rather, the current practice and contract language should remain as is. The fact finder believes that this request of the Employer is motivated by the frustration of the moment and the protracted negotiations. It is believed that this provision would work a forfeiture, and operate as a penalty rather than inducement to encourage settlement.

9. **Sick Leave Addition.** The recommendation of the Employer should not be adopted because no substantial evidence was introduced, to support this change. This request was not a part of the so-called table agreement, and it appears that the motivation for it is again caused by the frustration of the lengthy negotiations. Nevertheless, perhaps the parties can come to some resolution of this issue based on the suggestion of the Union and their offered modification contained in their argument on page 11.

10. **Remaining Items.** The Employer has suggested, and the fact finder will adopt, that certain items identified will become part and parcel of a new collective bargaining agreement. These items are identified as those set forth in Employer Exhibit 38 as:

Item 6: In Article 18, the recall provisions will be altered in the following respects. Upon recall from a layoff, the given vacancy shall be posted and filled as a new vacancy according to Article 20. Further, any individual applying for the vacancy must meet the requirements of Article 20 with regard to filling a vacancy.

Item 9: Under Article 20, if the Employer posts a job vacancy, the Employer must indicate on the posting whether or not testing will be required.

Item 11: With regard to Article 10, Grievance Procedure, the County Board of Commissioners and the elected officials will meet and indicate to the Union and reduce to written language as part of the contract whether the elected official or the County Board or his designee have the final authority on any grievance filed as the final step prior to arbitration. If the grievance is denied by such party, then the Union may proceed directly to arbitration.

Item 13: At the end of Article 41(a), language will be added indicating the Employer will notify the Union if there is a change in carriers for hospitalization and medical coverage.

Item 14: Language will be added to the contract indicating that the Employer will cooperate in a good faith effort, after the contract has been executed, to provide job descriptions for all categories of employees.
(NOTE: This is unnecessary in light of the recommendation, that the County give the already prepared job description of each classification to the Union.)

Item 15: In Article 10, Grievance Procedure, language will be added providing that any decision by the Employer or its designee will be made and the Union will be notified within ten working days after the meeting held at that step.

Item 16: In the Grievance Procedure, language will be added providing that if the Employer does not respond in a timely fashion, any grievance will be deemed granted; and that if the Employer or Union does not file a grievance timely or appeal to the next step timely, the grievance will be deemed denied.

Item 24: The last sentence of Article 7(a) would be changed to read as follows:

If the Chapter Chairperson or the appropriate Steward want time off during working hours to investigate and present grievances, they shall give advance notice to their Supervisor and work out a mutually acceptable time which shall not be unreasonably withheld, which shall be without loss of pay.

Item 25: In Article 10, the time period to proceed with arbitration after decision at the final step prior to arbitration shall be shortened from 60 days to 30 days.

Item 27: Delete the last sentence of Article 19(b)
(See p. 9 of J-4).

Item 29: In Article 32(b), the word "normal" will
be inserted before the word "period" in the third
line.

11(a) **Payment of Employee's Share of Pension Contribution.**
The Employer has offered to pay the employees' share of pension contribution, which offer is consistent with that accorded other employee unions within the County. This Union is asking for a retroactive adjustment to January 1, 1988. The fact finder cannot agree with a retroactive adjustment to January 1, 1988, because no retroactive adjustments in this regard were made with other County employees. However, based on the costing proposal of the Employer as submitted as Employer Exhibit 14, the cost data appears to be made on a retroactive basis. If the costs were anticipated by the County, and that is their anticipated frame of reference, perhaps the effective date should be as provided in column number 4 of the first page of Employer Exhibit 14.

(b) **Wages.** Parenthetically, it should be noted that the Union has requested a four year Collective Bargaining Agreement retroactive back to January 1, 1987. Once again, the facts do not disclose retroactivity being paid to other County employees. The fact finder will not be inconsistent in this regard. The important decision in this area is the selection of the economic offer for the year 1989. The Employer has offered 2%, to be effective one year from the effective date of the acceptance of the payment of the retirement benefit. The Union is suggesting

a twenty cent an hour increase on January 1, 1989.

I recommend the Employer's wage offer. In consideration of the granting of the Employer's wage offer of 2%, the fact finder recommends that it be made effective January 1, 1989. This is a clearly defined period and is consistent with the parties' prior practices evidenced in Joint Exhibit 4 for the payment of wages, i.e., wage rate increases are paid the first of the calendar year.

Likewise, in 1990, the fact finder adopts and recommends the 2% offer of the Employer to be effective January 1, 1990. This recommendation is made for the same reasons as stated above. The Union's wage positions were not adopted because the suggestions were out of line with the comparability of the rest of the County and there is no substantial reason to vary from that wage pattern.

(c) **Amended Classification Levels.** The amended classification levels are as follows: the inter-departmental employee would be paid at Level 6, the housekeepers at level 5, the Deputy County Clerk at Level 8, and the Airport Officers at Level 6. The fact finder adopts the offer of the Employer as set forth in Employer Exhibit 52.

(d) **Signing Bonus.** The Employer offers a \$300.00 signing bonus to be effective at the time the pension contribution is accepted or made. The fact finder would suggest that this offer be accepted and adopted as a part and parcel of this total package to be effective immediately upon ratification.

12. **Unfair Labor Practices Pending.** The fact finder would recommend that any outstanding unfair labor practices, grievances,

or the like be withdrawn and held for naught.

UNION ISSUES

Union proposals, that have not been touched on above, are contained in Employer Exhibit 50. They have been repeated in the position paper submitted after the hearing in the instant matter.

1. Purpose and Intent Clause. The phrase "a proper service" should be changed to "proper services".

2. In Article 1(d) the third sentence, the word "controller" should be changed to "Director of Administration and Finance".

3. The parties should work out a new provision that would provide indemnity which is substantially equivalent to the indemnity provision in Article 4(c) regarding the collection of non-union member representation fees.

4. The modification as suggested in Article 15(c), loss of seniority, should be adopted. Apparently the meaning is consistent. The last final sentence of that sub-section should read "If the disposition of any such case is not satisfactory, the matter shall be referred to the grievance procedure. "

5. Article 30(a) Workers Compensation shall be amended by adding the phrase "until all accumulated sick leave is used".

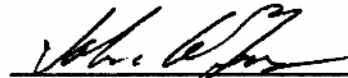
6. The language in Article 30 should be modified to be consistent with that agreed in the table agreement, Employer Exhibit 38. Therefore, the third sentence should read as follows: "Any employee selected as a pallbearer for a deceased employee will be allowed up to one funeral day leave with pay, dependent

on the distance from the funeral, to be deducted from sick leave". The last sentence of that Article should read: "The Chapter Chairperson, or his or her representative, shall be allowed up to one funeral leave day with pay, depending on the distance from the funeral, to be deducted from sick leave in the event of the death of a member of the Union, who is a member of the bargaining unit, for the exclusive purpose of attending the funeral".

CONCLUSION

The above recommendations should be made public, and hopefully will form the basis for the parties' new Collective Bargaining Agreement.

Respectfully submitted,



John A. Lyons
Fact Finder

Dated: August 18, 1988