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## ISSUE REVIEW

Fiscal Services Division

June 28, 2019



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## State Collective Bargaining

### ISSUE

This **Issue Review** highlights some of the changes to public employee collective bargaining that were made at the State level during the 2017 Legislative Session with the enactment of the [Public Employment Act](#), which amended Iowa Code chapter [20](#). The primary focus of this **Issue Review** is on collective bargaining at the State level in the Executive and Judicial Branches.

The changes to Iowa Code chapter [20](#) also had an impact on local bargaining processes in cities, counties, and school districts across Iowa and may affect how local officials choose to handle labor relations in their respective communities; however, those changes are not addressed in this **Issue Review**. The [2014 State Collective Bargaining Issue Review](#) provides historical information on the collective bargaining process prior to the changes made to Iowa Code chapter [20](#).

### AFFECTED AGENCIES

All State agencies and other public employers as defined in Iowa Code section [20.3\(10\)](#).

### CODE AUTHORITY

Iowa Code chapter [20](#)

### BACKGROUND

Collective bargaining is a process of negotiation between the employer and a represented group of employees to address wages, working conditions, benefits, and other aspects of employee rights. Public sector collective bargaining in Iowa began July 1, 1974, with the enactment of the [Public Employment Relations Act](#), which created Iowa Code chapter [20](#).<sup>1</sup> This Iowa Code chapter became the basis for labor relations across all levels of government in Iowa, including cities, counties, schools, and State government. Prior to the Act, all wage increases for State government employees were determined and enacted by the General Assembly, with the approval of the Governor.

During the 2017 Legislative Session, the [Public Employment Act](#) made a variety of changes to Iowa Code chapter [20](#).<sup>2</sup> The Act was approved by the General Assembly on February 16, 2017, and signed by the Governor on February 17, 2017. In May 2017, the Department of Administrative Services (DAS) began updating its administrative rules to implement the statutory changes.

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<sup>1</sup> [1974 Iowa Acts, chapter 1095](#); the Act did not obligate public employers to bargain until July 1, 1975, and prohibited public employee collective bargaining until June 1, 1976.

<sup>2</sup> [2017 Iowa Acts, ch 2](#).

## **CURRENT SITUATION**

In Iowa, there are five different types of permanent State government employees, including contract-covered, merit-covered; noncontract, merit-covered; contract-covered, merit-exempt; noncontract, merit-exempt; and statutory. Collective bargaining agreements affect contract-covered positions.<sup>3</sup> All employees in State government are merit-covered unless specifically exempted by Iowa Code section [8A.412](#) or by a specific Iowa Code provision.

### **Judicial Branch**

The State Court Administrator serves as the chief negotiator for the Judicial Branch and negotiates collective bargaining agreements with two Judicial union bargaining groups:<sup>4</sup>

- Public Professional and Maintenance Employees (PPME) — First Judicial District
- AFSCME Judicial — Second through Eighth Judicial Districts

### **Executive Branch**

The Governor determines the Executive Branch's proposals to the three State government union bargaining groups. Currently, the Director of the DAS serves as the Executive Branch's chief negotiator during collective bargaining negotiations, consulting the Department of Management (DOM) in regard to the cost of the various proposals for both management and labor.<sup>5</sup>

The three union groups for the Executive Branch are as follows:

- [American Federation of State, County, and Municipal Employees \(AFSCME\)](#)
- [State Police Officers Council \(SPOC\)](#)
- UE Local 893 Iowa United Professionals (UE/IUP) — [IUP – Science Unit](#) and [IUP – Professional Social Services Unit](#)

**Chart 1** shows the number of Executive Branch employees in a contract-covered position in the State of Iowa payroll system, although not all of these employees may be paying members of a union.<sup>6</sup> From FY 2012 to FY 2018, the total number of all State employee FTE positions (excluding Regents employees) decreased by 10.7%.

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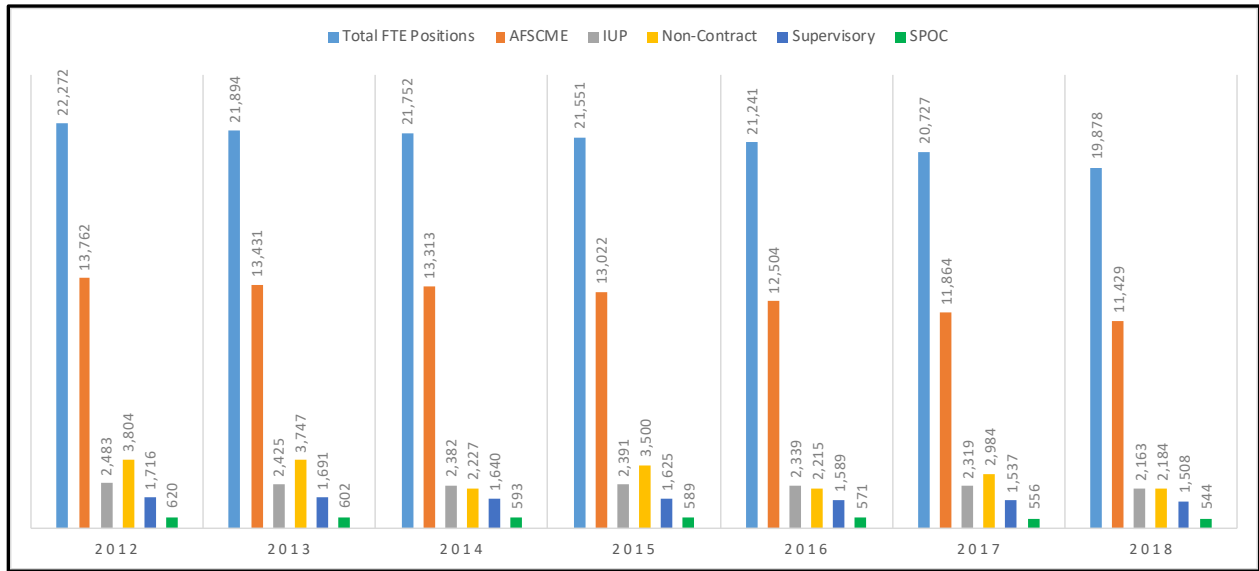
<sup>3</sup> The State of Iowa's [Classification and Pay Plans](#), available on the DAS website, include information on each job class's bargaining unit and status, overtime eligibility, pay grade, and class code.

<sup>4</sup> As of December 2017, there were approximately 90.0 filled PPME full-time equivalent (FTE) positions and 610.0 filled AFSCME Judicial FTE positions.

<sup>5</sup> For purposes of this *Issue Review*, Regents employees are not included. Some Regents employees are represented by different bargaining units, including AFSCME, United Faculty, Service Employees International Union at the University of Iowa Hospitals and Clinics (SEIU UIHC), and Grad Students. Iowa Code section [8A.402\(g\)](#) provides that while the DAS is responsible for the negotiation and administration of collective bargaining agreements on behalf of the Executive Branch, the State Board of Regents is the exclusive representative of the State for implementing and administering bargaining agreements with respect to its faculty, scientific, and other professional staff.

<sup>6</sup> State Executive Branch payroll data from the 24th pay period for FY 2012 through FY 2018. The chart does not include Judicial Branch employees nor does it include information on the Regents universities.

**Chart 1: Executive Branch Employee Representation FY 2012 Through FY 2018**



**Highlighted Provisions of the Public Employment Act**

The following section of this *Issue Review* highlights some of the changes that are required due to the enactment of the [Public Employment Act](#).<sup>7</sup>

**Governor’s Authority.** The 2017 legislation made changes to permit a newly elected Governor the authority to reject a proposed collective bargaining agreement and to commence new collective bargaining.

**Mandatory vs. Excluded Subjects of Collective Bargaining.** The Act made changes as to what constitutes mandatory and permissive subjects negotiated through the collective bargaining process between public employers and employees, and what are excluded subjects that cannot be legally negotiated during collective bargaining.

**Nonpublic Safety Bargaining Units.** For all nonpublic safety bargaining unit contract-covered workers in State government, the Act limited the mandatory subjects to base wages and other permissive subjects of bargaining that are mutually agreed upon.

The following is a list of excluded subjects for nonpublic safety bargaining units under Iowa Code section [20.9](#):

• Insurance	• Leaves of absence for political activities	• Supplemental pay
• Transfer procedures	• Evaluation procedures	• Staff reduction procedures
• Subcontracting public services	• Dues checkoffs	• Retirement systems
• Other political payroll deductions <sup>8</sup>		

<sup>7</sup> No collective bargaining contract term can be longer than five years. Bargaining with regard to benefits derived by employees from public retirement systems continues to be explicitly prohibited under Iowa Code section [20.9](#).

<sup>8</sup> Refers to payroll deductions for political action committees or deductions for political contributions or political activities.

With the elimination of certain subjects for nonpublic safety bargaining from collective bargaining agreements, subjects that would have previously been covered under a union contract are now addressed under the merit system provisions under Iowa Code chapter [8A](#) and through the DAS administrative rules.

The following DAS administrative rules chapters include provisions on some of the subjects mentioned above:

- [Chapter 53](#) — Overtime, compensatory time, shift differential, call back, standby, and pay increases.
- [Chapter 60](#) — Separations, disciplinary actions, and reduction in force.
- [Chapter 61](#) — Grievances and appeals.
- [Chapter 62](#) — Performance evaluations.
- [Chapter 63](#) — Vacation leave, sick leave, leave without pay, holidays, and the Family Medical Leave Act (FMLA).
- [Chapter 64](#) — Benefits.

**Public Safety Bargaining Units.** The 2017 legislation created a distinction between bargaining units with at least 30.0% of their members being public safety employees, called public safety bargaining units, versus bargaining units that contain less than 30.0% public safety employee members, called nonpublic safety bargaining units. The mandatory subjects that existed prior to the law change on July 1, 2017, still apply for public safety bargaining units, with the exception of dues checkoffs.

The following is a list of mandatory subjects for public safety bargaining units:

• Wages	• Hours	• Leaves of absence
• Insurance	• Shift differentials	• Overtime compensation
• Supplemental pay	• Transfer procedures	• Job classifications
• Seniority	• Evaluation procedures	• Staff reduction procedures
• Vacations	• Grievance procedures	• Holidays
• Other mutually accepted subjects	• In-service training	• Health and safety

**Arbitration Procedures.** The Act modified the factors that an arbitrator is required to consider when making a final determination on an impasse item. The Act also provided different factors an arbitrator can consider for a public safety bargaining unit compared to a nonpublic safety bargaining unit.

Under the Act, arbitration for public safety bargaining units continues to require the consideration of the factors that were required for consideration prior to the law change, including past collective bargaining contracts; a comparison of wages, hours, and conditions of employment of the involved public employees with other public employees doing comparable work; and interests and welfare of the public and the ability of the public employer to finance economic adjustments. The Act also removed from consideration the power of a public employer to levy taxes and appropriate funds to conduct operations.

Arbitration for nonpublic safety bargaining units requires the consideration of different factors, including a comparison of base wages, hours, and conditions of employment; the interests and welfare of the public; and the financial ability of the employer to meet the cost of an offer in light

of the current economic conditions of the public employer. In addition, an arbitrator is prohibited from considering past collective bargaining agreements between the parties; the public employer's ability to fund an award through the increase or imposition of new taxes, fees, or charges; or the public employer's ability to develop other sources of revenue.

**Arbitrator's Award Regarding Wages.** The Act also specified that for nonpublic safety bargaining units, the arbitrator's award with respect to any increase in base wages cannot exceed the lesser of the following percentages in any one-year period in the duration of the bargaining agreement: 3.0% or a percentage equal to the increase, if any, in the Consumer Price Index (CPI) for All Urban Consumers for the Midwest Region.<sup>9</sup> The Public Employment Relations Board (PERB) posts the official CPI-Urban Midwest calculation chart as determined by the Iowa Department of Workforce Development and the PERB, along with the dates of arbitration hearings for the nonpublic safety bargaining units, on its [website](#). The applicable CPI-Urban Midwest rate is determined for a 12-month period beginning 18 months prior to the month the impasse was submitted to the arbitrator. Generally, for State bargaining, impasse issues are submitted to an arbitrator in February of odd-numbered years and are applied to both years of a collective bargaining agreement.

**Table 1** shows a comparison between the Across-the-Board (ATB) increase received by AFSCME employees compared to the average increase in CPI-Urban Midwest. For four of the fiscal years listed below, the ATB increase was higher than what the CPI increase would have been, and for two of the fiscal years the CPI increase was higher than the ATB increase.

<b>Fiscal Year</b>	<b>ATB Increase</b>	<b>CPI Increase</b>	<b>Difference Between CPI Increase and ATB Increase</b>
2021	2.10%	2.10%	0.00%
2020	2.10%	2.10%	0.00%
2019	1.00%	0.60%	-0.40%
2018	1.00%	0.60%	-0.40%
2017	2.25%	1.60%	-0.65%
2016	2.50%	1.60%	-0.90%
2015	0.00%	1.32%	1.32%
2014	0.00%	1.32%	1.32%

Source: Bureau of Labor Statistics

Note: Bargaining discussions happen in the odd - numbered year. The applicable ATB increase would be 18 months sooner (August) of the even - numbered year.

**Union Dues.** The [Public Employment Act](#) prohibited union dues from being deducted from State employees' paychecks. Final payroll deductions occurred on June 23, 2017. After that date, union dues were no longer deducted from State payroll. This applied to all bargaining units in State government (both public safety and nonpublic safety).

<sup>9</sup> The Midwest region is comprised of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

**Recertification.** The Act required a retention and recertification election to be initiated by the PERB approximately 10 months prior to the expiration of a collective bargaining agreement.<sup>10</sup> The election is to determine whether the bargaining representative of the bargaining unit will be retained and recertified. All State bargaining units have collective bargaining agreements expiring June 30, 2019. All collective bargaining agreements continue to be two-year agreements.

To recertify a bargaining representative, the majority of eligible voters (not a majority of voters in attendance) in a bargaining unit have to vote in favor of recertification. Nonvoters in the eligible group for the election are considered no votes. Prior to the Act, the outcome of a recertification vote was based on the majority vote of the members in attendance and not based on all members eligible to vote.

If a bargaining representative fails to win a recertification election, the representative is decertified and the members of the bargaining unit no longer have representation. Additionally, any costs from the recertification process need to be paid by the bargaining representative.<sup>11</sup> If the bargaining representative wins a recertification election, the bargaining representative continues to represent the bargaining unit.

According to the [PERB website](#), as of October 15, 2018, all 21 union bargaining units associated with State government retained and recertified their union representation. **Table 2** shows the results of each of the elections as reported by the PERB.

**Table 2: October 15-29, 2018, Retention and Recertification Election Official Results**

<b>Executive Branch</b>	<b>Total Eligible</b>	<b>Majority</b>	<b>Voted Yes</b>	<b>Voted No</b>	<b>Void/No Preference</b>
<b>AFSCME Council 61</b>					
Blue Collar	4,389	2,195	3,295	20	13
Clerical	2,787	1,394	2,193	21	6
Community Corrections	923	462	853	4	2
Education	386	194	295	8	2
Fiscal and Staff	2,387	1,194	1,909	24	1
Patient Care	495	248	450	2	0
Security	1,863	932	1,568	20	1
Technical	4,762	2,382	3,619	15	8
<b>UE Local 893 (IUP – Professional Social Services)</b>	1,719	860	1,522	7	6
<b>UE Local 893 (IUP – Science)</b>	395	198	317	12	0
<b>State Police Officers Council – SPOC</b>	544	273	488	0	2
<b>Judicial Branch</b>					
Court Administration - PPME Local 2003	87	44	64	0	0
Court Administration - Second	93	47	78	0	0
Court Administration - Third	72	37	56	0	0
Court Administration - Fourth	54	28	43	0	0
Court Administration - Fifth	166	84	143	1	0
Court Administration - Sixth	88	45	83	1	0
Court Administration - Seventh	71	36	63	3	1
Court Administration - Eighth	58	30	47	1	0

Note: Some Regents employees are included in the AFSCME Council 61 figures above; otherwise, Regents employees are not included in this table.

<sup>10</sup> Iowa Code section [20.15](#).

<sup>11</sup> Iowa Code section [20.6](#); IAC [621—5.1\(2\)](#) sets the fee amount.



**Performance Evaluations.** Under the [Public Employment Act](#), beginning July 1, 2017, employee pay increases are no longer automatic, but rather are tied to performance evaluations. For an eligible employee to receive a within-grade pay increase, a performance evaluation must be on file and completed within the last 12 months. The evaluation must indicate that the employee achieved an overall rating of “meets expectations” or “exceeds expectations.”<sup>12</sup> Employees who are not at the top of their salary pay range may receive a merit/step increase if their performance evaluation had an overall rating of “meets expectations” or “exceeds expectations.”

**Overtime and Compensatory Time.** Overtime eligibility is determined by the provisions of the federal [Fair Labor Standards Act](#) (FLSA). As of July 1, 2017, only “overtime eligible” employees designated pursuant to Iowa Administrative Code [11—53.11\(2\)](#) are able to receive compensatory time for hours worked over 40 in a given work week and are permitted to accrue up to 80 hours of compensatory time. Overtime applies to hours actually worked during the work week and not to other hours the employee was in pay status, such as sick leave, vacation, etc. Overtime entitlement cannot be waived by the employee.

FLSA-exempt positions typically are not eligible for overtime. However, the DAS administrative rules may provide overtime to employees not eligible for overtime under FLSA provisions. Overtime-eligible positions are entitled to overtime at the premium rate of one-and-a-half times the employee’s regular rate of pay. Approximately 167 job classes that had been eligible for overtime due to collective bargaining provisions were no longer eligible after July 1, 2017. The estimated savings to the State from this change is approximately \$684,000, based on the actual overtime paid to employees in those 167 job classes in FY 2017.

**Dispute Resolution and Grievance Procedures.** Prior to July 1, 2017, dispute resolution processes or grievance procedures were outlined in collective bargaining agreements for both public safety and nonpublic safety bargaining groups. After July 1, 2017, dispute resolution and grievance processes for SPOC members continued to be governed by collective bargaining agreements, but for nonpublic safety bargaining units, the rules for guiding dispute resolution and grievance procedures are governed by DAS administrative rules, specifically Iowa Administrative Code [11—60](#) and [11—61](#). The “just cause” requirement continues to apply to merit-covered employees.

Pursuant to Iowa Administrative Code [11—61](#), grievance meetings are no longer required to be held. A management representative may choose to hold a meeting with a grievant, but all that is required of the representative is that the representative provides an answer to the submitted grievance within a designated time frame. If a meeting is held, an employee may be assisted by a peer of the employee’s choosing who is of the same bargaining status as the employee, as long as the employee’s choice of peer does not constitute a conflict of interest or unreasonably interfere with the operations of the employing agency.

**Public Employee Personnel Records and Personnel Settlement Agreements.** The [Public Employment Act](#) provides that certain information relating to the discipline, resignation, discharge, or demotion of a public employee is considered a public record. This includes such information as a resignation in lieu of termination, a discharge, or a demotion that is placed in an individual’s personnel file.

The Act also requires the governmental body taking the disciplinary action against the employee to notify the employee in writing that such information may become a public record pursuant to Iowa Code sections [22.7\(11\)\(a\)\(5\)](#) and [22.15](#). In addition, personnel settlement agreements are

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<sup>12</sup> IAC [11—53.7](#).

not permitted to contain any confidentiality or nondisclosure provisions and should be easily accessible to the public either through the DAS website or the Board of Regents website.

**Health Insurance.** The Act requires public employers to offer health insurance to all permanent, full-time public employees; however, for collective bargaining purposes, the Act changed health insurance to an excluded subject for all non-public safety bargaining units.

The State consolidated its health insurance options from six State employee health insurance plan options into three beginning January 1, 2018.<sup>13</sup> In addition, some employees were required to contribute more to their health insurance costs, which reduced the employer's share and increased the employee's share of costs. The estimated annualized savings to all State funding sources as a result of these changes was approximately \$21.3 million including plan design changes, changes in enrollment, and the Regents moving off the DAS health insurance plans.

### **FISCAL IMPACT**

According to the Department of Management (DOM), there was approximately \$24.5 million in total savings to the State from all funds as a result of reducing Executive Branch merit step pay increases for AFSCME-covered employees from 4.5% to 3.0%, increasing employee contributions to health insurance costs, and reducing the number of job classes that are eligible for overtime.<sup>14</sup>

<b>Estimated Fiscal Impact of Chapter 20 Changes</b>	
Reduction of AFSCME-Covered Employee Step Increases from 4.5% to 3.0%	\$ 2,579,000
Annualized Health Insurance Plan Changes	21,284,000
Reduction in Overtime Payments to Certain Job Classes	684,000
	<u>\$ 24,547,000</u>

### **U.S. SUPREME COURT**

Iowa is a "right-to-work" state, as are 27 other states and the Territory of Guam. In a right-to-work state, labor unions cannot require employee membership or payment of dues to get or keep a job. Iowa's right-to-work law was enacted in [1947 Iowa Acts, chapter 296](#).

In June 2018, the U.S. Supreme Court ruled 5-4 in [Janus v. American Federation of State, County, and Municipal Employees, Council 31, et. al.](#) that public employees do not have to pay fees to unions to cover the costs of collective bargaining, citing a violation of free speech under the First Amendment. The decision means that public-sector employees will no longer have to pay fees or dues to their unions, even if those unions collectively bargain on behalf of those employees.

Prior to the ruling, 22 states had in place what was referred to as a "fair-share" provision, which required persons represented by unions who did not choose to be members of the unions to pay fees to cover the cost of the unions' collective bargaining activities. The remaining 28 states were referred to as "right-to-work" states, which barred employers from including "fair-share" requirements in employment contracts.

<sup>13</sup> The six former plans were Blue Access, Blue Advantage, Iowa Select, Deductible 3, Deductible 3 Plus, and Alliance Select (SPOC). The three plans are National Choice, Iowa Choice, and Alliance Select (SPOC).

<sup>14</sup> There may be other cost avoidance measures that are not included in the table.



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## **IOWA SUPREME COURT CASES**

Although the collective bargaining process for 2019 through 2021 collective bargaining agreements has begun, there were cases being heard before the Iowa Supreme Court regarding the collective bargaining law for both IUP and AFSCME.

The Iowa Supreme Court heard oral arguments on November 13, 2018, in the IUP case no. [17-2093](#) (*UE Local 893/IUP v. State of Iowa*). The State appealed a district court order granting the IUP a summary judgment in its action pursuant to Iowa Code section [20.17\(5\)](#) to enforce the terms of a collective bargaining agreement for 2017-2019. In May 2019, the Iowa Supreme Court affirmed the District Court's summary judgment in favor of UE enforcing the collective bargaining agreement.

The Iowa Supreme Court heard oral arguments on December 12, 2018, in the AFSCME case no. [17-1841](#) (*AFSCME Iowa Council 61, et. al. v. State of Iowa and Iowa Public Employment Relations Board*). The plaintiffs, AFSCME, filed a petition for declaratory and injunctive relief challenging the constitutionality of the [Public Employment Act](#) amendments to Iowa Code chapter [20](#). The district court granted the defendants' motion for summary judgment, and the plaintiffs appealed, arguing the [Public Employment Act](#) violates [Article I, section 6](#) of the Iowa Constitution and infringes on the right to freely associate. In May 2019, the Iowa Supreme Court ruled 4-3 that the 2017 rewrite of Iowa Code chapter 20 was constitutional.

## **2021 COLLECTIVE BARGAINING AGREEMENTS**

Below is a listing of the [ratified tentative agreements](#) for the State collective bargaining groups discussed in this *Issue Review*:

- AFSCME reported a 2.10% ATB for FY 2020 and a 2.10% ATB for FY 2021.
- SPOC reported a 2.50% ATB for FY 2020 and a 2.50% ATB for FY 2021.
- IUP — Science Unit reported a 2.10% ATB for FY 2020 and a 2.10% ATB for FY 2021.
- IUP — Professional Social Services Unit reported a 2.10% ATB for FY 2020 and a 2.10% ATB for FY 2021.
- The Judicial Branch reported a 2.10% ATB for FY 2020 and for FY 2021 for both AFSCME and PPME.

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