

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**DOROTHY WOOD**, Complainant,

vs.

**MILWAUKEE PUBLIC SCHOOLS and MILWAUKEE  
TEACHERS' EDUCATION ASSOCIATION**, Respondent.

Case 368  
No. 56797  
MP-3454

**Decision No. 29502-A**

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Appearances:

**Ms. Lelia Marie Harmon**, Attorney at Law, 3712 North 23<sup>rd</sup> Street, Milwaukee, Wisconsin 53206, appearing on behalf of the Complainant Dorothy Wood.

**Mr. Donald L. Schriefer**, Assistant City Attorney, City of Milwaukee, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202-3551, appearing on behalf of the Milwaukee Public Schools.

Perry, Lerner, Quindel & Saks, S.C., by **Attorney Richard Perry** and **Attorney Barbara Zack Quindel**, 823 North Cass Street, P.O. Box 514005, Milwaukee, WI 53203-3405, appearing on behalf of Milwaukee Teachers' Education Association.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On September 2, 1998, Dorothy Wood, hereafter Complainant, filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission alleging that Milwaukee Public Schools and Milwaukee Teachers' Education Association had committed prohibited practices in violation of the Municipal Employment Relations Act. Hearing was held in Milwaukee, Wisconsin, on April 12, 1999. The hearing was transcribed. The record was closed on June 25, 1999, upon receipt of the transcript and post-hearing written argument.

No. 29502-A

### **FINDINGS OF FACT**

1. Dorothy Wood, hereafter Complainant, is employed as an itinerant resource teacher by the Milwaukee Public Schools and resides at 3540 North 50<sup>th</sup> Street, Milwaukee, Wisconsin 53216.

2. Milwaukee Public Schools, hereafter MPS or District, operates a public school system in Milwaukee, Wisconsin, and maintains its principle office at 5225 West Vliet Street, Milwaukee, Wisconsin 53201.

3. The Milwaukee Teachers' Education Association, hereafter MTEA, is the recognized collective bargaining agent of certain employes of the District and maintains its principle office at 5130 West Vliet Street, Milwaukee, Wisconsin.

4. The Complainant, on September 2, 1998, filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission alleging that the District has committed a prohibited practice in violation of Sec. 111.70(3)(a)5, Stats., and that the MTEA has committed a prohibited practice in violation of Sec. 111.70(3)(b)1, Stats. On December 22, 1998, the District filed an answer to the complaint and argued, as an affirmative defense, that "to the extent the Complainant seeks relief for alleged illegal activities occurring more than one year from the date she filed her complaint, her complaint is time barred." On December 30, 1998, the MTEA filed an answer to the complaint and argued, as an affirmative defense, "as to all conduct alleged to be violative of the Municipal Employment Relations Act which occurred more than one year prior to the date of the filing of the complaint, the Commission is without jurisdiction to consider such conduct as violative of the Act since it is beyond the statute of limitations provided for in the Municipal Employment Relations Act."

5. Prior to November 15, 1996, the District published the following:

### **PROFESSIONAL OPPORTUNITY**

DEPARTMENT OF HUMAN RESOURCES, 5225 W. VLIET ST., P.O. BOX 2181, MILWAUKEE, WI 53201

Applications for the following position are being accepted by the Division of Staffing Services through **November 15, 1996**. Appointment is subject to residency requirements and a criminal background check.

### **METROPOLITAN MULTICULTURAL TEACHER EDUCATION PROGRAM**

Dependent upon available budget and agreement from the Milwaukee Teachers' Education Association, several intern teacher positions will be offered in a joint

effort between Milwaukee Public Schools, Milwaukee Teachers' Education Association and the University of Wisconsin-Milwaukee School of Education. The program involves preparing Milwaukee Public Schools' paraprofessional and general educational assistants and safety assistants who are college graduates to become effective teachers of a multicultural population in an urban school district. The program runs from the summer of 1997 through June 1998; includes earning 34 credits; and leads to teacher certification (grades 1-8).

### **Objectives of the Program**

- Develop high level of effectiveness in working with children of diverse cultural backgrounds.
- Develop sensitivity toward similarities and differences between oneself and individuals of other cultural backgrounds, as well as skills for learning about others.
- Acquire substantive knowledge that will facilitate teaching culturally diverse students more effectively.
- Develop a heightened awareness in maintaining high expectations and achievement.
- Gain awareness of how institutional racism, sexism, and classism actually affect the lives of students.
- Develop a sensitivity to the processes of labeling, tracking and testing.
- Learn to analyze school system bureaucracies and how to turn debilitation procedures to the advantage of children.
- In addition, other concepts relating to effective teacher preparation.

### **Qualifications:**

- A **paraprofessional, general educational assistant or safety assistant** employed with Milwaukee Public Schools with at least **one** year of successful employment as an educational or safety assistant as of **JANUARY 27, 1997.**
- An undergraduate B.S. or B.A. degree earned by **DECEMBER 31, 1996** with a minimum GPA of 2.5.
- Eligible for admission to the School of Education, UWM, as a post-baccalaureate student.
- Demonstrated ability to relate to children in multicultural situations.
- Must be a member of the MTEA Bargaining unit.

**(Applicants must meet all qualifications)**

**Benefits:**

- The salary is \$24,684 (Step 0 of MTEA 1996-97 salary schedule).
- Credits taken as part of the internship program will apply toward placement on the salary schedule upon appointment by the Milwaukee Board of School Directors.
- Interns will receive all negotiated fringe benefits provided by the MBSD/MTEA Teacher Contract.
- Upon successful completion of the intern program and attainment of DPI certification, each intern will be offered a contract for employment as an appointed teacher in MPS.
- Interns who participate in the program will be paid the negotiated part-time certificated rate for each hour of participation as an intern in Milwaukee Public School's summer school program, if funded.

Applications may be obtained from the Division of Staffing Services, Room 124 of the Central Services Building, 5225 West Vliet Street, Milwaukee, Wisconsin 53208. For further information call (414) 475-8243.

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**QUALITY EDUCATION BEGINS WITH QUALITY PERSONNEL  
MILWAUKEE PUBLIC SCHOOLS IS AN EQUAL OPPORTUNITY  
EMPLOYER**

In accordance with Wisconsin Statutes, every applicant for a position with Milwaukee Public Schools will be subject to the open records law. Any applicant not wishing to have his/her identity released, must submit a written statement to that effect to the Department of Human Resources. The identities of all "final candidates" may be released.

At the time of the publication of this "Professional Opportunity," Complainant was a paraprofessional aide employed by the District and a member of a MTEA collective bargaining unit. The Metropolitan Multicultural Teacher Education Program is referred to as MMTEP. Complainant applied for the 1997-98 MMTEP program. Members of the faculty of the University of Wisconsin-Milwaukee School of Education recommended Complainant as an applicant for the 1997-98 MMTEP program. The 1997-98 MMTEP program was limited to twenty individuals. The more than twenty applicants recommended by the University of Wisconsin-Milwaukee School of Education were subjected to a further screening process by MPS and MPS decided which of the applicants would be accepted into the 1997-98 MMTEP program. In March or April of 1997, Complainant was interviewed by two MPS employees and, at that time, was told that no decision would be made on her application until MPS employee Cynthia Gallant returned to the office. Complainant contacted University of Wisconsin-Milwaukee School of Education Professor Dr. Martin Haberman, an MMTEP

faculty advisor, to express concern about the fact that she had not been selected for the 1997-98 MMTEP program. In the Spring of 1997, and in response to this contact from the Complainant, Haberman contacted an employe of the MPS Human Resources Department to discuss the status of the Complainant's application for the 1997-98 MMTEP program. During the course of this discussion, Haberman was told that the Complainant's application had been rejected because she had been excessively absent and late during her employment with MPS. Haberman then withdrew the University of Wisconsin-Milwaukee School of Education's recommendation that Complainant be admitted into the 1997-98 MMTEP program because he did not want to recommend an individual that was excessively absent. In the Spring of 1997, Complainant complained to her union about the 1997-98 MMTEP situation; received the response that the union did not do the hiring; and concluded that her union could do nothing about her complaint. Prior to June, 1997, Complainant had a conversation with Haberman in which she was advised that Haberman had a conversation with MPS Human Services Department employe Cynthia Gallant in which Gallant had told Haberman that the Complainant had an attendance problem involving a "matter of eighty days." Prior to June, 1997, and following this conversation with Haberman, Complainant telephoned Gallant to discuss the "eighty days." During this telephone conversation, Gallant stated that attendance was important and that the Complainant should not count on being accepted into the 1997-98 MMTEP program. By the end of June, 1997, Complainant knew that she had not been accepted into the 1997-98 MMTEP program.

6. Hearing on the complaint was initially scheduled for January 11, 1999. This hearing was postponed, upon request of MTEA and on the basis that MTEA representative Cheryl Barczak was ill. The hearing date of January 11, 1999 was used for a pre-hearing conference. On February 5, 1999, the hearing was rescheduled to March 2, 1999. Pursuant to the request of Mrs. Dorothy Wood, who was appearing pro se, the hearing of March 2, 1999 was postponed because her witness, Professor Haberman, was not available on March 2, 1999. On March 5, 1999, the hearing was rescheduled to April 12, 1999. On April 6, 1999, the Examiner received oral notice that Complainant had retained an attorney to represent her at the April 12, 1999 hearing. The Examiner received written notice of the attorney's appearance on April 8, 1999. At no time prior to the start of the hearing on April 12, 1999, did Complainant, or her attorney, request that the hearing of April 12, 1999 be postponed. At no time prior to the end of the hearing on April 12, 1999, did Complainant, or her attorney, request any additional days of hearing.

Based upon the foregoing Findings of Fact, the Examiner makes the following

### CONCLUSIONS OF LAW

1. Complainant's request to be granted additional hearing is untimely and without good cause. To grant such a request would be severely prejudicial to the interests of the other parties to this proceeding.

2. Section 111.07(14), Stats., which is made applicable to this proceeding by the terms of Sec. 111.70(4)(a), Stats., is a statute of limitations which can be waived when not properly raised by a party as an affirmative defense.

3. Respondent Milwaukee Teachers' Education Association and Respondent Milwaukee Public Schools properly raised the statute of limitations as an affirmative defense.

4. Complainant's allegations that Respondent Milwaukee Public Schools has violated Sec. 111.70(3)(a)5, Stats., and that Respondent Milwaukee Teachers' Education Association has violated Sec. 111.70(3)(b)1, Stats., is not timely under Sec. 111.07(14), Stats., and, therefore, the Commission does not have jurisdiction to decide these allegations.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner now makes and issues the following

**ORDER**

1. Complainant's request to be granted additional hearing is hereby denied.

2. Complainant's complaint against Respondent MTEA and Respondent MPS is hereby dismissed in its entirety.

Dated at Madison, Wisconsin, this 9<sup>th</sup> day of July, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

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Coleen A. Burns, Examiner

MILWAUKEE PUBLIC SCHOOLS

**MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On September 2, 1998, Dorothy Wood filed a complaint with the Wisconsin Employment Relations Commission alleging that Milwaukee Public Schools and Milwaukee Teachers' Education Association had committed prohibited practices in violation of Sec. 111.70(3)(a)5, Stats., and Sec. 111.70(3)(b)1, Stats. Subsequently, Respondent MPS and Respondent MTEA each filed an answer to the complaint in which each denied committing the prohibited practices alleged in the complaint. Each answer to the complaint raised, as an affirmative defense, that Complainant's claims were barred by the statute of limitations.

**POSITIONS OF THE PARTIES**

**Complainant**

Where a collective bargaining agreement provides a procedure for the voluntary settlement of disputes, a cause of action involving an alleged violation of contract does not arise until the grievance procedure has been exhausted. Complainant asserts, therefore, that the one-year limitation period for filing a complaint is computed from the date when the grievance procedure is exhausted, provided that the Complainant has not unduly delayed the grievance procedure.

The Complainant maintains that the relevant statute of limitations period does not begin until the beginning of the 1997-98 school year. Complainant asserts, therefore, that a complaint filed at the beginning of the 1998-99 school year would be timely. Complainant requests that she be granted another hearing to procure testimony relating to all unresolved issues.

**Respondent MPS**

The basis for Complainant's complaint, as indicated by the Complainant and her attorney at hearing, was the fact that she was not admitted into the 1997-98 MMTEP program due to incorrect information regarding her attendance record as an MPS employee. To comply with the one-year statute of limitations applicable to the claim that she was wrongfully rejected from the MMTEP program, the Complainant needed to file her complaint by June, 1998, at the latest.

According to Dr. Haberman, he received a telephone call from the Complainant questioning her rejection as a candidate in the Spring of 1997. To the best of his recollection, the telephone call occurred around May. Complainant admitted that, by June of 1997, she knew that she had not been accepted into the MMTEP program. Given this admission, MPS had no need to introduce any exhibits confirming that the Complainant had been rejected for the 1997-98 MMTEP program.

Complainant has alleged a violation of Sec. 111.70(3)(a)5, Stats., which prohibits violation of a collective bargaining agreement. No contractual provisions were introduced into evidence and Complainant has not cited any contractual provision. The MOU, introduced as Complainant Exhibit 7, provides no basis for a contractual claim. Complainant has alleged a violation of Sec. 111.70(3)(b)(1), Stats., but has offered no evidence to substantiate such a violation.

Complainant's reliance on documents and/or statements that have not been admitted into evidence is inappropriate. Complainant was provided with the opportunity to litigate her claims. Complainant has not offered any valid reasons why she should receive a new or reopened hearing.

As set forth in Complainant's Exhibit #3, the MMTEP program ran from the summer of 1997, through June of 1998. There is no merit to Complainant's argument that statute of limitations period does not begin to run until the beginning of the 1997-98 school year. Complainant offered no evidence to establish that her claim is subject to a voluntary dispute resolution procedure.

Complainant's complaint, which was filed on September 2, 1998, is untimely and must be dismissed. In the alternative, the complaint must be dismissed because the claims of prohibited practice are unfounded. Complainant's action is frivolous and, therefore, MPS requests attorney's fees.

### **Respondent MTEA**

Complainant alleges that Sec. 111.70(3)(a)5 and (3)(b)1, Stats., were violated due to the fact that Complainant was not accepted by MPS for a MMTEP position for the 1997-98 school year. By June of 1997, Complainant knew that she had not been accepted into the MMTEP program based upon her attendance record. Complainant informed the MTEA of her rejection in the Spring of 1997; was told that MTEA does not do the hiring; and concluded that MTEA could do nothing.

Complainant's brief is replete with material not contained in the evidentiary record. The record evidence does not demonstrate that the Complainant had any conversations with MTEA employees after the Spring of 1997.



Complainant was provided with ample opportunity to litigate her claims. Complainant has not offered any reasonable basis to conclude that she is entitled to further hearing. Moreover, the evidence that Complainant seeks to submit does not cure either the procedural or substantive defects of her complaint.

All of Complainant's allegations involved actions that occurred in the Spring of 1997. The evidence adduced at hearing fails to establish any violation of Sec. 111.70(3)(b)1, Stats. The complaint must be dismissed as untimely and for failing to state a claim upon which relief may be granted.

## DISCUSSION

### Complainant's Request for additional hearing

In post-hearing brief, Complainant asks that she be granted additional hearing for the purpose of eliciting evidence relating to all unresolved issues. In justification of this request, Complainant states that relatively inexperienced Counsel was retained approximately one (1) week prior to hearing.

Prior to the hearing of April 12, 1999, Complainant, or Complainant's attorney, had the opportunity to request a postponement of hearing to prepare for hearing or to secure additional witnesses, or for any other reason. Neither Complainant, nor her attorney, did so.

Prior to the close of hearing on April 12, 1999, Complainant, or Complainant's attorney, had the opportunity to request that additional hearing be scheduled for the purpose of soliciting additional evidence, or for any other reason. Neither Complainant, nor her attorney, did so.

Complainant's request to be granted additional hearing for the purpose of procuring "testimony relating to unresolved issues" is neither timely, nor for good cause. To grant Complainant's request for additional hearing would be severely prejudicial to the interests of the other parties to this proceeding. Accordingly, the Examiner has denied Complainant's request to be granted additional hearing.

### Statute of Limitations

The complaint in this matter was filed on September 2, 1998. The complaint, as filed, alleges a violation of Sec. 111.70(3)(a)5, Stats., and Sec. 111.70(3)(b)1, Stats.

Section 111.70(3)(a)5, Stats., makes it a prohibited practice for a municipal employer, individually or in concert with others, to violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting municipal employes. Section 111.70(3)(b)1, Stats., makes it a prohibited practice for a municipal employe, individually or in concert with others, to coerce or intimidate a municipal employe in the enjoyment of the employe's legal rights, including those guaranteed in Sec. 111.70(2), Stats.

Section 111.07(14), Stats., which is made applicable to these proceedings by Sec. 111.70(4)(a), Stats., provides:

The right of any person to proceed under this section shall not exceed beyond one year from the date of the specific act or unfair labor practice alleged.

Section 111.07(14), Stats., is a statute of limitations that can be waived when not properly raised by a party as an affirmative defense. STATE OF WISCONSIN, DEC. NO. 28222-C (WERC, 7/98)

Each Respondent raised the statute of limitations as an affirmative defense in its answer to the complaint. It is appropriate, therefore, for the Examiner to determine whether or not the complaint has been filed within the applicable statute of limitations period.

The Commission has held that, where a collective bargaining agreement contains procedures for the voluntary settlement of disputes arising thereunder and where the parties have attempted to resolve such disputes with such procedures, a cause of action against the employer alleging a violation of Sec. 111.70(3)(a)5, Stats., and a companion cause of action against the union alleging a violation of Sec. 111.70(3)(b)1, Stats., will not arise until the grievance procedure has been exhausted, provided that the complaining party has not unduly delayed the grievance procedure. HARLEY-DAVIDSON MOTOR COMPANY, DEC. NO. 7166 (WERC, 6/65); LOCAL 950, INTERNATIONAL UNION OF OPERATING ENGINEERS, DEC. NO. 21050-C (WERC, 7/84)

Complainant has not introduced, and the record does not contain, any agreement between MTEA and MPS that contains a grievance procedure. Nor has Complainant established that the claimed contractual violation is subject to any other procedure for the voluntary settlement of disputes. It must be concluded, therefore, that Complainant's claim that the statute of limitations period does not begin to run until the grievance procedure is exhausted is without merit.

The complaint, as filed, alleges that MPS and MTEA committed prohibited practices by violating contracts; by failing to promote (no reason given); and by slanderous referencing. At hearing, when requested by the Examiner to describe the conduct that resulted in a violation of Sec. 111.70(3)(a)5, Stats., and Sec. 111.70(3)(b)1, Stats., Complainant's attorney responded that it was the fact that MPS employe Cynthia Gallant gave Dr. Haberman some incorrect and false information, thereby, prompting him to refuse to pursue her in terms of the MMTEP position for the 1997-98 school year. At hearing, Complainant confirmed that she had filed the complaint because she believed that Gallant had given Haberman inaccurate information, thereby disqualifying the Complainant from the 1997-98 MMTEP program.

Dr. Haberman recalls that the Complainant contacted him to express her concern about not being selected for the 1997-98 MMTEP program; that, following this contact by the Complainant, Haberman telephoned the MPS Human Resources Department; that an unidentified employe of the MPS Human Resources Department informed Haberman that the Complainant had been rejected as a candidate for the 1997-98 MMTEP program because the Complainant was excessively absent and late; and that, upon hearing this, Haberman withdrew UWM's recommendation that the Complainant be accepted into the 1997-98 MMTEP program. Haberman further recalls that this conversation with the unidentified Human Resources Department employe occurred in the Spring of 1997, he would "guess around May of 1997." As set forth in the "Professional Opportunity" announcement, the 1997-98 MMTEP program ran from the summer of 1997 through June of 1998.

The Complainant recalls that she had a conversation with Haberman in which she was informed that Haberman had spoken with Cynthia Gallant, an MPS employe, and that Gallant had advised Haberman that the Complainant had an attendance problem involving a "matter of eighty days." The Complainant further recalls that, following this conversation with Haberman, the Complainant telephoned Gallant to ask her about the "eighty days" and that Gallant advised the Complainant that attendance was important and that the Complainant should not count on being accepted into the 1997-98 MMTEP program. According to Complainant, she concluded that Gallant had singled out the Complainant's attendance records and that Gallant's representations regarding Complainant's attendance records was incorrect. Complainant confirms that her conversations with Haberman and Gallant occurred by June, 1997, and that by the end of June, 1997, Complainant knew that she had not been accepted into the 1997-98 MMTEP program.

In summary, Haberman's testimony demonstrates that, in the Spring of 1997, MPS rejected Complainant's application for the 1997-98 MMTEP program because of a poor attendance record and that, for the same reason, Haberman withdrew UWM's recommendation that the Complainant be accepted into this program. Haberman's testimony also demonstrates that, in the Spring of 1997, Complainant knew that she had not been accepted into the 1997-98 MMTEP program.

According to Complainant, MPS never provided Complainant with written notice that she had not been accepted into the 1997-98 MMTEP program. Complainant acknowledges, however, that by the end of June, 1997, Complainant knew that Complainant's application for the 1997-98 MMTEP program had not been accepted.

Complainant further acknowledges that her conversations with Haberman and Gallant occurred by June, 1997. Given the substance of Complainant's conversations with Haberman and Gallant, it is reasonable to conclude that, by June, 1997, Complainant knew, or should have known, that MPS had provided the attendance record information that Complainant considers to be false and incorrect to Haberman and that this attendance record information was a factor in the decision to not accept Complainant's application for the 1997-98 MMTEP program.

The conduct giving rise to Complainant's allegation that MPS has violated Sec. 111.70(3)(a)5, Stats., occurred more than one year prior to the filing of the complaint on September 2, 1998. Complainant was aware of this conduct more than one year prior to the filing of her complaint. Complainant's complaint against MPS was not filed within the one-year statute of limitations period applicable to the complaint. Accordingly, the Examiner is without jurisdiction to decide the merits of Complainant's claim that MPS has violated Sec. 111.70(3)(a)5, Stats.

Neither the complaint, on its face, nor Complainant's written argument, identifies the MTEA conduct that gives rise to Complainant's allegation that MTEA has violated Sec. 111.70(3)(b)1, Stats. At hearing, Complainant recalled that she made a complaint to the union about the MMTEP situation; that the union knew that she had problems with the person who was the subject of the complaint; that the union said that they do not do the hiring; and that, as a result of this conversation with the union, the Complainant "guessed" that the union could do nothing about her complaint. Complainant's testimony indicates that this interaction with MTEA occurred in the Spring of 1997.

As Respondents' argue, Complainant may not rely upon material that was not placed into evidence. The evidence of union conduct related to Complainant's application for the 1997-98 MMTEP program demonstrates that such union conduct occurred more than one year prior to the filing of the complaint on September 2, 1998. The evidence further demonstrates that Complainant was aware of this conduct more than one year prior to the filing of her complaint.

Complainant's complaint against MTEA was not filed within the one-year statute of limitations period applicable to the complaint. Accordingly, the Examiner is without jurisdiction to decide the merits of Complainant's claim that MTEA has violated Sec. 111.70(3)(b)1, Stats.

Arguing that Complainant's action is frivolous, Respondent MPS requests an award of attorney's fees. The Commission has held that it lacks the statutory authority to award attorney's fees and costs to responding parties in complaint proceedings. DEPT. OF EMPLOYMENT RELATIONS, ET AL., DEC. NO. 29093-B (WERC, 11/98). Thus, Respondent MPS' request for attorney's fees has not been granted.

Dated at Madison, Wisconsin, this 9<sup>th</sup> day of July, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

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Coleen A. Burns, Examiner