

FY 2009 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: Sec 115 Boards, Authorities and Commissions

PROGRAM: Employment and Labor Relations

TIMELINE: October 1, 2008 through September 30, 2009

PROGRAM MISSION STATEMENT

The mission of the Bureau of Employment Relations is to provide high quality support to the Michigan Employment Relations Commission, and to foster peaceful, cooperative, and effective public and private sector employer-employee relationships by neutral and timely resolution of labor disputes, application of conflict resolution processes, and education and training.

VISION STATEMENT

The vision of the Bureau of Employment Relations is to promote excellent labor-management relations between employers and employees in the State of Michigan.

PROGRAM STATEMENT

The Michigan Employment Relations Commission (MERC), supported by the Bureau of Employment Relations, is statutorily charged with resolving labor disputes between public and private sector employers, labor organizations, and employees. The Bureau and its staff achieve this mandate by: resolving unfair labor practices; conducting elections; handling bargaining unit clarification issues; mediating collective bargaining disputes; appointing fact finders and arbitrators to resolve bargaining impasses; enforcing statutes which protect bargaining rights of public and private sector employees; fostering cooperative programs between public and private sector labor and management; and offering education and training. The Commission also provides fact finding, compulsory arbitration, grievance arbitration, and grievance mediation. The Bureau of Employment Relations administers the Public Employment Relations Act, the Labor Relations and Mediation Act, and the Compulsory Arbitration Act (Act 312 of 1969).

FUND SOURCE:

State Restricted Funds - Our agency had been funded with GF/GP dollars for many years. Due to State budgetary issues, these funds were replaced by Corporation and Securities fees some years ago.

LEGAL BASIS:

Public Act 345 of 2006

CUSTOMER IDENTIFICATION:

Customers - Public and private sector employers and employees, labor organizations, legislators, management and program staff of the Department of Energy, Labor and Economic Growth and other state and federal agencies, outside vendors, and citizens of the State of Michigan.

Stakeholders – Governor's Office; Citizens of the State of Michigan.

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CRITICAL GOALS/MAJOR OBJECTIVES and RESULTS

The Bureau of Employment Relations/Michigan Employment Relations Commission actively seeks to create a positive labor relations environment. Our agency provides employers and labor organizations with avenues to reduce the likelihood of labor disputes, as well as administrative procedures to promptly resolve such disputes should they occur. All services offered by the Bureau and provided to parties are without cost; these free-of-charge services seek to ensure a more positive labor climate and to increase the perception and reality of Michigan as a desirable site to locate, retain and grow jobs.

In FY2009, we accomplished our agency goals and objectives, although we worked with an incomplete staff and a limited budget. The Bureau refrained from filling vacant position(s) in an effort to ensure that our challenged budget would carry us throughout the year.

We have succeeded in reaching our ultimate goal of ensuring a prompt response to any labor dispute that occurs and have marshaled forces to offer available avenues of dispute resolution at the first juncture.

Highlights of our accomplishments by our (reduced in number) Bureau staff include: promptly responding and marshaling forces to resolve all labor disputes within our agency's jurisdiction, as well as presenting on numerous occasions to educate and train constituents concerning the various laws administered by our agency and their legal rights and obligations under those laws - a vital part of our Bureau's mission. Significantly, we achieved the latter goal without any outlay of State funds. We have also worked to improve upon and up-date the informational materials that are disseminated to our constituents by amending and/or supplementing information posted on our web-site at www.michigan.gov/merc, as well as in our educational booklets and other materials.

Our agency considers labor/management cooperation to be a vital part of our mission. In an effort to achieve this goal, Bureau Staff are members of the Executive Board of and participate extensively in the activities of the Michigan Labor-Management Association. Our agency has provided training in collaborative bargaining techniques to a large number of our constituent parties.

Finally, the Bureau of Employment Relations has developed a unique collaboration with the Rapid Response Team (RRT) – another DELEG agency. This relationship between BER and RRT – that will be explained further in our listed accomplishments – is an example of true collaboration between state agencies. These are agencies whose missions are quite different, but intersect in a manner that provides opportunities for collaboration and significant benefits for our constituents.

Program Goal:

Promote positive labor relations by establishing joint labor/management committees and facilitating collaborative bargaining.

This goal has been met.

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Processes/Services:

The Bureau Director and several members of her staff serve on the Executive Board of the Michigan Labor-Management Association. In fulfilling this task, they attend and assume responsibilities in quarterly meetings of the Association and work with others to develop the agenda for and participate in the organization's Annual Conference, at which DELEG and other State officials present. At the conference, labor and management are trained and receive valuable information about how to develop and maintain a positive labor relationship and to collectively and collaboratively bargain on complex and challenging issues, such as health care and retirement benefits, in this difficult economic climate.

Bureau staff has conducted training in and has, at times, facilitated collaborative bargaining relationships between numerous employers and labor organizations, including:

Ingham County (county wide, all bargaining units)
Holland Board of Public Works / IBEW (technicians/linemen)
Delton Kellogg Schools / MEA (teachers)
Blackmer Corporation / UAW
Grand Rapids Community College / MEA (support staff)
Cedar Springs Schools / MEA (support staff)
Western Michigan University / AFSCME (support staff)
West Shore Medical Center / MNA (nurses)
Lansing, City of / FOP (police supervisors)
Michigan Labor Management Association October training seminar
Bureau staff has provided mediation information and training assistance in high school student collective bargaining programs.

Bureau staff also provided mediation and judging assistance at the regional conference of the Student Alternative Dispute Resolution Competition at MSU College of Law.

Program Goal:

Conduct educational seminars for and prepare and disseminate written materials to labor and management officials and/or arbitrators or fact finders that describe agency services and structure, and employer, union, and employee rights and obligations under laws administered by MERC.

This goal has been met.

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Processes/Services:

During the past fiscal year, Bureau staff have presented to numerous entities in programs that describe the structure of our agency and the services provided, as well as the rights and obligations of the parties that are set forth in the laws administered by our agency. Presentations were made to: Institute of Continuing Legal Education – Labor and Employment Law Section; Michigan Education Association Annual Conference, American Bar Association (ABA), and elsewhere. Bureau staff participates on the State & Local Government Bargaining and Employment Law Committee of the ABA, and one BER staffer serves as Co-Chair of the Practice and Procedure - Unfair Labor Practice Sub-Committee of that ABA Section.

Our Bureau continues to submit on a quarterly basis an educational article to the *Lawnotes* publication – a newsletter disseminated by the State Bar Labor and Employment Law Section. In addition, one member of the Bureau Staff provides an annual update summarizing Court of Appeals Opinions that review MERC decisions in the *Lawnotes* publication.

In an effort to provide the most accurate and up-to-date information, the Bureau has updated and supplemented its *Guide to Public Sector Labor Relations in Michigan: Law and Procedure Administered by the Michigan Employment Relations Commission*. That up-dated publication will be posted on the agency's web-site at www.michigan.gov/merc in the very near future, replacing the web-version that is currently available.

Our agency is working with MSU College of Law and with other agency partners to provide for a full-day's training and refresher program for MERC's Panel of Act 312 Arbitrators and Fact Finders in April 2010. This program will permit attendees to glean timely and helpful information relative to the continually changing and highly relevant subjects of municipal finance, insurance and pension benefits, and other topics that challenge decision makers working in the public sector arena in this difficult economic climate. If space permits and funds are available, constituents will be invited to attend this training, as well.

Program Goal:

Ensure that all representation elections are conducted impartially under the Rules and Regulations of the Michigan Employment Relations Commission, promoting free choice in the election, facilitating positive and excellent labor and employment relationships, and ensuring continuity in business operations.

This goal has been met.

Processes/Services:

No objections to the results of or conduct surrounding a representation election conducted by MERC alleging misconduct by the Bureau or its Election Officer(s) have been filed during this fiscal year.

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PROGRAM EFFECTIVENESS and Efficiency

Program Goals/Metrics

See attached charts

Performance Measures

While vacant positions remained unfilled, our Bureau continued to successfully process a significant number of case filings in this challenged economy. The number of filings processed by our agency has increased in several areas (# of voters participating in union representation elections, # of Petitions for Fact Finding filed, and # of Commission decisions issued). At the same time, in our effort to ensure that adequate funds remained in our agency's budget, we worked without one (and sometimes two) labor mediators and with only one (versus two) election officers during much of the year.

In FY2009, with unfilled positions and an uncertain budget, our Bureau handled the following filings without incident:

456	Unfair Labor Practices and Representation Petitions processed
5430	Voters participating in Union Representation Elections
85%	Certifications of Elections issued within 15 days of the Election
2182	Notices of Open Contracts received and processed
1107	Mediation Conferences held
97	Fact Finding Petitions filed and processed
42	Commission-drafted Decisions & Orders issued
58	Commission 20-day Orders issued

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Program Improvements Made

Bureau Accomplishments

The number of filings processed by our agency has increased in several areas in this challenged economy. The number of Commission Decisions issued during the past year has increased dramatically. Charts reflecting the increased number of Fact Finding Petitions filed, as well as the significantly increased numbers of voters participating in Union Representation Elections, and the increased numbers of Decisions issued by the Commission are included at the end of this report. During this same period, we worked with two and sometimes three positions remaining unfilled during much of the year. Significantly, these positions remained vacant in our Representation Election and Labor Mediation arenas, thereby challenging staff with ensuring that statutorily-required services were provided to our constituents in a timely manner. Bureau staff has been reduced by more than 60% over the years as reflected in a chart representing the continuous depletion of agency employees.

Incredibly, in the last five years (from 2004-2009), the Bureau of Employment Relations/MERC has conducted 607 union representation elections, that touched the lives of 103,534 eligible voters.

During the past fiscal year, the number of Commission cases issued in all areas has increased as parties continue to pursue their statutory remedies via MERC procedures. The significant increase in the number of MERC cases issued by the Commission is indicated in the attached chart that reflects the extremely hectic docket of the Michigan Employment Relations Commission that is managed by Bureau personnel.

Collaboration between State Agencies

BER developed a unique collaboration with the Rapid Response Team (RRT) - another DELEG agency. Recognizing a commonality in their missions, BER and RRT work together to reduce the number of entities moving out of state and/or the number of mass layoffs when labor costs may be a reason for the potential job loss. The collaboration involves RRT notifying BER when RRT receives a notice of layoff or closure. BER labor mediators offer assistance to the parties and work with RRT to determine how best to respond to the situation, ensuring that if the labor issues are resolvable, they do not contribute to the loss of jobs in our state. One example of this involved Lenawee Stamping Corporation and the UAW, Region 1-A – the employees' bargaining representative. The company was considering moving out of state or closing its doors. Through the efforts of a labor mediator, the RRT, and MEDC incentives, Lenawee Stamping remained viable and reached a labor contract with the UAW.

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PROGRAM IMPROVEMENT PLANS FOR FY10

In FY10, we will seek to reduce the backlog of cases that are pending with the Michigan Employment Relations Commission. We will do this by working with staff to develop a plan to ensure that all MERC decisions are issued within one year of record closure.

CHALLENGES FOR FY10 and BEYOND

To provide statutorily-required services with our current complement of employees. We note that more than 60% of our staff is eligible to retire in the next five years. Succession planning is imminent. DELEG has commenced work to address this issue.

Since the Bureau of Employment Relations was established more than 40 years ago, we have experienced a continuous reduction in the number of employees on our staff. In 1983, 46 employees worked at our Bureau. This number has steadily declined; in 1992, we employed 40 employees, while by 1998 our numbers had been reduced to 28 employees. We remained at 28 until the 2002 retirements, after which, we were left with 23.5. After the transfer of our ALJs and one support staff to SOAHR and the addition of one FTE, our current organizational chart includes 21.5 positions. Our challenge is to provide timely responses to requests for basic services as required by statute with this continuous depletion of staff and legislative allocation. A chart indicating the steady and continuous decline in Bureau staff is attached.

To continue to provide statutorily-required dispute resolution services with our current or a reduced budget and to provide a quality panel of outside decision makers. We need a stable, increased funding stream in order to more efficiently meet our customer needs and to ensure that we may continue to provide all of our statutorily-mandated services to our constituents in a timely manner.

We need to increase the daily rate of \$650 paid to our panel of neutral decision makers in our Act 312 Arbitration and Fact Finding procedures and to locate a stable, increased funding stream for all of the services provided by our agency.

By way of background, Act 312 of 1969 and Fact Finding are dispute resolution procedures provided by MERC, and both are mandated by state statutes, MCL 423.231, et seq and MCL 423.25, respectively. Act 312 provides for compulsory arbitration of unresolved contract disputes in municipal police and fire departments. Employees covered under Act 312 include municipal police officers and firefighters, as well as emergency medical personnel and emergency telephone operators employed by municipal police or fire departments. Under Act 312, if the parties are unable to reach voluntary resolution of their contract terms, a three-member arbitration panel issues an award based on criteria set forth in the statute. The award establishes the terms of the parties' collective bargaining agreement in the public safety arena.

Fact Finding is the final impasse resolution procedure available to public sector employees under MERC's jurisdiction - other than public safety personnel. If bargaining and mediation have failed to result in a final collective bargaining agreement, either or both parties may petition for fact finding.

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The neutral fact finder, following a process set forth in MERC Rules, will issue a non-binding recommendation for settlement of the contractual dispute.

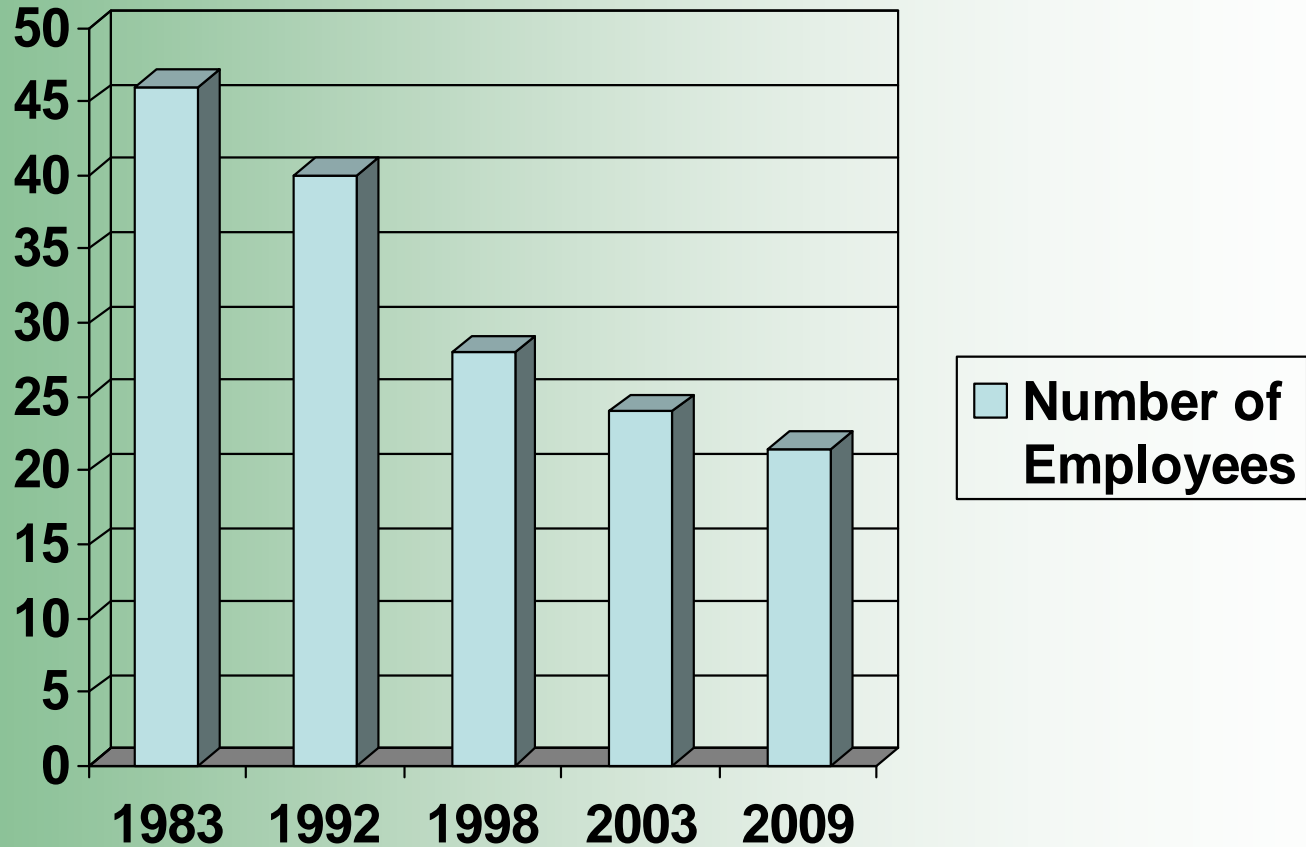
In 1999, the daily rate paid to our neutral decision makers in Act 312 and Fact Finding proceedings was increased from \$450 to \$650. **For more than 10 years, our panel members have not had an increase in their daily rate.** The current per diem of \$650 is significantly below what neutrals receive for their services in the private sector which frequently exceeds \$1,000 per day. At this time, many neutrals handle MERC-related cases as a public service and a favor to the agency. It is essential that the daily rate, as well as the amount of expense reimbursement, be increased if we are to assure a high quality panel of decision makers.

In sum, we need a stable and increased funding stream for all of the dispute resolution services that our agency provides in order to more efficiently and ably meet our customer needs. This will permit us to increase the daily rate paid to our independent panel of arbitrators and fact finders and will assist in ensuring that we are able to attract the most competent decision makers to our panel.



BUREAU OF EMPLOYMENT RELATIONS DECLINE IN NUMBER OF FTEs

Working to Create Michigan's Future Today

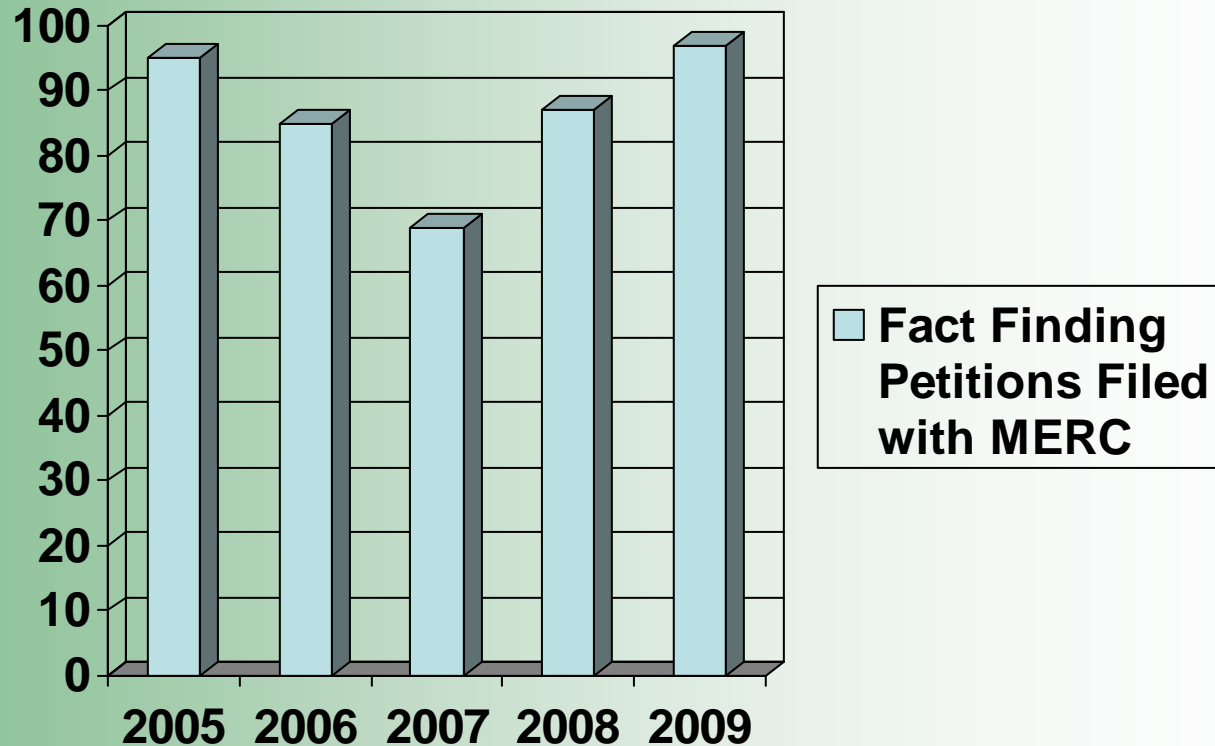


Working to Create Michigan's Future Today



BUREAU OF EMPLOYMENT RELATIONS PETITIONS FILED

Working to Create Michigan's Future Today

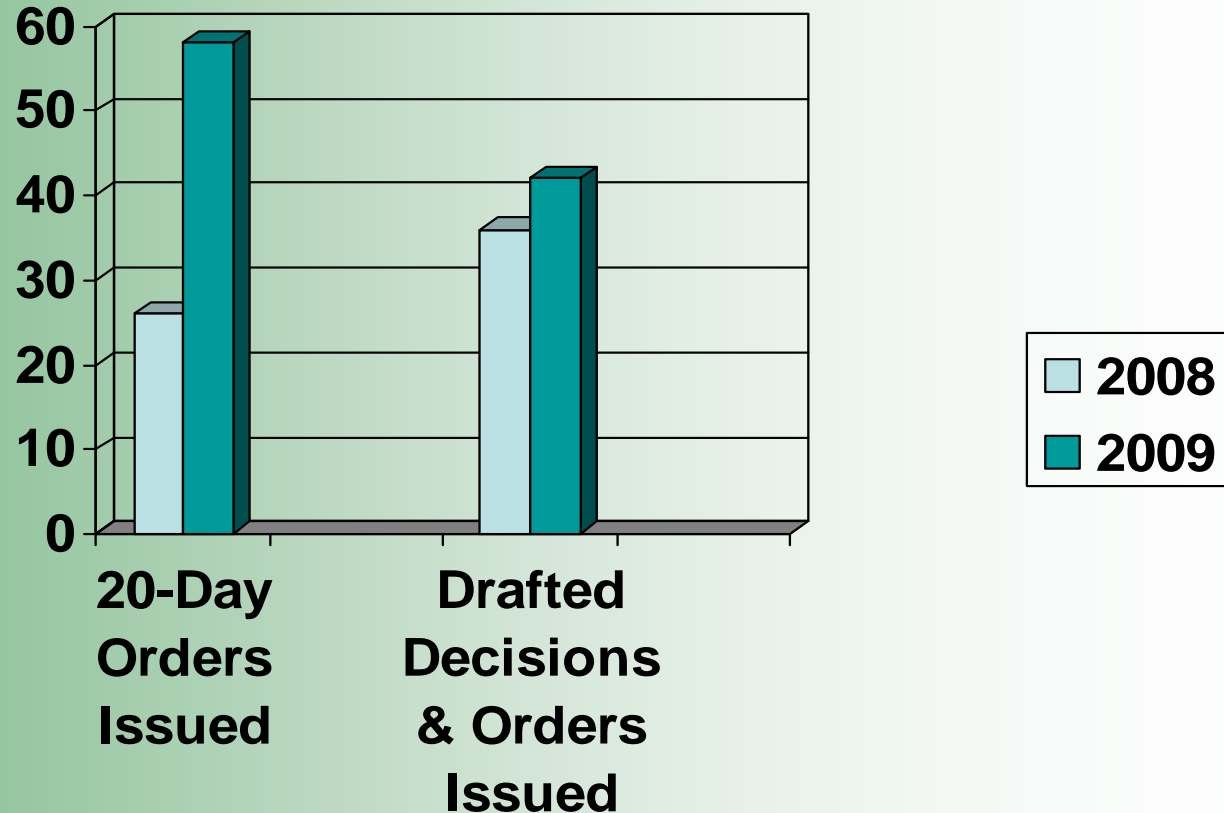


Working to Create Michigan's Future Today



BUREAU OF EMPLOYMENT RELATIONS COMMISSION DECISIONS AND ORDERS

Working to Create Michigan's Future Today



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