

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**VERNON COUNTY COURTHOUSE AND HUMAN SERVICES  
EMPLOYEES, LOCAL 2918, AFSCME, AFL-CIO**

Involving Certain Employes of

**VERNON COUNTY**

Case 23  
No. 55137  
ME-887

**Decision No. 13805-I**

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Appearances:

**Mr. Daniel R. Pfeiffer**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 18990 Ibsen Road, Sparta, Wisconsin 54656-3755, appearing on behalf of Vernon County Courthouse and Human Services Employees, Local 2918, AFSCME, AFL-CIO.

Klos, Flynn & Papenfuss, Chtd., by **Attorney Jerome J. Klos**, 800 Lynne Tower Building, 318 Main Street, P.O. Box 487, LaCrosse, Wisconsin 54602-0487, appearing on behalf of Vernon County.

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER CLARIFYING BARGAINING UNIT**

On April 8, 1999, Vernon County Courthouse and Human Services Employees, Local 2918, AFSCME, AFL-CIO filed a petition with the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of Vernon County employes by including four employes holding the position of Public Health Nurse.

Examiner John R. Emery, a member of the Commission's staff, conducted a hearing on October 15, 1999, in Viroqua, Wisconsin. Vernon County contended that the Public Health Nurse is a supervisory or managerial position and, therefore, should continue to be excluded from the bargaining unit. Briefs were filed by November 16, 1999.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

No. 13805-I

### **FINDINGS OF FACT**

1. Vernon County, herein the County, is a municipal employer with offices at Viroqua, Wisconsin and maintains a Public Health Department.

2. Vernon County Courthouse and Human Services Employees, Local 2918, AFSCME, AFL-CIO, herein the Union, is a labor organization with its offices located at Rt. 1, P.O. Box 333, Sparta, Wisconsin. The County and Union are parties to a collective bargaining agreement which contains the following recognition clause:

1.01 The COUNTY hereby recognizes the UNION as the exclusive bargaining representative for all employees for the Courthouse and Human Services Department, except the elected officials, supervisors, confidential, managerial or executive employees; for the purposes of conferences and negotiations relating to wages, hours and other conditions of employment.

The Union currently represents 54 County employees in the bargaining unit, 40 of whom are clerical and paraprofessional employees and 14 of whom are professional employees. Of the 14 professionals, 10 are Social Workers in the Human Services Department and 4 are County Conservationists.

3. The County Public Health Department currently employs five Public Health Nurses, including the Director, Elizabeth Johnson, all of whom are registered nurses. The Director and one of the nurses, Patricia Helgerson, are full-time employees. The other three nurses, Julie Fargen, Janet Reed, and Joyce Quarnstrom, are part-time employees. The Public Health Department also employs a Secretary/Bookkeeper, a Nutritionist and a WIC Receptionist/Outreach Worker, all of whom are supervised by the Public Health Director.

4. The County has adopted a description for the position of Public Health Nurse, which identifies the essential duties and responsibilities of the position as follows:

- Applies the nursing process to individuals, families and groups in the community, school settings, and jail.
- Assesses needs pertinent to the health of the individual, family and group, or inmates.
- Establishes realistic short term and long term goals and priorities based on the needs of the total family or group.
- Formulates a thorough and realistic plan of care with the individual, family or group.
- Coordinates plans with other professional workers and the individual, family, or group for the effective use of community resources.
- Establishes and maintains a nursing record of care provided and makes reports as requested, i.e., Medicaid, charts, programs, grants, jail, etc.

- Provides nursing services based on the concepts of health promotion, disease prevention, maintenance of health, rehabilitation and education.
- Plans with the client the concept of continuity of care to the extent of the client's capability.
- Evaluates the nursing service given to the individual, family, or group.
- Applies agency policy for the determination of priorities based upon the total caseload.
- Participates in the development, operation, assessment, and evaluation of the public health agency programs and grants.
- Contributes to the development of the philosophy, purposes, policies, and procedures of the nursing services in the Agency.
- Assists with the orientation and guidance of new staff members, volunteers, citizen committees, and boards.
- Promotes activities of the agency while providing education and making presentations to appropriate groups in the community on public health topics.
- Represents the agency in an official role when so designated.
- Contributes in the evaluation of workers under shared supervisory responsibility.
- Demonstrates responsibility for professional and/or personal growth.
- Plays a major role in the identification of own professional needs in relation to the job.
- Travels to clients' homes to provide nursing care.
- Keeps necessary records and reports and performs other tasks as necessary or directed.
- Cooperates with other community resources in planning of public health programs.
- Organizes and provides services in a clinic setting, i.e., immunizations, foot care, blood pressure, health screenings, WIC (Women, Infants, and Children), etc.
- May provide lactation education services and act as Breast Feeding Coordinator.
- Participates in surveys and assessment techniques regarding the general health of the community and inmates.

Programs which the Public Health Nurses help administer include the following:

- Maternal and Child Health
- Family Preservation
- Prevention of Child Abuse and Neglect
- Cardiovascular Risk Reduction
- MA Outreach/Immunization Outreach
- Immunizations

- WIC/Breastfeeding Coordinator
- Jail Health
- School Health
- Prenatal Care Coordination
- Foot care
- Lead Screening
- Health Check
- Wisconsin Well Women's Program
- Wisconsin Women's Cancer Control Program
- Influenza/Pneumonia Clinics
- AIDS Program – Partner Referral
- Home Visits
- Community Presentations on various health related topics

5. The position of Outreach Worker was recently added to the Department, and is staffed by a Certified Nurse's Aide. This employee will be responsible for providing foot care and monitoring to approximately 50 elderly or disabled County residents who are currently seen by two of the Public Health Nurses. The Outreach Worker will receive her initial training from the Nurses and will be monitored by them during her orientation period. Eventually, the employee will work independently, and will report directly to the Director.

The Public Health Nurses were not involved in the decision to create the Outreach Worker position, nor were they consulted in the hiring of the employee. Aside from directing the work of the Outreach Worker and reporting any unresolved performance issues to the Director, the Public Health Nurses do not have any supervisory responsibility over the Outreach Worker.

6. In July, 1999, the Department, as part of its Child Abuse Prevention program, began a cooperative program with the Viroqua Community Action Program (CAP) to assist high-risk families. Two Public Health Nurses have the responsibility of overseeing the activities of a CAP Parent Aide and monitoring her case files. They are also responsible for reporting any unresolved performance issues to the CAP Director. The Parent Aide is otherwise supervised by the CAP Director.

The Public Health Nurses were not involved in the decision to create the Parent Aide position, nor did they participate in the hiring of the CAP employee.

7. The Department has a contractual relationship with the Kickapoo School District to provide school nurse services one day per week. While on site, the Public Health Nurse dispenses prescription medications to students, does vision and scoliosis screening, trains school staff to dispense medications on days the nurse is not there, and reviews the school's records regarding medications and health related matters for the previous week. There are two District clerical employees that are primarily responsible for dispensing medications in the

Nurse's absence and approximately six other District employees who are available as substitutes. The Nurse meets with the two lead District staff people weekly to receive status reports and discuss medical issues in the District. The Kickapoo School District employees are under the supervision of the school Principal, or District Administrator.

The Public Health Nurses make initial determinations regarding District employees' competence to dispense medications and can make reports and recommendations to the District supervisor with respect to any problems with the performance of a District employee.

8. The Department oversees dispensation of prescription medications and provision of medical care to inmates in the Vernon County Jail. In addition to direct care provided to inmates, the Public Health Nurse assigned to the Jail trains and qualifies County Jail personnel to dispense prescription medications to inmates, oversees their work and checks their records. The Jail personnel are employees of the Vernon County Sheriff's Department and are under the direct supervision of the Sheriff.

The Public Health Nurses make initial determinations regarding employees' competence to dispense medications and can make reports and recommendations to the Sheriff with respect to any problems with the performance of an employee.

9. The Department has a contractual relationship with Viterbo College to serve as a clinical site for the Viterbo School of Nursing and for the Public Health Nurses to act as preceptors for Viterbo nursing students. Under this program, the students are assigned to the Nurses to observe them in clinical settings and also to gain experience performing certain tasks and procedures, such as immunizations, under the Nurses' supervision. The students are not employees of Vernon County, nor are the nurses on the faculty of Viterbo College, but they do have input into grading the students for the project.

10. When Director Johnson prepares the Department's budget, she seeks input from the Public Health Nurses. The Director then presents the budget to the appropriate County Board committees. The Public Health Nurses also provide budget input to the Kickapoo School District regarding the medical services the District receives from the Department.

Public Health Nurses prepare draft policies and procedures for the various programs the Department administers. Typically, these policies and procedures are subjected to a "consensus" review among the Department's Nurses and then are approved by the Director.

11. Julie Fargen has worked as a County Public Health Nurse for nine years and works an average of 30-32 hours per week. Her primary job function is to administer grant writing for the Department, which involves helping to develop and apply policies and procedures, identifying grants, writing applications, and reporting statistics and data to the State. In addition to her grant responsibilities, Fargen shares responsibility for directing the work of the Department's Outreach employee (with Public Health Nurse Helgersen) and of the Community

Action Program Parent Aide (with Public Health Nurse Quarnstrom). When Public Health Nurse Janet Reed is absent, she also fills in providing nursing services one day a week for the Kickapoo School District. Other programs for which she has responsibility include:

- Prenatal Care Coordination
- Child Abuse and Prevention Program
- Maternal and Child Health Services
- Breast Feeding Coordinator for WIC
- Breast Pump Rental Station
- Universal Hearing Screening Program
- Wisconsin Well Women's Program/Wisconsin Women's Cancer Control Program
- Cardiovascular Risk Reduction Program
- Family Preservation

Julie Fargen supervises activities rather than employees. She does not possess supervisory responsibilities in sufficient combination and degree to make her a supervisor. She does not participate sufficiently in the formulation, determination and implementation of management policy or possess sufficient authority to commit the County's resources to be a managerial employee.

12. Janet Reed has worked as a County Public Health Nurse for three years and works an average of 15-24 hours per week. She is primarily responsible for the Jail Health Program and is the primary School Nurse for the Kickapoo School District. In the Jail Health Program, and as School Nurse, she trains and oversees Jail and School District staff in the proper administration of prescription medications, as well as providing nursing services to inmates and students herself. She is also a Certified Lactation Educator and Breastfeeding Coordinator for WIC, which responsibilities do not involve supervision of employees.

Janet Reed supervises activities rather than employees. She does not possess supervisory responsibilities in sufficient combination and degree to make her a supervisor. She does not participate sufficiently in the formulation, determination and implementation of management policy or possess sufficient authority to commit the County's resources to be a managerial employee.

13. Joyce Quarnstrom has worked as a County Public Health Nurse for one year and works an average of 21-30 hours per week. She works with Julie Fargen in overseeing the training and activities of the Parent Aide employed by the Viroqua Community Action Program and works with Janet Reed in the Jail Health Program. Other programs for which she has responsibility include:

- Health Check
- WIC
- Lead Screening
- School Screenings (Vision & Hearing)
- MA Outreach/Immunization Outreach

Joyce Quarnstrom supervises activities rather than employees. She does not possess supervisory responsibilities in sufficient combination and degree to make her a supervisor. She does not participate sufficiently in the formulation, determination and implementation of management policy or possess sufficient authority to commit the County's resources to be a managerial employee.

14. Patricia Helgerson has worked as a County Public Health Nurse for two years and is a full-time employee. She works with Julie Fargen in overseeing the training and activities of the Outreach Worker in providing foot care and acts as principal preceptor for the Viterbo College nursing students in their cooperative clinical program. Other programs for which she has responsibility include:

- AIDS Program
- Immunizations
- Health Supervision Visits for elderly
- Blood Pressure Screening
- Influenza/Pneumonia Program
- Community Presentations – Environmental Field Days, Rural Safety Days, AIDS/STDs presentations to school children.
- School Screenings – Vision/Hearing

Patricia Helgerson supervises activities rather than employees. She does not possess supervisory responsibilities in sufficient combination and degree to make her a supervisor. She does not participate sufficiently in the formulation, determination and implementation of management policy or possess sufficient authority to commit the County's resources to be a managerial employee.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

### **CONCLUSIONS OF LAW**

1. The Public Health Nurses are not supervisors within the meaning of Sec. 111.70(1)(o)1, Stats.

2. The Public Health Nurses are not managerial employees within the meaning of Sec. 111.70(1)(i), Stats.

3. The Public Health Nurses are municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

**ORDER CLARIFYING BARGAINING UNIT**

The Public Health Nurses shall be included in the bargaining unit represented by Vernon County Courthouse and Human Services Employees, Local 2918, AFSCME, AFL-CIO.

Given under our hands and seal at the City of Madison, Wisconsin this 4th day of February, 2000.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner



Vernon County

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER CLARIFYING BARGAINING UNIT**

**BACKGROUND**

The Vernon County Public Health Department employs four Public Health Nurses under the supervision of the Department Director. The Nurses are not included in the County Courthouse and Human Services employees' bargaining unit represented by Local 2918, AFSCME, AFL-CIO.

In September, 1998, a hearing was held on a Union petition for unit clarification seeking to include the Public Health Nurses in the Local 2918 unit. The Union and County then entered into a stipulation that an election would be held for the Nurses to determine if they wished to be included in the bargaining unit, but that the results of the election would not preclude the filing of another unit clarification petition in the future. On October 19, 1998, an election was held, at which time the Nurses voted against joining the bargaining unit. On April 8, 1999, the Union again filed a petition for unit clarification, seeking to have the Nurses included in the bargaining unit, which resulted in the instant hearing.

**POSITIONS OF THE PARTIES**

**The Union**

The Union asserts that the Public Health Nurses are not supervisors or managerial employees and, therefore, should be included in the bargaining unit. Their limited supervisory duties extend to the Department Outreach Worker and a Parent Aide, employed by the Viroqua Community Action Program. In both cases, the supervisory role of the Nurses is limited to monitoring job performance and they do not have authority to hire, fire, discipline, approve overtime or time off with respect to these employees or to effectively recommend same.

The Public Health Nurses are also not managerial employees. Managerial and budgetary decisions for the Department are made by the Director, the governing County Committee and/or the County Board. The Nurses are sometimes consulted, and may make suggestions, but have no decision-making power. The independent judgment exercised by the Nurses, and their oversight of the cooperative nursing program with Viterbo College, is indicative of the Nurses' professional status, which the Union does not dispute, but is not evidence of managerial status. Public health nurses have consistently been found eligible to be placed in county employee bargaining units in Wisconsin and to do so here would be consistent with the statutory "anti-fragmentation" policy.

## **The County**

The County contends that the Public Health Nurses are supervisors and managerial employees and, therefore, are properly excluded from the bargaining unit. As set forth in Joint Exhibit 4A, the Nurses' supervisory and administrative duties include grant writing for the Department, exercising independent judgment and discretion in overseeing and administering Department programs, supervising the Parent Aide and Outreach Worker, delegating and monitoring medication administration by County Jail and Kickapoo School District personnel, supervising student nurses and assisting the Director in preparing the budget and developing agency programs, objectives and goals. Each Nurse has responsibility for various programs and all of them operate to a large extent independent from the direct supervision of the Director.

Whether the Nurses are responsible for the budget or have the authority to hire, fire, or discipline subordinates is not determinative as to whether they are supervisory or managerial employees.

Their supervisory responsibilities extend to others than just County employees, and encompass oversight of the participation of many individuals in the programs they administer. In providing medical care, the Nurses are personally responsible for the acts of those to whom they delegate and they have total discretion in determining who is competent to distribute medications or render medical care. Further, they can recommend disciplinary action to an employee's supervisor which, in turn, triggers actual discipline, in much the same way that the Director can make personnel recommendations to the appropriate County committee.

The managerial role of the Public Health Nurses is also clear. Federal, State and County regulations define the programs administered by the Department, but within those parameters the Nurses act as independent managers. They write grants for the Director's approval and draft budgetary requirements for submission to the Director for inclusion into the departmental budget. Additionally, they make day-to-day managerial decisions for the operation of each of their programs.

The record establishes that the primary duties of the Public Health Nurses are supervisory and managerial, with "hands on" nursing being secondary. They should, therefore, be disqualified from bargaining unit eligibility.

## **DISCUSSION**

### **Supervisory Status**

The statutory definition of a supervisor in Sec. 111.70(1)(o)1, Stats., is the following:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or

discipline other employees, or to adjust their grievances or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgement.

When in evaluating claims of supervisory status under Sec. 111.70(1)(o)1, we focus upon the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for her skills or for her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether she spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees. 1/

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1/ *CITY OF MILWAUKEE, DEC. NO. 6960-J (WERC, 5/89).*

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We have consistently held that not all of the above factors need to reflect supervisory status for us to find an employee to be a supervisor. Our task is to determine whether the factors are present in sufficient combination and degree to warrant finding an employee to be a supervisor. 2/

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2/ *ONEIDA COUNTY, DEC. NO. 24844-G (WERC, 6/98).*

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The Vernon County Public Health Department consists of a Director, four Public Health Nurses, an Outreach Worker, a Nutritionist and a Secretary/Bookkeeper. The Department administers a substantial number of programs, for which the Nurses often have a great deal of independent responsibility. They do not, however, possess sufficient supervisory responsibility to qualify as supervisors.

The County employees over whom the Public Health Nurses allegedly exercise supervisory authority are the Health Department Outreach Worker and the employees in the County Jail.

As to the Outreach Worker, Public Health Nurses direct her foot care work and will report any performance issues they cannot informally resolve to the Department Director. As to the Jail employees, the assigned Public Health Nurse directs the work of employees with health care responsibilities (primarily dispensing medication) and again are responsible for reporting performance issues which cannot be resolved to the appropriate Sheriff's Department personnel. When directing the work of these County employees, the Nurses do exercise independent judgment.

The record does not establish that the reporting of disciplinary issues rises to the level of effectively recommending discipline. Instead, the Nurses' role is limited to reporting the circumstances to others. We are further satisfied that the Nurses play no role in hiring, promotion or transfer, cannot adjust employee grievances, play no role in approving employee requests for leave or to work overtime, are paid for their skills, and (particularly as to the Outreach Worker) spend a small portion of their time directing the work of County employees. It is also noteworthy that if the Nurses were found to be supervisors, the Outreach Worker would have at least three supervisors within the eight person Department.

Given all of the foregoing, we conclude the Public Health Nurses are not supervisors.

We acknowledge that the County's argument regarding supervisory status relies in part on the allegedly supervisory authority of Public Health Nurses over individuals **who are not employees of the County**. Consistent with past rulings of this agency, however, we are reluctant to find supervisory status through the supervision of non-employees. JACKSON COUNTY, DEC. NO. 17828-E (WERC, 3/91). Thus, in our view, any authority exercised by the Public Health Nurses over employees of other employers is irrelevant to the supervisory issue. 3/

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*3/ However, assuming for the sake of argument that we were to consider the nature and extent of the Public Health Nurses' authority over non-County employees, we would still find that the Nurses are not supervisors. At best, the extent of their authority over the Community Action Program or Kickapoo School District employees is no greater than the authority they exercise over County employees, smacks more of supervision of an activity than of individuals, and in either case is an insufficient basis for establishing supervisory status.*

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We also note that the County relies in part on the Nurses' role directing and evaluating the work of nursing students. Because the students are not employees and supervisory status must be established based on authority over employees, the Nurses' responsibilities for students is also irrelevant to the issue of supervisory status. MONROE COUNTY, DEC. NO. 8166-A (WERC, 12/67); WOOD COUNTY, DEC. NO. 13760 (WERC, 6/75).

### **Managerial Status**

The Legislature has excluded "managerial employees" from the definition of "municipal employees" found in Sec. 111.70(1)(i), Stats., but has left the Commission to develop the parameters of the exclusion.

There are two analytical paths to assess claimed managerial status. One considers the degree to which individuals participate in the formulation, determination and implementation of management policy; the other considers the extent to which the individuals possess the authority to commit the employer's resources.

For an individual to assume managerial status based on participation in program and policy, such involvement must be "at a relatively high level of responsibility." Managerial status based on allocation of the employer's resources necessarily entails significantly affecting the nature and direction of the employer's operations, such as the kind and level of services to be provided, or the kind and number of employees to be used in providing services. 4/

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4/ CHIPPEWA COUNTY, DEC. NO. 10497-A (WERC, 8/97)

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The Public Health Nurses actively participate in the formulation of policies related to the programs for which they are responsible. They also provide input to the Director when she is preparing the Department's budget for submission to the County Board and help acquire resources through grant writing. While these responsibilities are not insignificant, we are persuaded that they fall shy of establishing managerial status, particularly in the context of the State and Federal parameters established as to many of the Department's programs. We also note that acceptance of the County's position would mean that five of the eight Department employees would be managerial.

Given the foregoing, we have ordered the inclusion of the Public Health Nurses into the Union bargaining unit.

In closing, we note the County has argued that if the Public Health Nurses are included in the bargaining unit, the County's ability to provide public health services will be harmed. The County's concerns are premised on an assumption that the wage and hour provisions of an existing bargaining agreement will automatically apply to the Public Health Nurses. However, any existing contract will not automatically apply to the Nurses. Their wages, hour and conditions of employment will be established by the collective bargaining process and, if necessary, interest arbitration. *LOCAL 60, AM. FED. OF MUN. EMPLOYEES v. WERC*, 217 WIS.2D 602 (CT. APP. 1998). Thus, the County will have the opportunity to address issues of concern to it.

Dated at Madison, Wisconsin this 4th day of February, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

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