

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petitions of  
**THE LABOR ASSOCIATION OF WISCONSIN, INC.**

Involving Certain Employes of  
**SHEBOYGAN COUNTY**

Case 8  
No. 53894  
ME-831

**Decision No. 8256-K**

and

Case 321  
No. 57623  
ME-3728

**Decision No. 29847**

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Appearances:

**Mr. Thomas A. Bauer**, Labor Consultant, 206 South Arlington Street, Appleton, Wisconsin 54915, appearing on behalf of the Labor Association of Wisconsin, Inc.

**Mr. Michael J. Wilson**, Representative at Large, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of Local 110, AFSCME, AFL-CIO.

**Ms. Louella Conway**, Personnel Director, 615 North Sixth Street, Sheboygan, Wisconsin 53081, appearing on behalf of Sheboygan County.

No. 8256-K  
No. 29847

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DISMISSING  
PETITION FOR UNIT CLARIFICATION AND PETITION FOR ELECTION**

On June 4, 1999, the Labor Association of Wisconsin, Inc. filed two petitions with the Wisconsin Employment Relations Commission regarding certain employees of Sheboygan County currently included in the bargaining unit represented by Local 110, AFSCME. By its petitions, the Association requested the Commission to clarify the existing Local 110 bargaining unit by excluding therefrom all regular full-time and regular part-time correctional officers and to order an election in a correctional officers bargaining unit to determine whether the employees wished to be represented by the Association, Local 110 or by neither of these organizations for the purposes of collective bargaining.

Local 110, AFSCME, opposed the petitions. Sheboygan County took no position.

Hearing in the matter was held on November 4, 1999, in Sheboygan, Wisconsin by Examiner Stuart Levitan. The Association filed written argument on December 11, 1999, with Local 110, AFSCME submitting a letter brief at the Commission's request on January 11, 2000. The County did not file any written argument.

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

**FINDINGS OF FACT**

1. Sheboygan County, herein the County, is a municipal employer with offices at 615 North Sixth Street, Sheboygan, Wisconsin.

2. The Labor Association of Wisconsin, herein the Association, is a labor organization with offices at 2825 North Mayfair Road, Wauwatosa, Wisconsin. The Association is not the collective bargaining representative of any County employees.

3. Local 110, AFSCME, AFL-CIO, herein AFSCME, is a labor organization with offices in Sheboygan, Wisconsin. Local 110 represents a bargaining unit of 277 employees described in its 1997-1999 contract with the County as:

. . .all regular full-time and part-time personnel employed by Sheboygan County in the Courthouse and in auxiliary departments and buildings (but specifically excluding therefrom all elected public officials, supervisors, professional employees of the **Health and Human Services Department**, all deputized employees of the Sheriff's Department, all nurses, and all confidential employees. . .

There are three other AFSCME bargaining units of County employees - Local 437 (Social Workers) consisting of 46 employees; Local 2427 (Health Care Center) consisting of 632 employees; and Local 1749 (Highway Department) consisting of 108 employees.

4. The Wisconsin Professional Police Association, herein WPPA, is a labor organization with offices at 340 Coyier Lane, Madison, Wisconsin. WPPA represents two bargaining units of County employees - the 56 sworn non-supervisory employees of the Sheriff's Department and the 23 supervisory employees of the Sheriff's Department.

5. The American Federation of Teachers, herein AFT, is a labor organization with offices at 9620 West Greenfield Avenue, West Allis, Wisconsin 53214. AFT represents two bargaining units of County employees: Local 5011 (Health Care Centers Registered Nurses) consisting of 62 employees; and employees of the Division of Public Health and Division of Community Programs consisting of 53 employees.

6. As part of its responsibilities, the County Sheriff's Department maintains a jail and detention center serviced by 10 secretaries, two account clerks, 12 dispatchers, 40 correctional officers, five booking clerks, a Huber Law correctional officer, an officer in charge of the electronic monitoring program and an officer assigned to classify inmates (all currently in the AFSCME Local 110 bargaining unit); a jail administrator and eight correctional supervisors, in the WPPA supervisory unit; and an office manager, an accountant, a training and development head, two nurses, an emergency management director, and two mechanics, all unrepresented. All these positions, and only these positions, are under the supervision of the Sheriff Department's Director of Administration, who reports to the Department's Inspector and the Sheriff.

7. At hearing, the parties stipulated to the following statement of the process by which the correctional officers became part of the Local 110 bargaining unit:

The entire Sheriff's department was under one union, AFSCME Local 2481. Members of this bargaining unit included sworn deputies, correctional officers, dispatchers, clerical staff and cooks in the jail.

At the end of the December 31, 1991 contract, the sworn officers negotiated a change in the new contract indicating only sworn officers were to be included in the bargaining unit.

The other members of this unit were aware that they were not to be included in the new unit with the sworn officers. It then became necessary for the other members of the unit, which included the correctional officers, clerical staff, dispatchers and cooks, to seek other representation.

The correctional officers requested to the Personnel Committee that they be allowed to form a new unit comprised only of correctional officers. The Personnel Committee did not agree with this request and recommended the correctional officers move to the AFSCME 110 unit with the clerical employees, dispatchers and cooks. Subsequently an addendum was developed which outlined the provisions of the accretion. This addendum was signed by the parties on May 12, 1993 and these employees have been members of Local 110 since that time.

The Sworn Officers petitioned for unit clarification with the Wisconsin Professional Police Association on May 2, 1994. Through the election process it was determined the sworn officers would be represented by WPPA.

At the time the Personnel Committee rejected the correctional officers' request for their own bargaining unit, there were approximately twelve correctional officers. There are now 48 correctional officers authorized on the table of organization.

8. The 1997-1999 collective bargaining agreement between the County and Local 110, AFSCME, provides for a wage structure ranging from grade 8 (1999 top hourly wage \$10.77) to grade 24 (1999 top hourly wage \$20.42). The correctional officers are among those employees at grade 18 (1999 top hourly wage \$15.95), with the huber law officer, programmer II and soil conservation technician.

Correctional officers provide jail coverage 24 hours a day, 7 days per week – unlike all other Local 110 unit employees except dispatchers. The correctional officers' work week is based on a 6-3, 6-2 pattern that is totally unique to the Local 110 unit.

The 1997-1999 agreement also includes an addendum applicable to certain employees of the Sheriff's Department, specifically the correctional officers, dispatchers, and secretary I's and II's. All provisions of the 1997-1999 agreement apply to the above-described Sheriff's Department positions, except as amended by the five-page addendum. The addendum addresses the following issues:

- A. Work Week
- B. Shift Differential
- C. Call-In/Stand-By Pay
- D. Time and One-Half
- E. Holidays
- F. Vacation
- G. Sick Leave
- H. Probationary Period
- I. Uniform Allowance
- J. Grievance Procedure
- K. Seniority
- L. Addendum
- M. Civil Suits
- N. Death and Disability Benefits
- O. Duration

Of the positions covered by the addendum, the Association petitions relate only to the correctional officers. The Association does not seek a unit clarification or election affecting the other non-sworn positions, namely the dispatchers or secretaries.

In the performance of their duties, all Sheriff's Department employees are subject to the detailed provisions of the Sheriff's Department policies and procedures manual.

9. In general, the correctional officers are responsible for the maintenance of security and order of inmates in a correctional environment. Correctional officers are assigned to the jail and detention center, which are secure facilities, and may also work in the field on transport or other duties. No correctional officer is routinely assigned to the other 16 county facilities, namely the courthouse, extension office, job center, human services building and annex, meal sites and airport, and no County personnel assigned to those facilities have general access to the secure portions of the jail and detention center.

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

#### **CONCLUSIONS OF LAW**

1. The Labor Association of Wisconsin, Inc. does not have standing to file the instant unit clarification petition.

2. A bargaining unit consisting of correctional officers employed by Sheboygan County is not an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

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

**ORDER**

1. The petition for unit clarification is dismissed.

2. The petition for election is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 2nd day of March, 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

**SHEBOYGAN COUNTY (COURTHOUSE)**

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER DISMISSING PETITION  
FOR UNIT CLARIFICATION AND PETITION FOR ELECTION**

By its two petitions, the Association requests the Commission to clarify the existing Courthouse bargaining unit represented by Local 110, AFSCME, by excluding therefrom all regular full-time and regular part-time correctional officers and to order an election in a bargaining unit of correctional officers.

**POSITIONS OF THE PARTIES**

**The Association**

In support of its petitions, the Association asserts the correctional officers share a community of interest that is distinct from that of the other employees in the existing Local 110 bargaining unit. Their duties and skills (almost exclusively performing dangerous security functions such as bookings and detainments, strip searches, inspections and inmate transport) are distinctive to their classification. Because these duties and skills are unique to the correctional officers, correctional officers should have a separate bargaining unit.

The correctional officers have a unique work schedule, working a 6-3,6-2,6-3,6-2 cycle while other Local 110 employees work the normal five-day workweek. Correctional officers wear distinct uniforms; their 12-month probationary period is double the other employees'; they have separate and distinct supervision under the Sheriff's Department chain of command; they have rules and regulations which are far more comprehensive and specific than other employees; their pay grade is the same as positions with which they have no community of interest; their workplace is a secure area which they use exclusively and apart from all other Local 110 employees (except for occasional use by dispatchers, clerical and accounting personnel within the Sheriff's Department, who still have restricted movement). For all these reasons, the correctional officers have a community of interest which is separate and distinct from the other Local 110 employees, such that they are entitled to their own bargaining unit.

The bargaining history of the correctional officers also supports creation of a separate bargaining unit. The bargaining history shows that the correctional officers were forced into a "shotgun marriage" with the Local 110 unit without any consideration as to their desires. Local 110 did not complain because it meant additional union dues. Although it is not uncommon to have a unit such as Local 110 exist with a variety of different employee

classifications within one bargaining unit, those units usually come about through voluntary agreement between the parties regarding the appropriateness thereof, not via a Commission edict.

Further, the number of correctional officers has grown to a size that should be recognized as appropriate for a separate unit. At the time they were excluded from the sworn officers' bargaining unit, there were only about a dozen employees within the classification. There are now 40 correctional officers, with 48 officers being authorized. The County currently has four bargaining unit ranging from 46 to 62 employees, making a 48-member unit appropriate.

The Municipal Employment Relations Act requires the Commission to strike a balance between anti-fragmentation and the need for ensuring that the unique interests of a given group of employees will not be subordinated to the interests of others in the bargaining unit. The statute requires that the Commission determine whether the unit sought is **an** appropriate unit, not whether it is the **most** appropriate unit. The Association argues that a correctional officers' unit is **an** appropriate unit.

Finally, the County did not advance any argument at hearing that they were opposed to the Commission creating a new correctional officers bargaining unit. Whatever the County's concerns were in 1992, (and it appears that the size of the bargaining unit may have been the rationale for denying the correctional officers a separate bargaining unit), no opposition is now being expressed.

Accordingly, the Commission should find that the correctional officers comprise an appropriate bargaining unit and order an election.

### **AFSCME**

AFSCME asserts the unit clarification petition should be dismissed because the Association is neither the employer nor the bargaining representative for any affected County employees.

Regarding the election petition, AFSCME argues it would be undue fragmentation to splinter off a group of one classification of 40-48 employees from a bargaining unit that has existed for some years. A separate bargaining unit of correctional officers does not have a sufficiently distinct community of interest from the employees in the overall unit represented by Local 110 to warrant creation of a correctional officers' unit.



AFSCME asserts the correctional officers do have a community of interest with other Local 110 employees. Law enforcement has always been a joint effort, and there are others in the Local 110 bargaining unit who work hand in hand with the correctional officers in this mission who are in the same facility, have the same breaks, and have the same wages, hours and working conditions.

These petitions have held up collective bargaining for the Local 110 unit. The petitions should be dismissed so that parties can begin bargaining.

### **County**

The County takes no position.

## **DISCUSSION**

### **The Unit Clarification Petition**

One of the two matters before us is the unit clarification petition filed by the Association seeking to exclude the correctional officers from the existing AFSCME Local 110 unit. Citing MILWAUKEE COUNTY, DEC. NO. 24212 (WERC, 1/87), AFSCME asserts that this petition should be dismissed because the Association is neither the employer of the affected employees nor the bargaining representative of any affected County employees. We agree and dismiss the petition on that basis.

### **The Election Petition**

Although it has no right to file a unit clarification petition, the Association does have the right to seek to represent the correctional officers currently represented in the Local 110 unit if it: (1) timely files an election petition (2) supported by at least 30% showing of interest among the correctional officers; and (3) can persuade us that a unit of correctional officers is appropriate under Sec. 111.70(4)(d)2.a., Stats.

The Association election petition is timely because it was filed during the 60-day period prior to the date in the 1997-1999 Local 110 unit contract for the reopening of negotiations.

The Association election petition is supported by the requisite showing of interest of at least 30% of the correctional officers.

We turn to the question of whether a unit of correctional officers is appropriate.

### **Applicable Law**

Section 111.70(4)(d)2.a., Stats. provides:

2.a. The commission shall determine the **appropriate** collective bargaining unit for the purpose of collective bargaining and shall whenever possible, unless otherwise required under this subchapter, avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the municipal employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a collective bargaining unit (emphasis added).

When making the determination of whether a unit is “appropriate”, we measure the facts presented by the parties against the statutory language of Sec. 111.70(4)(d)2.a., Stats. We use the following factors as interpretive guides to the statute:

1. Whether the employees in the unit sought share a “community of interest” distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought have separate or common supervision with other employees.
5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

ARROWHEAD UNITED TEACHERS v. WERC, 116 Wis.2d 580 (1984); BENTON SCHOOL DISTRICT, DEC. No. 24147 (WERC, 12/86); BOYCEVILLE COMMUNITY SCHOOL DISTRICT, DEC. No. 20598 (WERC, 4/83).

We have used the phrase “community of interest” as it appears in Factor 1 as a means of assessing whether the employees participate in a shared purpose through their employment. We have also used the phrase “community of interest” as a means of determining whether employees share similar interests, usually – though not necessarily – limited to those interests reflected in Factors 2-5. This definitional duality is of long-standing, and has received the approval of the Wisconsin Supreme Court. ARROWHEAD UNITED TEACHERS v. WERC, SUPRA.

The fragmentation criterion reflects our statutory obligation under Sec. 111.70(4)(d)2.a., Stats. to “avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal workforce.”

The bargaining history criterion involves an analysis of the way in which the workforce has bargained with the employer or, if the employees have been unrepresented, an analysis of the development and operation of the employee/employer relationship. MARINETTE SCHOOL DISTRICT, DEC. No. 27000 (WERC, 9/91).

Based upon long-standing Commission precedent, it is well established that within the unique factual context of each case, not all criteria deserve the same weight (SHAWANO-GRESHAM SCHOOL DISTRICT, DEC. No. 21265 (WERC, 12/83); GREEN COUNTY, DEC. No. 21453 (WERC, 2/84); MARINETTE COUNTY, DEC. No. 26675 (WERC, 11/90)) and thus a single criterion or a combination of criteria listed above may be determinative (Common purpose, MADISON METROPOLITAN SCHOOL DISTRICT, DEC. Nos. 20836-A and 21200 (WERC, 11/83); similar interests, MARINETTE SCHOOL DISTRICT, SUPRA; fragmentation, COLUMBUS SCHOOL DISTRICT, DEC. No. 17259 (WERC, 9/79); bargaining history, LODI JOINT SCHOOL DISTRICT, DEC. No. 16667 (WERC, 11/78)). Consequently, the Commission gives effect to the aforesaid statutory provision by employing a case-by-case analysis (APPLETON AREA SCHOOL DISTRICT, DEC. No. 18203 (WERC, 11/80)) “to avoid the creation of more bargaining units than is necessary to properly reflect the employee’s community of interest.” AREA BOARD OF VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT No. 1, DEC. No. 11901 (WERC, 5/73).

## The Merits

Turning first to the “community of interest” factor as a means of assessing whether the employees participate in a shared purpose, we have held “ . . . that the common focus and interdependence of the efforts of all Sheriff’s Department employees provides them with a substantial ‘community of interest’ and that “(t)he employees who lack a power of arrest share in this distinctive ‘community of interest’ when compared to other County employees.” MANITOWOC COUNTY, DEC. NO. 25851 (WERC, 1/89).

In the instant matter, while the correctional officers have a shared purpose *with each other* that is distinct from that of most of the other members of the AFSCME Local 110 unit, they share that purpose with the other AFSCME Local 110 unit employees of the Sheriff’s Department (as well as the sworn deputies).

When “community of interest” is examined from the perspective of Factors 2 – 5, we find clear distinctions between the corrections officers and the other AFSCME Local 110 unit employees.

Factor 2 compares the duties and skills of the employees in the unit sought as compared with the duties and skills of other employees. The employees in the AFSCME Local 110 unit perform a wide variety of secretarial, administrative, technical, blue-collar and professional duties requiring a wide range of skills. None, however, have duties involved in performing the correctional officers’ security functions in a secure setting. Thus, consideration of this factor supports the Association’s petition.

Factor 3 compares the similarity of wages, hours and working conditions of employees in the unit sought with the wages, hours and working conditions of other employees. On balance, consideration of this factor favors the Association’s petition:

a) Correctional officers must provide jail coverage 24 hours per day, 7 days per week, which is unique among all AFSCME Local 110 unit employees, except dispatchers. Moreover, the workweek for correctional officers is based on a 6 – 3, 6 - 2 pattern that is totally unique to the Local 110 unit. The sworn deputies are the only employees to have a similar work week but the deputies (power of arrest) are in a separate bargaining unit of their own.

b) Newly hired correctional officers serve a 12-month probationary period, as opposed to the 6-month probationary period served by other AFSCME Local 110 unit employees, including other civilian employees of the Sheriff’s Department.

c) By virtue of their daily contact with alleged or convicted lawbreakers, correctional officers may run a greater risk to their personal safety than do the other members of the AFSCME Local 110 bargaining unit. (This distinction is lessened, of course, to the extent that the latter may come into contact with the prisoner population.)

d) Both correctional officers and other civilian employees of the Sheriff's Department receive a ½ day holiday more than the other members of the AFSCME Local 110 bargaining unit.

e) Both correctional officers and other civilian employees of the Sheriff's Department receive the same shift differential as the other members of the AFSCME Local 110 bargaining unit and other benefits (e.g., insurance, retirement) are also identical.

Turning to consideration of Factor 4 (separate or common supervision), a somewhat mixed picture emerges. Unsworn Sheriff's Department employees do have supervision distinct from all other AFSCME Local 110 unit employees. But again, the AFSCME unit includes other Sheriff's Department employees beside the correctional officers. Because correctional officers share a common chain of command with other civilian Department employees in the AFSCME Local 110 bargaining unit, consideration of Factor 4 does not provide unqualified support for the Association's petition.

Factor 5 inquires into whether the employees in question have an exclusive workplace or work at a site shared by others. Support for the Association's proposed unit is generated by the fact that correctional officers are the only AFSCME Local 110 unit employees that routinely work in secured portions of the jail. That support is diluted to the extent that other unsworn Department employees may also be required from time to time to work in the secured portions.

Factor 6 reflects the statutory mandate against undue fragmentation found in Sec. 111.70(4)(d)2.a., Stats. This statute requires the Commission to " . . . avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force." Undeniably, granting the Association's petition herein would splinter the Sheriff's Department employees from two units into three. Thus, on its face, the Association's petition would appear to violate the statutory restraint.

Historically, however, the Commission has interpreted this statute as entrusting us with a “ . . . statutory obligation to strike a balance between the need to avoid fragmentation of the workforce by maintaining as few units as practicable and the need to ensure that the unique interests and aspirations of a given group of employees are not subordinated to the interests of another group.” JUNEAU COUNTY, DEC. NO. 27877 (WERC, 11/93).

The evidence does not show that the unique interests and aspirations of the corrections officers have been subordinated to the interests of another group. (On the contrary, we note that an addendum to the labor agreement between AFSCME Local 110 and the County is exclusively devoted to the wages, hours and conditions of employment of unsworn Sheriff’s Department employees, including the corrections officers.) We are mindful that there are currently 40 corrections officers (with an authorized strength of 48) in a bargaining unit of more than 200 persons. But, we find no persuasive evidence that the unique interests of the corrections officers are not being met.

Factor 7 inquires into bargaining history. “Bargaining history is relevant . . . insofar as it relates to a previously established relationship between the parties. In structuring or revising unit descriptions, the Commission is sensitive to the desirability of not disturbing such a relationship without compelling reason.” MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NO. 20836-A (WERC, 11/83), cited approvingly in CITY OF GREEN BAY (CITY HALL), DEC. NO. 21210-A (WERC, 3/84).

In the instant matter, we note that the existing AFSCME Local 110 unit has a long-time and well-established relationship with the County. The record establishes that the correctional officers were first included in a Sheriff’s Department unit of all sworn and unsworn employees and then moved to the existing AFSCME Local 110 unit. They have never been treated as a separate group for purposes of collective bargaining. In our view, this bargaining history offers no “compelling” reason for change, and buttresses our conclusion that the unit proposed by the Association is not appropriate because it violates the anti-fragmentation mandate of the Sec. 111.70(4)(d)(2).a., Stats.

We therefore dismiss the election petition. 1/

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*1/ Our conclusion is consistent with the result reached in MANITOWOC COUNTY, SUPRA, MARINETTE COUNTY, DEC. NO. 22102-D (WERC, 7/87); MARATHON COUNTY, DEC. NOS. 24467, 24468 and 20999-A (WERC, 5/87) and CITY OF MENASHA, DEC. NO. 24446 (WERC, 4/87) where we found proposed units of unsworn law enforcement employees to be inappropriate.*

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Dated at Madison, Wisconsin this 2nd day of March, 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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